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# REVISED LAWS OF NEVADA

CONTAINING

STATE STATUTES OF A GENERAL NATURE FROM 1861  
REVISED TO 1912, AND PERTINENT ACTS OF CONGRESS  
WITH ANNOTATIONS FROM VOLUMES 1 TO 34, NEVADA  
REPORTS, AND FROM FEDERAL AND STATE DECISIONS

Prepared under legislative enactment, by

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F. H. NORCROSS

Justices of the Supreme Court

## VOLUME I

Sections 1 to 4827, inclusive



CARSON CITY, NEVADA

JOE FARNSWORTH, Superintendent of State Printing

1912

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## CERTIFICATE OF COMPILERS

SUPREME COURT CHAMBERS,  
CARSON CITY, NEVADA, December 15, 1911.

HON. GEORGE BRODIGAN, *Secretary of State.*

SIR: We, the undersigned, Justices of the Supreme Court of the State of Nevada, do hereby certify that the annexed is a true and full compilation of the general laws of the State of Nevada, as revised, compiled, annotated and indexed under an act of the legislature entitled "An act to provide for the revising, compiling, annotating and publishing the laws of the State of Nevada, and the compiling, annotating and publishing therewith certain laws of the United States of particular interest to the State of Nevada, and other matters properly connected therewith, and making appropriation therefor," which became a law March 31, 1909, and as amended March 20, 1911.

*James G.weeney*

*G. P. Salbeck*

*J. A. Horvath*



# PREFACE

This work has been prepared pursuant to the act of the legislature of March 31, 1909 (sections 1001 to 1016 of this volume), which provides that "The justices of the supreme court of the State of Nevada shall constitute a commission to revise, compile, annotate and index the laws of the State of Nevada, and certain laws of the United States," as directed in different sections of the act, and to present new bills for the consideration of the succeeding legislature. The magnitude of the task proposed was greater than at first realized, and the labor necessarily involved in the preparation of a careful and complete revision of all the statutes of the state was more than could be accomplished in the time at the disposal of the commission. Proceeding as far as this part of the work could be done to the close of the legislative session, the commission revised and consolidated old and prepared new acts relating to the more important branches of the law, such as civil practice, crimes, and criminal practice, and these and an act comprehending a complete revision of the school laws of the state, were reenacted by the legislature of 1911. In the preparation of these the latest and most improved codes in various states were examined, sections which appeared beneficial and suitable to our conditions were adopted, amendments and changes were made, unnecessary requirements eliminated, new sections added, and more especially it was sought to make the law in relation to crimes more complete, and civil and criminal practice more simple, expeditious and inexpensive. The statement on motion for a new trial, which has heretofore caused delay and trouble in its amendment and settlement, is abolished, and a statement on appeal will no longer be necessary when the alleged errors appear upon the record, or except in cases where the evidence or other matter cannot be brought to the appellate court without the making and settlement of a statement.

As a basis for revision and compilation every act passed at the regular or special sessions of the legislature from 1861 to 1911, inclusive, has been examined and classified as general, special, local, amended, or repealed, and the books and manuscript showing these classifications have been retained for preservation in the archives of the secretary of state in contemplation of their use in preparing future revisions or compilations of the laws, in so far as they may relate to statutes passed to this time.

The preparation of the new act relating to schools was almost entirely the work of State Superintendent of Public Instruction Bray and Deputy Superintendents Abel, Anderson, Lightfoot, McKay, and Mitchell, and they are entitled to the credit for the painstaking labor involved in the revision of that important branch of the law, the commission being able to give only advice and slight assistance in this part of the revision which those officials readily undertook at the request of the commission.

As the work contains new features, arranged differently from any compilation heretofore published, an outline of its plan will be an aid to users.

Nearly all of the acts relating to civil practice, crimes, and criminal practice passed since the main civil practice act of 1869, the general crimes and punishments and the general criminal practice acts in 1861, have been consolidated with the main acts and enlarged with new sections, and the old ones worked over have been repealed.

The direction in section 5 of the act authorizing this compilation, that all acts unconstitutional shall not be included, the commission has deemed as applying only where statutes manifestly fell within some well-established rule of construction enunciated by the supreme court so as to leave not the slightest question of doubt as to constitutionality. In no way whatever should it be deemed that the appearance of any statute within this publication carries any expression of opinion upon the part of the compilers by virtue of their official positions, either as to construction or constitutionality.

Although not so classified, except in the table of contents, theoretically the work is arranged in four parts. The first contains Magna Carta, Declaration of Independence, Articles of Confederation, Federal and State Constitutions, and Enabling Acts. The third contains the statutes relating to courts, court officers, civil practice, divorce, adoption of children, estates of deceased persons, wills, guardians, and habeas corpus. The fourth contains the acts relating to crime, criminal practice, state prison and jails, pardons and paroles. The second contains the statutes of a general nature pertaining to the other branches of the law, with the titles in alphabetical order.

A little familiarity with this arrangement, and the knowledge that the acts relating to courts and civil practice are in the fore part and those concerning crimes in the last part of volume 2, will enable any one, without going to the table of contents or index, to turn to a desired title, with its schedule of acts and sections. The alphabetical list following this preface also permits of ready reference to the different titles. The next schedule shows the acts of Congress. The table of contents following gives a panoramic view of the whole work, and indicates where the various acts may be found.

At the heads of the more important acts are tables of statutory and constitutional cross-references, arranged separately and alphabetically. A number of acts were found to properly fall within either of two classifications, and when this occurred they were placed in that classification which seemed to the commission to be the more appropriate and a cross-reference made under the other classification.

The commission has endeavored by cross-references at the beginning of different subjects or titles, and under the various sections, to refer to sections in the same or other acts having a particular bearing upon the same subject-matter. Such cross-references should, however, be deemed only as an aid in finding the law upon a given subject, and whenever the importance of the investigation warrants resort should be had to the index for a more complete reference. The head-lines in large type above the sec-

tions of nearly all the titles, excepting the constitution and corporations, have been revised, and these have been given special care in the index.

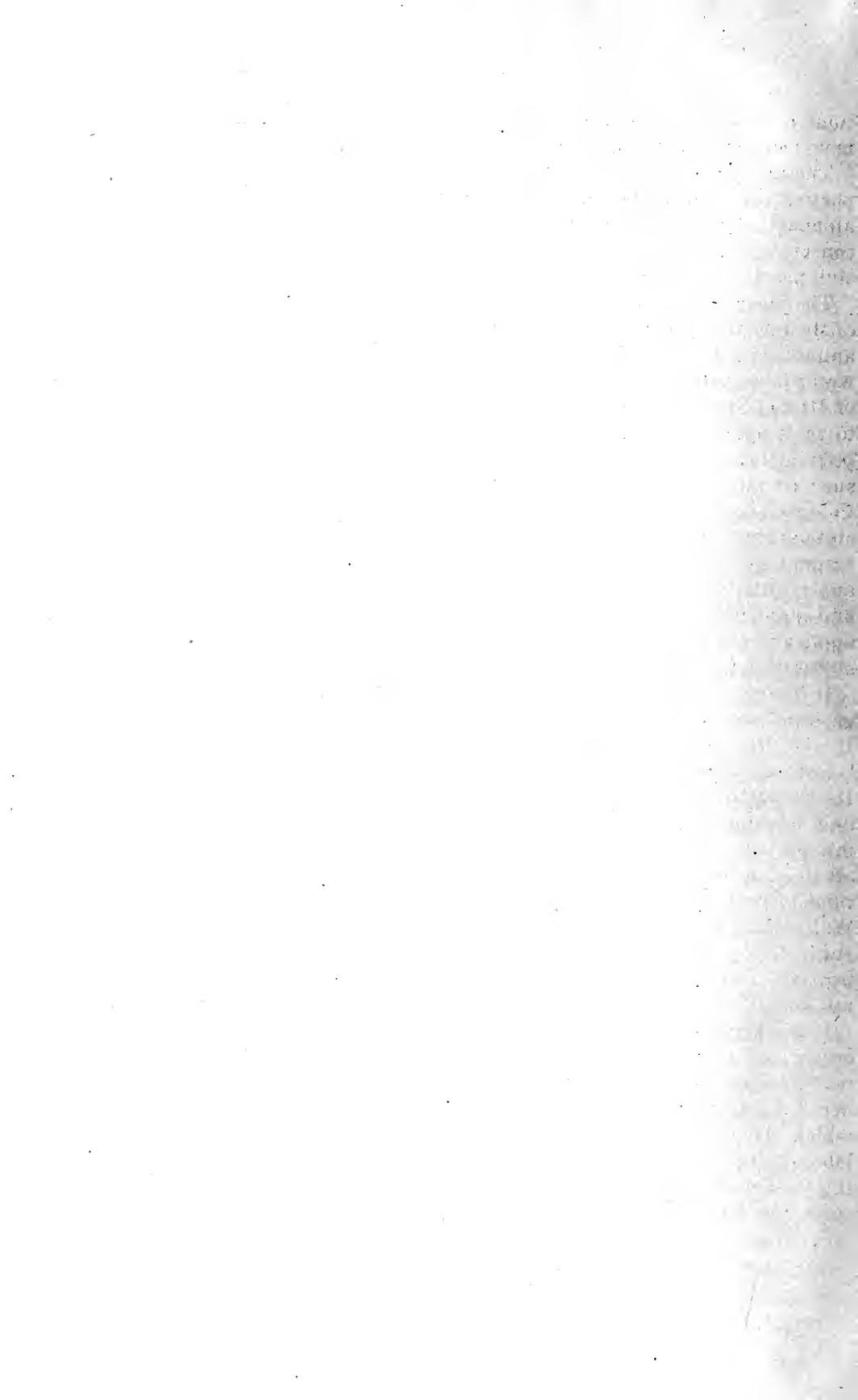
The act in relation to marriage and divorce has been divided, and that portion of it relating to marriage has been placed under its own title in alphabetical order in volume 1, and the part relating to divorce and the act concerning the adoption of children have been inserted as subheads under civil practice in volume 2.

The federal constitution and acts of Congress relating to the organization of the territory and state, the land grants to the state, agricultural colleges, animal industry, bankruptcy, authentication of records, land, mining and water laws, townsites and rights of way on the public domain, and election of United States senator, which are as controlling and of as much interest to the people of the state as the enactments of our own legislature, have been included in the compilation. When pertinent to the same subjects, such as mines, public lands or water, as the state statutes, the acts of Congress have for convenience been placed adjoining and preceding the state statutes under the same title, and the federal and state sections are accompanied by notes under each giving reference to the other. The rules and regulations of various departments, boards and officers, both federal and state, which either have the force of statute or are essential in the application of statutory provisions, have been placed immediately after the statutory law to which they relate.

In kindly response to the solicitation of the commission, valuable suggestions were made by members of the bar, state and other public officials. It is desired to especially acknowledge the assistance rendered by the legislature; by Hon. Joe Farnsworth, superintendent of state printing; Hon. H. F. Bartine, chairman of the railroad commission, in the preparation and indexing of the laws affecting the railroads and the public utility commission act; Mr. Edward T. Patrick, in the review and classification of all the original territorial and state statutes and the insertion of annotations of most of the decisions under the greater part of the titles; and Mr. Walter D. Cole, in the examination and submission of the laws of other states for the use of the commission in the preparation of new acts for the legislature and insertion of most of the references to decisions relating to mines.

It is regretted that the magnitude of the undertaking has necessarily occasioned so much delay in publication. With a full consciousness of many imperfections, and with the realization that lack of time has rendered it impossible to bring the work to that high degree of excellence for which the commission has entertained a sincere purpose and earnestly labored, the compilation is finally submitted in the hope that, notwithstanding its defects, it will be a valuable aid to the people of the state and to some appreciable extent fulfil the object of the legislature.

JAMES G. SWEENEY,  
G. F. TALBOT,  
F. H. NORCROSS.



## ABBREVIATIONS

Cite this work: **Rev. Laws.**

Ann. Cases.....	American and English Annotated Cases.
A. D.....	American Decisions.
A. R.....	American Reports.
A. S.....	American State Reports.
Cent. Dig.....	Century Digest.
Colo. Mills An. C.....	Mills's Colorado Annotated Code.
Const.....	Constitution of Nevada.
Dec. Dig.....	Decennial Digest.
F. or Fed.....	Federal Reporter.
Fed. St. Ann.....	Federal Statutes Annotated.
Iowa.....	McClain's Annotated Code (Iowa).
Kansas.....	General Statutes of Kansas, 1889.
Kerr C. C. P.....	Kerr's (California) Code of Civil Procedure.
Kerr Pen. C.....	Kerr's (California) Penal Code.
Mont. Civ. P.....	Montana Civil Practice.
N. Dak.....	Revised Codes of North Dakota, 1899.
P. or Pac.....	Pacific Reporter.
Rev. Laws.....	Revised Laws of Nevada, 1912.
Rev. Stats.....	United States Revised Statutes.
Sec.....	When not otherwise designated, refers to the general section numbers of this book in black-face type.
S. C. R.....	Supreme Court Reporter.
T. C. C.....	Treadwell's California Constitution (Annotated).
U. S. Const.....	Constitution of the United States.
Utah.....	Utah Compiled Laws, 1907.



# ALPHABETICAL LIST OF TITLES

This list covers the main titles, but does not contain a direct reference to all the duties of officers or all the various subjects found in the numerous acts which are detailed in the table of contents and index.

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# MAGNA CARTA<sup>1</sup>

## THE GREAT CHARTER OF LIBERTIES OF KING JOHN

Granted at Runningmede, June 15, A. D. 1215, in the Seventeenth Year  
of His Reign

John, by the grace of God, King of England, Lord of Ireland, DUKE OF NORMANDY, Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his lieges, greeting. Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of all our ancestors and heirs, and unto the honor of God and the advancement of Holy Church, and amendment of our Realm, by advice of our venerable Fathers, STEPHEN, archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church, HENRY, Archbishop of Dublin, WILLIAM of London, PETER of Winchester, JOCELIN of Bath and Glastonbury, HUGH of Lincoln, WALTER of Worcester, WILLIAM of Coventry, BENEDICT of Rochester, Bishops; of Master PANDULPH, Sub-Deacon and Familiar of our Lord the Pope, Brother AYMERIC, Master of the Knights-Templars in England; and of the Noble Persons, WILLIAM MARESCALL, Earl of Pembroke, WILLIAM, Earl of Salisbury, WILLIAM, Earl of Warren, WILLIAM, Earl of Arundel, ALAN DE GALLOWAY, Constable of Scotland, WARIN FITZ GERALD, PETER FITZ HERBERT, and HERBERT DE BURGH, Seneschal of Poitou, HUGH DE NEVILLE, MATTHEW FITZ HERBERT, THOMAS BASSET, ALAN BASSET, PHILIP OF ALBINEY, ROBERT DE ROPPELL, JOHN MARESCHAL, JOHN FITZ HUGH, and others our liegemen, have in the first place, granted to God, and by this our present Charter confirmed, for us and our heirs for ever:

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed, that it may appear thence, that the freedom of elections, which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our Charter, and obtained the confirmation of the same from our Lord the Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which charter we shall observe, and we do will it to be faithfully observed by our heirs for ever.

2. We also have granted to all the freemen of our kingdom, for us and for our heirs for ever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs for ever: If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owes a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

<sup>1</sup> Text here followed is Prof. Creasy's translation. Eng. Const., p. 120.

3. But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us; or to him to whom we shall assign them, and if we sell or give to anyone the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5. But the keeper, so long as he shall have custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir, when he comes of full age, his whole land, stocked with plows and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

6. Heirs shall be married without disparagement, and so that before matrimony shall be contracted those who are near in blood to the heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which term her dower shall be assigned.

8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the securities of the debtor be distrained so long as the principal debtor is sufficient for the payment of the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

10. If any one have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt fall into our hands we will only take the chattel mentioned in the deed.

11. And if anyone shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving however the service due to the lords; and in like manner shall it be done touching debts due to others than the Jews.

12. No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our

eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid a reasonable aid. In like manner it shall be concerning the aids of the City of London.

13. And the City of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore we will and grant, that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.

14. And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we shall cause to be summoned the archbishops, bishops, abbots, earls and greater barons of the realm, singly by our letters. And furthermore we shall cause to be summoned generally by our sheriffs and bailiffs, all others who hold of us in chief, for a certain day, that is to say, forty days before their meeting at least, and to a certain place; and in all letters of each summons we will declare the cause of such summons. And summons being thus made, the business of the day shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

15. We will not for the future grant to any one that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be only paid a reasonable aid.

16. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

17. Common pleas shall not follow our court, but shall be holden in some place certain.

18. Assizes of novel disseisen, and of mort d'ancestor, and of darrien presentment, shall not be taken but in their proper counties, and after this manner. We, or, if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year, who, with four knights, chosen out of every shire by the people, shall hold the said assizes, in the county, on the day, and at the place appointed.

19. And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to decide them, as is necessary, according as there is more or less business.

20. A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great crime according to the heinousness of it, saving to him his contenment; and after the same manner a merchant, saving to him his merchandise, and a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighborhood.

21. Earls and barons shall not be amerced, but by their peërs, and after the degree of the offense.

22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenant shall be distrained to make bridges or banks, unless that anciently and of right they are bound to do it.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the crown.

25. All counties, hundreds, wapentakes, and tythings, shall stand at the old rents, without any increase, except in our demesne manors.

we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending, or whereof an inquest hath been made by our order, before we undertook the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein.

53. The same respite we shall have (and in the same manner above administering justice, disafforesting the forests or letting them continue) for disafforesting the forests which Henry our father, and our brother Richard have afforested; and for the keeping of the lands which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right; and when we return from our pilgrimage, or if we tarry at home, and do not make our pilgrimage, we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All unjust and illegal fines made by us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh, of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the marche by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales, according to the law in Wales, for tenements of the marche according to the law of the marche; the same shall the Welsh do to us and our subjects.

57. As of all those things of which a Welshman hath, without the legal judgment of his peers, been disseised or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order, before we undertook the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewelin, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of Scots, concerning the restoring his sisters and hostages, and his right and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the charters which we have from his father William, late King of Scots, it

ought to be otherwise; but this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us towards our people of our kingdom, as well clergy as laity shall observe, as far as they are concerned towards their dependents.

61. And whereas, for the honour of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm, and lasting, we do give and grant our subjects the underwritten security, namely; that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed; so that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstance fail in the performance of them, towards any person, or shall break through any of these articles of peace and security, and the offense be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary, (if we should be out of the realm,) the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons, and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person, and the persons of our queen and children; and when it is redressed, they shall obey us as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises, and will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

62. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed to the execution of these five-and-twenty barons, if when they are all assembled together, they should happen to disagree about any matter; and some of them, when summoned, will not, or cannot come, whenever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear, that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will not by ourselves, or by any other, procure anything whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other. And all the ill-will, indignations, and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive; moreover all tres-

passes occasioned by the said dissensions, from Easter in the fifteenth year of the reign, till the restoration of peace and tranquility, we hereby entirely remit to all, both clergy and laity, and as far as in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, lord archbishop of Canterbury, Henry, lord archbishop of Dublin, and the bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, forever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed bona fide and without evil subtilty.

64. Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runningmede, between Windsor and Staines the 15th day of June, in the 17th year of our reign. With the Seals of the King's Securities to Magna Charta and Shields of ye Barons in Arms.

# THE DECLARATION OF INDEPENDENCE<sup>1</sup>

IN CONGRESS, JULY 4, 1776

*The unanimous Declaration of the thirteen united States of America:*

65. When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

66. We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are Life, Liberty, and the pursuit of Happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; That, whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute a new Government laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government and to provide new Guards for their future security.

67. Such has been the patient sufference of these Colonies, and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world: He has refused his Assent to Laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operations till his Assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

<sup>1</sup> The text here followed is that of U. S. Rev. Stat. (2d ed. 1878), p. 3.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise, the State remaining in the meantime exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states, for that purpose obstructing the Laws for the Naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People and eat out their substance.

He has kept among us in times of peace, Standing Armies, without the consent of our Legislatures.

He has affected to render the Military independent of, and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws, giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our charters, abolishing our most valuable Laws, and altering, fundamentally, the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to Legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun, with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow citizens, taken Captive on the high Seas, to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian Savages, whose

known rules of warfare is an undistinguished destruction of all ages, sexes and conditions.

68. In every stage of these oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

69. Nor have We been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace, Friends.

70. We, therefore, the Representatives of the UNITED STATES OF AMERICA IN GENERAL CONGRESS Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by Authority of the good People of these Colonies, solemnly publish and declare, that these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with firm reliance on the Protection of DIVINE PROVIDENCE we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

## NEW HAMPSHIRE.

JOSIAH BARTLETT,  
WM. WHIPPLE,  
MATTHEW THORNTON.

## MASSACHUSETTS BAY.

SAML. ADAMS,  
JOHN ADAMS,  
ROBT. TREAT PAINE,  
ELBRIDGE GERRY.

## RHODE ISLAND.

STEP. HOPKINS,  
WILLIAM ELLERY.

## CONNECTICUT.

ROGER SHERMAN,  
SAM'EL HUNTINGTON,  
WM. WILLIAMS,  
OLIVER WOLCOTT.

## NEW YORK.

WM. FLOYD,  
PHIL. LIVINGSTON,  
FRANS. LEWIS,  
LEWIS MORRIS.

## JOHN HANCOCK.

## PENNSYLVANIA.

ROBT. MORRIS,  
BENJAMIN RUSH,  
BENJA. FRANKLIN,  
JNO. MORTON,  
GEO. CLYMER,  
JAS. SMITH,  
GEO. TAYLOR,  
JAMES WILSON,  
GEO. ROSS.

## DELAWARE.

CAESAR RODNEY,  
GEO. READ,  
THO. M'KEAN.

## MARYLAND.

SAMUEL CHASE,  
WM. PACA.  
THOS. STONE,  
CHARLESCARROLL, of Carrollton.

## NEW JERSEY.

RICHD. STOCKTON,  
JNO. WITHERSPOON,  
FRAS. HOPKINSON,  
JOHN HART,  
ABIA CLARK.

## NORTH CAROLINA.

WM. HOOPER,  
JOSEPH HEWES,  
JOHN PENN.

## VIRGINIA.

GEORGE WYTHE,  
RICHARD HENRY LEE,  
TH. JEFFERSON,  
BENJ. HARRISON,  
THOS. NELSON, JR.,  
FRANCIS LIGHTFOOT LEE,  
CARTER BRAXTON.

## SOUTH CAROLINA.

EDWARD RUTLEDGE,  
THOS. HEYWARD, JUNR.,  
THOMAS LYNCH, JUNR.,  
ARTHUR MIDDLETON.

## GEORGIA.

BUTTON GWINNETT,  
LYMAN HALL,  
GEO. WALTON.

# ARTICLES OF CONFEDERATION<sup>1</sup>

ADOPTED BY DELEGATES IN CONGRESS AT PHILADELPHIA, JULY 9, 1778

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting:

71. Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-Bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz:

"Articles of Confederation and perpetual Union between the States of New-hampshire, Massachusetts-Bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia."

72. ARTICLE I. The style of this confederacy shall be, "The United States of America."

73. ARTICLE II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

74. ARTICLE III. The said States hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

75. ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively: provided, That such restriction shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant: provided, also, That no impositions, duties or restriction shall be laid by any State on the property of the United States, or either of them.

If any person, guilty of or charged with treason, felony, or other high misdemeanor, in any state shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or Executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offense. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

<sup>1</sup> The text here followed is that of U. S. Rev. Stat. (2d ed. 1878), p. 7.

76. ARTICLE V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday of November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind. Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

77. ARTICLE VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive an embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide, and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled; and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled; unless such States be invested by pirates; in which

case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

78. ARTICLE VII. When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

79. ARTICLE VIII. All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time, direct and appoint.

The taxes for paying that proportion, shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

80. ARTICLE IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances; provided, That no treaty of commerce shall be made, whereby the legislative power of the respective States, shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: provided, That no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear, and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the

day appointed, without showing reasons which Congress shall judge sufficient, or, being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive. And if any of the parties shall refuse to submit to the authority of such court or to appear or defend their claim or cause, the court shall, nevertheless, proceed to pronounce sentence or judgment, which shall, in like manner, be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned: provided, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward:" provided, also, That no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdiction, as they may respect such lands and the States which passed such grants, are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States. The United States in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States—regulating the trade, and managing all affairs with the Indians, not members of any of the states: provided, that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated, "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction—to appoint one of their number to preside; provided, That no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and cloath, arm, and equip them in a soldier-like manner, at the expense of the United

States; and the officers and men so cloathed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other State, should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared; and the officers and men, so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

81. ARTICLE X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time, think expedient to vest them with: provided, That no power be delegated to the said committee, for the exercise of which, by the articles of confederation the voice of nine States in the Congress of the United States assembled is requisite.

82. ARTICLE XI. Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

83. ARTICLE XII. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

84. ARTICLE XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual;

nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And, whereas, it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. KNOW YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual Union, and all and singular the matters and things therein contained, and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which, by the said confederation, are submitted to them; and that the articles thereof shall be inviolably observed by the States we re[s]pectively represent; and that the Union shall be perpetual.

85. In witness whereof, We have hereunto set our hands, in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord one thousand, seven hundred and seventy-eight, and in the third year of the Independence of America.

ON THE PART & BEHALF OF THE STATE OF NEW HAMPSHIRE.—Josiah Bartlett, John Wentworth, Junr. (August 8, 1778.)

ON THE PART AND BEHALF OF THE STATE OF MASSACHUSETTS BAY.—John Hancock, Samuel Adams, Eldbridge Gerry, Francis Dana, James Lovell, Samuel Holton.

ON THE PART AND BEHALF OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.—William Ellery, Henry Marchant, John Collins.

ON THE PART AND BEHALF OF THE STATE OF CONNECTICUT.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams.

ON THE PART AND BEHALF OF THE STATE OF NEW YORK.—Jas. Duane, Fran. Lewis, Wm. Duer, Gouv. Morris.

ON THE PART AND BEHALF OF THE STATE OF NEW JERSEY.—Jno. Witherspoon, Nathl. Scudder. (Nov. 26, 1778.)

ON THE PART AND BEHALF OF THE STATE OF PENNSYLVANIA.—Robt. Morris, Daniel Roberdeau, Jonas Bayard Smith, William Clingan, Joseph Reed. (22d July, 1778.)

ON THE PART & BEHALF OF THE STATE OF DELAWARE.—Tho M'Kean.—(Feby. 12, 1779), John Dickinson (May 5th, 1779), Nicholas Van Dyke.

ON THE PART AND BEHALF OF THE STATE OF MARYLAND.—John Hanson (March 1, 1781), Daniel Carroll. (Mar. 1, 1781.)

ON THE PART AND BEHALF OF THE STATE OF VIRGINIA.—Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

ON THE PART AND BEHALF OF THE STATE OF NO. CAROLINA.—John Penn (July 21st, 1778), Corns. Harnett, Jno. Williams.

ON THE PART & BEHALF OF THE STATE OF SOUTH CAROLINA.—Henry Laurens, William Henry Drayton, Jno. Matthews, Richd. Hutson, Thos. Heyward, Junr.

ON THE PART & BEHALF OF THE STATE OF GEORGIA.—Jno. Walton (24th July, 1778), Edwd. Telfair, Edwd. Langworthy.

# CONSTITUTION OF THE UNITED STATES

86. Preamble.

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87. Legislative powers vested in Congress.

88. Members chosen by people of the States every second year—Electors of the House of Representatives.

89. Age as a qualification of the Representative—Citizenship as a qualification of the Member—Inhabitaney as a qualification of the Member.

90. The old provision for apportionment of Representatives and direct taxes—Census as a basis of apportionment.

91. Writs for elections to vacancies in representation.

92. House chooses the Speaker and other officers—House of Representatives alone impeaches.

93. Numbers, terms, and votes of Senators.

94. Division of the Senate into classes—Filling of vacancies in the Senate.

95. Qualifications of Senators.

96. The Vice-President and his vote.

97. Choice of President pro tempore and other officers of the Senate.

98. Senate tries impeachment and convicts by two-thirds vote.

99. Judgment in cases of impeachment.

100. Times, places, and manner of elections of Representatives and Senators.

101. Annual meeting of Congress.

102. Each House the judge of elections, returns, and qualifications—The quorum.

103. Each House determines its rules, punishment and expulsion of Members.

104. Each House to keep a journal—Yeas and nays entered on the Journal.

105. Adjournment for more than three days.

106. Compensation of Members—Privilege of Members from arrest—Members privileged from being questioned for speech or debate.

107. Restriction on appointment of Members to office—Members not to hold office under the United States.

108. Bills raising revenue to originate in the House.

109. Approval and disapproval of bills by the President—Bills which become laws without the President's approval.

110. As to presentation of orders and resolutions for approval.

111. The revenue power.

112. The borrowing power.

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114. Naturalization and bankruptcy.

115. Coinage, weights and measures.

116. Counterfeiting.

117. Postoffice and post-roads.

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119. Inferior courts.

120. Piracies and offenses against law of nations.

121. Declarations of war and maritime operations.

122. Raising and support of armies.

123. Provisions for a navy.

124. Land and naval forces.

125. Calling out the militia.

126. Power over the militia.

127. Power over territory of the United States.

128. General legislative power.

129. Migration or importation of persons.

130. Writ of habeas corpus.

131. Bills of attainder and ex post facto laws.

132. Capitation and direct taxes.

133. Export duties.

134. Freedom of commerce.

135. Appropriations and accounting of public money.

136. Titles of nobility and gifts from foreign states.

137. States not to make treaties, coin money, pass ex post-facto laws, impair contracts, etc.

138. States not to lay impost or duties.

139. States not to lay tonnage taxes, make compacts, or go to war.

## ARTICLE II.

140. Terms of the President and Vice-President.

141. Electors of President and Vice-President and their qualifications.

143. Time of choosing electors and time at which their votes are given.

144. Qualifications of President of the United States.

145. Succession in case of removal, death, resignation, or disability of President and Vice-President.

146. Compensation of President.

147. Oath of the President.

148. The President the Commander-in-Chief—Opinions of the President's advisers—President grants reprieves and pardons.

149. President makes treaties—Appointing power of the President.

150. President's power to fill vacancies during recess of the Senate.

151. Messages from the President—Power of President as to convening and adjourning Congress—President receives ambassadors, executes the laws and commissions officers.

152. Impeachment of civil officers.

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153. The judges, their terms, and compensation.

154. Extent of the judicial power.

155. Original and appellate jurisdiction of the Supreme Court.

156. Places of trial of crimes by jury.

157. Treason against the United States.

158. Punishment for treason.

## ARTICLE IV.

159. Each State to give credit to acts, records, etc., of other States.

160. Privileges and immunities of citizens.

161. Extradition for treason, felony or other crime.

162. Persons held to service or labor.

163. Admission and formation of new States.

164. Power of Congress over territory and other national property.

165. Republican form of government and protection from domestic violence guaranteed to the States.

## ARTICLE V.

166. Amendments to the Constitution.

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167. Validity of debts and engagements.  
 168. Constitution, laws, and treaties the supreme law of the land.

169. Oaths of public officers, and prohibition of religious tests.

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170. Ratification of the Constitution.

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171. Freedom of religion, of speech, and of peaceable assembly.

## ARTICLE II.

172. The right to bear arms.

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173. Quartering of soldiers in houses.

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174. Security from unreasonable searches and seizures.

## ARTICLE V.

175. Security as to accusations, trials, and property.

## ARTICLE VI.

176. Right to trial by jury and to confront witnesses and secure testimony.

## ARTICLE VII.

177. Jury trial in suits at common law.

## ARTICLE VIII.

178. Excessive bail or fines and cruel punishments prohibited.

## ARTICLE IX.

179. Rights reserved to the people.

## ARTICLE X.

180. Powers reserved to the States.

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181. Extent of the judicial power.

## ARTICLE XII.

182. Meeting of the electors and transmission and count of their votes—Elections of President and Vice-President by the House and Senate in certain cases.

## ARTICLE XIII.

183. Prohibition of slavery and involuntary servitude.

## ARTICLE XIV.

185. Citizenship; security and equal protection of citizens.

186. Apportionment of representation.

187. Loyalty as a qualification of Senators and Representatives.

188. Validity of the National debt, etc.

## ARTICLE XV.

190. Suffrage not to be abridged for race, color, etc.

In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report (drawn by Mr. Hamilton, of New York), expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectfully delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter containing the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: 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; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

CONSTITUTION OF THE UNITED STATES—1787<sup>1</sup>

86. WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, 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.

<sup>2</sup> *Chisholm v. Georgia*, 2 Dall. 419; *McCulloch v. Maryland*, 4 Wh. 316; *Brown v. Maryland*, 12 Wh. 419; *Barron v. Mayor and City Council of Baltimore*, 7 Pet. 243; *Dred Scott v. Sanford*, 19 How. 393; *Lane County v. Oregon*, 7 Wall. 71; *Texas v. White*, 7 Wall. 700; *Claffin v. Houseman*, 93 U. S. 130; *Williams v. Bruffy*, 96 U. S. 176; *Tennessee v. Davis*, 100 U. S. 257; *Langford v. United States*, 101 U. S. 341; *United States v. Jones*, 109 U. S. 513; *Fort Leavenworth Railroad Co. v. Lowe*, 114 U. S. 525; *Chinese Exclusion Case*, 130 U. S. 581; *Geofroy v. Riggs*, 133 U. S. 258; *In re Neagle*, 135 U. S. 1; *In re Ross*, 140 U. S. 453; *Logan v. United States*, 144 U. S. 263; *Lascelles v. Georgia*, 148 U. S.

537; *Fong Yue Ting v. United States*, 149 U. S. 698; *In re Tyler*, 149 U. S. 164; *United States v. E. C. Knight Co.*, 156 U. S. 1; *Mattox v. United States*, 156 U. S. 237; *In re Quarles and Butler*, 158 U. S. 532; *In re Debs, Petitioner*, 158 U. S. 564; *Ward v. Race Horse*, 163 U. S. 504; *De Lima v. Bidwell*, 182 U. S. 1; *Prout v. Starr*, 188 U. S. 537; *Jacobson v. Massachusetts*, 197 U. S. 11; *South Carolina v. United States*, 199 U. S. 437; *Ellis v. United States*, 206 U. S. 246; *Dick v. United States*, 208 U. S. 340; *Muller v. Oregon*, 208 U. S. 412.

<sup>3</sup> *Decision of Nevada Supreme Court: Maynard v. Newman*, 1 Nev. 275, 276, 286.

## ARTICLE I.

**Legislative powers vested in Congress.**

87. SECTION. 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.

*Hayburn's case (notes)*, 2 Dall. 409; *Field v. Clark*, 143 U. S. 649; *Union Bridge Co. v. United States*, 204 U. S. 364; *United States v. Heinszen*, 206 U. S. 370; *St. Louis & Iron Mountain Railway v. Taylor*, 210 U. S. 281; *Monongahela Bridge Co. v. United States*, 216

U. S. 177; *United States v. Grimand*, 216 U. S. 614, 220 U. S. —, 31 S. C. R. 480; *Light v. United States*, 220 U. S. —, 31 S. C. R. 485; *Standard Oil Co. v. U. S.*, 220 U. S. —, 31 S. C. R. 503.

**Members chosen by people of the States every second year—Electors of the House of Representatives.**

88. SECTION. 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.

*Ex-parte Yarbrough*, 110 U. S. 651; *Wiley v. Sinkler*, 179 U. S. 58.

**Age as a qualification of the Representative—Citizenship as a qualification of the Member—Inhabitanacy as a qualification of the Member.**

89. 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.

**The old provision for apportionment of Representatives and direct taxes—Census as a basis of apportionment.**

90. [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.]<sup>3</sup> The

<sup>1</sup> A literal copy of the original furnished by the Secretary of State of the United States.

<sup>2</sup> Annotations include vol. 219 United States Reports, and continued through S. C. R. in vol. 31, p. 653, and vol. 32 Nevada Reports, and vol. 33 Nevada Reports, as published in Pacific Reporter to and including vol. 116, p. 624.

<sup>3</sup> The clause included in brackets is amended, in respect to apportionment of Representatives, by the 14th amendment, 2d section, sec. 186 of this work.

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 chuse 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.

Dred Scott v. Sandford, 19 Howard, 393; Veazie Bank v. Fenno, 8 Wall. 533; Scholey v. Rew, 23 Wall. 331; De Treville v. Smalls, 98 U. S. 517; Gibbons v. District of Columbia, 116 U. S. 404; Pollock v. Farmers' Loan &

Trust Co. (Income Tax case), 157 U. S. 429; Pollock v. Farmers' Loan & Trust Co. (Rehearing), 158 U. S. 601; Thomas v. United States, 192 U. S. 363.

#### **Writs for elections to vacancies in representation.**

91. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

#### **House chooses the Speaker and other officers—House of Representatives alone impeaches.**

92. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

#### **Numbers, terms, and votes of Senators.**

93. SECTION 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.

#### **Division of the Senate into classes—Filling of vacancies in the Senate.**

94. 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 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.

#### **Qualifications of Senators.**

95. 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 and his vote.**

96. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

#### **Choice of President pro tempore and other officers of the Senate.**

97. The Senate shall chuse 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.

#### **Senate tries impeachment and convicts by two-thirds vote.**

98. 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.**

99. 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.

**Times, places, and manner of elections of Representatives and Senators.**

100. SECTION 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 chusing Senators.

*Ex parte Siebold*, 100 U. S. 371; *Ex parte* 110 U. S. 651; *United States v. Waddell*, 112 U. S. 399; *Ex parte Yarbrough*, U. S. 76; *In re Coy*, 127 U. S. 731.

**Annual meeting of Congress.**

101. 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.

**Each House the judge of elections, returns, and qualifications—The quorum.**

102. SECTION 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.

*United States v. Ballin*, 144 U. S. 1; *In re Loney*, 134 U. S. 317.

**Each House determines its rules—Punishment and expulsion of Members.**

103. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

*Anderson v. Dunn*, 6 Wh. 204; *Kilbourn v. Ballin*, 144 U. S. 1; *In re Chapman*, 166 U. S. 168; *United States* U. S. 661.

**Each House to keep a journal—Yeas and nays entered on the Journal.**

104. 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.

*Field v. Clark*, 143 U. S. 649; *United* *Bank v. Nebeker*, 167 U. S. 196; *Wilkes* *States v. Ballin*, 144 U. S. 1; *Twin City* *County v. Coler*, 180 U. S. 506.

**Adjournment for more than three days.**

105. 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.

**Compensation of Members—Privilege of Members from arrest—Members privileged from being questioned for speech or debate.**

106. SECTION 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.

*Cox v. McClenahan*, 3 Dall. 478; *Kilbourn v. Thompson*, 103 U. S. 168; *Williamson v. United States*, 207 U. S. 425.

**Restriction on appointment of Members to office—Members not to hold office under the United States.**

107. 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 such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

**Bills raising revenue to originate in the House.**

108. SECTION 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.

Field v. Clark, 143 U. S. 649; Twin City Bank v. Nebeker, 167 U. S. 196; Millard v. Roberts, 202 U. S. 429; Flint v. Stone Tracy Co. 220 U. S.—, 31 S. C. R. 343.

**Approval and disapproval of bills by the President—Bills which become laws without the President's approval.**

109. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes 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.

Field v. Clark, 143 U. S. 649; United States v. Ballin, 144 U. S. 1; Twin City Bank v. Nebeker, 167 U. S. 196; La Abra S. M. Co. v. United States, 175 U. S. 423; Wilkes County v. Coler, 180 U. S. 506.

**As to presentation of orders and resolutions for approval.**

110. 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.

Field v. Clark, 143 U. S. 649; United States v. Ballin, 144 U. S. 1; Fourteen Diamond Rings v. United States, 183 U. S. 176.

**The revenue power.**

111. SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;

Hylton v. United States, 3 Dall. 171; McCulloch v. Maryland, 4 Wh. 316; Loughborough v. Blake, 5 Wh. 317; Osborn v. Bank of the United States, 9 Wh. 738; Weston v. City Council of Charleston, 2 Pet. 449; Dobbins v. Commissioners of Erie County, 16 Pet. 435; License Cases, 5 How. 504; Cooley v. Board of Wardens of Port of Philadelphia, 12 How. 299; McGuire v. The Commonwealth, 3 Wall. 387; Van Allen v. The Assessors, 3 Wall. 573; Bradley v. The People, 4 Wall. 459; License Tax Cases, 5 Wall. 462; Pervear v. The Commonwealth, 5 Wall. 475; Woodruff v. Parham, 8 Wall. 123; Hinson v. Lott, 8 Wall. 148; Veazie Bank v. Fenno, 8 Wall. 533; The Collector v. Day, 11 Wall. 113; United States v. Singer, 15 Wall. 111; State tax on foreign-held bonds, 15 Wall. 300; United States v. Railroad Company, 17 Wall. 322; Railroad Company v. Peniston, 18 Wall. 5;

Scholey v. Rew, 23 Wall. 331; National Bank v. United States, 101 U. S. 1; Springer v. United States, 102 U. S. 586; Legal Tender Case, 110 U. S. 421; Head Money Cases, 112 U. S. 580; Van Brocklin v. Tennessee, 117 U. S. 151; Field v. Clark, 143 U. S. 649; New York, Lake Erie and Western R. R. v. Pennsylvania, 153 U. S. 628; Pollock v. Farmers' Loan and Trust Co. (Income Tax Case), 157 U. S. 429; United States v. Realty Company, 163 U. S. 427; In re Kollock, 165 U. S. 526; Nichols v. Ames, 173 U. S. 509; Knowlton v. Moore, 178 U. S. 41; De Lima v. Bidwell, 182

U. S. 1; Dooley v. United States, 182 U. S. 222; Fourteen Diamond Rings v. United States, 183 U. S. 176; Falsenheld v. United States, 186 U. S. 126; Thomas v. United States, 192 U. S. 363; Binns v. United States, 194 U. S. 486; South Carolina v. United States, 199 U. S. 437; Flaherty v. Hanson, 215 U. S. 515.

Decisions of Nevada Supreme Court: Maynard v. Newman, 1 Nev. 271, 276, 277, 279, 282, 285, 286; Milliken v. Sloat, 1 Nev. 573, 587, 588; Gibson v. Mason, 5 Nev. 293; Riter v. Douglass, 32 Nev. 400 (109 P. 444).

### The borrowing power.

#### 112. To borrow Money on the credit of the United States;

McCulloch v. Maryland, 4 Wh. 316; Weston, v. City Council of Charleston, 2 Pet. 449; Bank of Commerce v. New York City, 2 Black. 620; Bank Tax Cases, 2 Wall. 200; The Bank v. The Mayor, 7 Wall. 16; Bank v. Supervisors, 7 Wall. 26; Hepburn v. Griswold, 8 Wall. 603; National Bank v. Commonwealth, 9 Wall. 353; Parker v. Davis, 12

Wall. 457; Legal Tender Case, 110 U. S. 421; Home Insurance Company v. New York, 134 U. S. 594; Home Savings Bank v. Des Moines, 205 U. S. 503.

Decisions of Nevada Supreme Court: Maynard v. Newman, 1 Nev. 279; Ex parte Crandall, 1 Nev. 306; Milliken v. Sloat, 1 Nev. 573, 587.

### Power over Commerce.

#### 113. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Gibbons v. Ogden, 9 Wh. 1; Brown v. Maryland, 12 Wh. 419; Wilson v. Black Bird Creek Marsh Company, 2 Pet. 245; Worcester v. Georgia, 6 Pet. 515; City of New York v. Miln, 11 Pet. 102; United States v. Combs, 12 Pet. 72; Holmes v. Jennison, 14 Pet. 540; License Cases, 5 How. 504; Passenger Cases, 7 How. 283; Nathan v. Louisiana, 8 How. 73; Mager v. Grima, 8 How. 490; United States v. Marigold, 9 How. 560; Cowley v. Board of Wardens of Port of Philadelphia, 12 How. 209; Genesee Chief v. Fitzhugh, 12 How. 443; Pennsylvania v. Wheeling Bridge Company, 13 How. 518; Veazie v. Moor, 14 How. 568; Smith v. Maryland, 18 How. 71; Pennsylvania v. Wheeling and Belmont Bridge Company, 18 How. 421; Sinnitt v. Davenport, 22 How. 227; Foster v. Davenport, 22 How. 244; Conway v. Taylor's Ex., 1 Black. 603; United States v. Holliday, 3 Wall. 407; Gilman v. Philadelphia, 3 Wall. 713; The Passaic Bridges, 3 Wall. 782; Steamship Company v. Port Wardens, 6 Wall. 31; Crandall v. Nevada, 6 Wall. 35; White's Bank v. Smith, 7 Wall. 646; Waring v. The Mayor, 8 Wall. 110; Paul v. Virginia, 8 Wall. 168; Thomson v. Pacific Railroad, 9 Wall. 579; Downham v. Alexandria Council, 10 Wall. 173; The Clinton Bridge, 10 Wall. 454; The Daniel Ball, 10 Wall. 557; Liverpool Insurance Company v. Massachusetts, 10 Wall. 566; The Montello, 11 Wall. 411; Ex parte McNiel, 13 Wall. 236; State freight-tax, 15 Wall. 232; State tax on railway gross receipts, 15 Wall. 284; Osborn v. Mobile, 16 Wall. 479; Railroad Company v. Fuller, 17 Wall. 560; Bartemeyer v. Iowa, 18 Wall. 129; The Delaware railroad tax, 18 Wall. 206; Peete v. Morgan, 19 Wall. 581; Railroad Company v. Richmond, 19 Wall. 584; Railroad Company v. Maryland, 21 Wall. 456; The Lottawanna, 21 Wall. 558; Welton v. Missouri, 91 U. S. 275; Henderson v. Mayor of the City of New York, 92 U. S. 259; Chy Lung v. Freeman, 92 U. S. 275; South Carolina v. Georgia, 93 U. S. 4; Sherlock v. Alling, 93 U. S. 99; United States v. Forty-three Gallons of Whisky, etc., 93 U. S. 188; Foster v. Master and Wardens of the Port of New Orleans, 94 U. S. 246; McCready v. Virginia, 94 U. S. 391; Railroad Co. v. Husen, 95 U. S. 465; Pound v. Turk, 95 U. S. 459; Railroad Co. v. Husen, 95 U. S.

465; Hall v. DeCuir, 95 U. S. 485; Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S. 1; Beer Co. v. Massachusetts, 97 U. S. 25; Cook v. Pennsylvania, 97 U. S. 566; Transportation Co. v. Wheeling, 99 U. S. 273; Packet Co. v. St. Louis, 100 U. S. 423; Guy v. Baltimore, 100 U. S. 434; Kirtland v. Hotchkiss, 100 U. S. 491; Machine Co. v. Gage, 100 U. S. 676; Trade-mark Cases, 100 U. S. 82; Wilson v. McNamee, 102 U. S. 572; Tiernan v. Rinker, 102 U. S. 123; Lord v. Steamship Co., 102 U. S. 541; County of Mobile v. Kimball, 102 U. S. 691; Telegraph Co. v. Texas, 105 U. S. 460; Bridge Co. v. United States, 105 U. S. 470; Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365; Turner v. Maryland, 107 U. S. 38; Escamba Company v. Chicago, 107 U. S. 678; Miller v. Mayor of New York, 109 U. S. 385; Moran v. New Orleans, 112 U. S. 69; Foster v. Kansas, 112 U. S. 201; Head Money Cases, 112 U. S. 580; Cardwell v. American Bridge Co., 113 U. S. 205; Cooper Manufacturing Co. v. Ferguson, 113 U. S. 727; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196; Brown v. Houston, 114 U. S. 622; Railroad Commission Cases, 116 U. S. 307, 347, 352; Walling v. Michigan, 116 U. S. 446; Coe v. Errol, 116 U. S. 517; Pickard v. Pullman Southern Car Co. 117 U. S. 34; Tennessee v. Pullman Southern Car Co. 117 U. S. 51; Morgan v. Louisiana, 118 U. S. 455; Wabash, St. Louis & Pacific Railway v. Illinois, 118 U. S. 557; United States v. Kagama, 118 U. S. 375; Philadelphia Fire Association v. New York, 119 U. S. 110; Johnson v. Chicago & Pacific Elevator Co., 119 U. S. 388; Robbins v. Shelby County Taxing District, 120 U. S. 489; Corson v. Maryland, 120 U. S. 502; Fargo v. Michigan, 121 U. S. 230; Philadelphia & Southern Steamship Co. v. Pennsylvania, 122 U. S. 326; Western Union Telegraph Co. v. Pendleton, 122 U. S. 347; Sands v. Manistee River Improvement Co., 123 U. S. 288; Smith v. Alabama, 124 U. S. 465; Willamette Iron Bridge Co. v. Hatch, 125 U. S. 1; Pembina Mining Co. v. Pennsylvania, 125 U. S. 181; Bowman v. Chicago & Northwestern Railway Co., 125 U. S. 465; Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530; California v. Pacific Railroad Co., 127 U. S. 1; Ratterman v. Western Union Telegraph Co., 127 U. S.

- 411; *Leloup v. Port of Mobile*, 127 U. S. 640; *Kidd v. Pearson*, 128 U. S. 1; *Asher v. Texas*, 128 U. S. 129; *Nashville, Chattanooga, etc. Railway v. Alabama*, 128 U. S. 96; *Stoutenburgh v. Hennick*, 129 U. S. 141; *Kimmish v. Ball*, 129 U. S. 217; *Western Union Telegraph Co. v. Alabama*, 132 U. S. 472; *Fritts v. Palmer*, 132 U. S. 282; *Louisville, New Orleans, etc. R. R. v. Mississippi*, 133 U. S. 587; *Leisy v. Harding*, 135 U. S. 100; *Cherokee Nation v. Southern Kansas R. R.*, 135 U. S. 641; *McCall v. California*, 136 U. S. 104; *Norfolk & Western R. Co. v. Pennsylvania*, 136 U. S. 114; *Minnesota v. Barber*, 136 U. S. 318; *Texas & Pacific R. R. v. Southern Pacific Co.*, 137 U. S. 48; *Brimmer v. Rebnan*, 138 U. S. 78; *Manchester v. Massachusetts*, 139 U. S. 240; *In re Rahrer*, 140 U. S. 545; *Pullman Palace Car Co. v. Pennsylvania*, 141 U. S. 18; *Massachusetts v. Western Union Telegraph Co.*, 141 U. S. 40; *Crutcher v. Kentucky*, 141 U. S. 47; *Voight v. Wright*, 141 U. S. 62; *Henderson Bridge Co. v. Henderson*, 141 U. S. 679; *In re Garnett*, 141 U. S. 1; *Maine v. Grand Trunk Railway Co.*, 142 U. S. 217; *Nishimura Ekiu v. United States*, 142 U. S. 651; *Pacific Express Co. v. Siebert*, 142 U. S. 339; *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *Field v. Clark*, 143 U. S. 649; *O'Neil v. Vermont*, 144 U. S. 323; *Ficklen v. Shelby County Taxing District*, 145 U. S. 1; *Lehigh Valley Railroad v. Pennsylvania*, 145 U. S. 192; *Harmon v. Chicago*, 147 U. S. 396; *Monongahela Navigation Co. v. United States*, 148 U. S. 312; *Brennan v. Titusville*, 153 U. S. 289; *Braes v. Stoesser*, 153 U. S. 391; *Ashley v. Ryan*, 153 U. S. 436; *Luxton v. North River Bridge Co.*, 153 U. S. 525; *Postal Telegraph Co. v. Charleston*, 153 U. S. 692; *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204; *Interstate Commerce Commission v. Brinson*, 154 U. S. 447; *Plumley v. Massachusetts*, 155 U. S. 461; *Texas & Pacific Railway v. Interstate Transportation Co.*, 155 U. S. 585; *Hooker v. California*, 155 U. S. 648; *Postal Telegraph Cable Co. v. Adams*, 155 U. S. 688; *United States v. E. C. Knight Co.*, 156 U. S. 1; *Emert v. Missouri*, 156 U. S. 296; *Pittsburg & Southern Coal Co. v. Bates*, 156 U. S. 577; *Pittsburg & Southern Coal Co. v. Louisiana*, 156 U. S. 590; *Gulf, Colorado & Santa Fe Railway Co. v. Hefley*, 158 U. S. 98; *New York, Lake Erie & Western R. R. Co. v. Pennsylvania*, 158 U. S. 431; *In re Debs, Petitioner*, 158 U. S. 564; *Geer v. Connecticut*, 161 U. S. 519; *Western Union Telegraph Co. v. James*, 162 U. S. 650; *Western Union Telegraph Co. v. Taggart*, 163 U. S. 1; *Illinois Central Railroad Co. v. Illinois*, 163 U. S. 142; *Hemington v. Georgia*, 163 U. S. 299; *Osborne v. Florida*, 164 U. S. 650; *Scott v. Donald*, 165 U. S. 58; *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194; *Lake Shore & Michigan Southern Railway Co. v. Ohio*, 165 U. S. 365; *N. Y., N. H. & Hartford R. R. Co. v. New York*, 165 U. S. 628; *Gladson v. Minnesota*, 166 U. S. 427; *Henderson Bridge Co. v. Kentucky*, 166 U. S. 150; *St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners*, 168 U. S. 349; *Chicago, Milwaukee & St. Paul Railway Co. v. Solan*, 169 U. S. 133; *Missouri, Kansas & Texas Railway Co. v. Haber*, 169 U. S. 613; *Richmond & Alleghany R. R. Co. v. R. A. Patterson Tobacco Company*, 169 U. S. 311; *Rhodes v. Iowa*, 170 U. S. 412; *Vance v. W. A. Vandercook, No. 1*, 170 U. S. 438; *Schollenberger v. Pennsylvania*, 171 U. S. 1; *Collins v. New Hampshire*, 171 U. S. 30; *Patapsco Guano Co. v. North Carolina*, 171 U. S. 345; *New York v. Roberts*, 171 U. S. 658; *Hopkins v. United States*, 171 U. S. 578; *Anderson v. United States*, 171 U. S. 604; *Green Bay & Mississippi Canal Co. v. Patten Paper Co.*, 172 U. S. 58; *Lake Shore & Michigan Southern Railway Co. v. Ohio*, 173 U. S. 285; *Henderson Bridge Co. v. Henderson City*, 173 U. S. 592; *Missouri, Kansas & Texas Railway Co. v. McCann*, 174 U. S. 580; *Addystone Pipe and Steel Co. v. United States*, 175 U. S. 211; *Louisiana v. Texas*, 176 U. S. 1; *United States v. Bellingham Bay Boom Co.*, 176 U. S. 211; *Lindsay & Phelps Co. v. Mullen*, 176 U. S. 126; *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28; *New York Life Insurance Co. v. Cravens*, 178 U. S. 389; *Scranton v. Wheeler*, 179 U. S. 141; *Williams v. Fears*, 179 U. S. 270; *Wisconsin, Minnesota & Pacific Railroad Co. v. Jacobson*, 179 U. S. 287; *Chesapeake & Ohio Railway Co. v. Kentucky*, 179 U. S. 388; *Reymann Brewing Co. v. Brister*, 179 U. S. 445; *W. W. Cargill Co. v. Minnesota*, 180 U. S. 452; *Rasmussen v. Idaho*, 181 U. S. 198; *Smith v. St. Louis & Southwestern Railroad Co.*, 181 U. S. 248; *Capital City Dairy Co. v. Ohio*, 181 U. S. 238; *Louisville & Nashville Railroad Co. v. Kentucky*, 183 U. S. 503; *Nutting v. Massachusetts*, 183 U. S. 553; *McChord v. Louisville & Nashville Railroad Co.*, 183 U. S. 483; *Louisville and Nashville Railroad Co. v. Eubank*, 184 U. S. 27; *Stockard v. Morgan*, 185 U. S. 27; *Minneapolis & St. Louis R. R. Co. v. Minnesota*, 186 U. S. 257; *Reid v. Colorado*, 187 U. S. 137; *Western Union Tel. Co. v. New Hope*, 187 U. S. 419; *Diamond Glue Co. v. United States Glue Co.*, 187 U. S. 611; *Louisville Ferry Co. v. Kentucky*, 188 U. S. 385; *United States v. Lynch*, 188 U. S. 445; *Cummings v. Chicago*, 188 U. S. 410; *The Roanoke*, 189 U. S. 185; *Montgomery v. Portland*, 190 U. S. 89; *Patterson v. Bark Eudora*, 190 U. S. 169; *Allen v. Pullman Co.*, 191 U. S. 171; *Pennsylvania R. R. Co. v. Knight*, 192 U. S. 21; *Postal Telegraph-Cable Co. v. Taylor*, 192 U. S. 64; *Crossman v. Lurman*, 192 U. S. 189; *St. Clair County v. Interstate Transfer Co.*, 192 U. S. 454; *Buttfield v. Stranahan*, 192 U. S. 470; *American Steel & Wire Co. v. Speed*, 192 U. S. 500; *Northern Securities Co. v. United States*, 193 U. S. 197; *Montague & Co. v. Lowry*, 193 U. S. 38; *Field v. Barber Asphalt Co.*, 194 U. S. 618; *Minnesota v. Northern Securities Co.*, 194 U. S. 48; *Olsen v. Smith*, 195 U. S. 332; *Western Union Telegraph Co. v. Pennsylvania R. R.*, 195 U. S. 540; *Central of Georgia Railway Co. v. Murphy*, 196 U. S. 14; *American Express Co. v. Iowa*, 196 U. S. 133; *Cook v. Marshall County*, 196 U. S. 261; *Matter of Heff (Indian)*, 197 U. S. 488; *Foppiano v. Speed*, 199 U. S. 501; *Houston & Texas Central Railroad v. Mayes*, 201 U. S. 321; *McLean v. Denver & Rio Grande R. R.*, 203 U. S. 38; *Rearick v. Pennsylvania*, 203 U. S. 507; *Mississippi Comm. v. Illinois Central*, 203 U. S. 335; *Martin v. Pittsburg & Lake Erie R. R.*, 203 U. S. 284; *Hatch v. Reardon*, 204 U. S. 152; *Wilson v. Shaw*, 204 U. S. 24; *Union Bridge Co. v. United States*, 204 U. S. 364; *Lee v. New Jersey*, 207 U. S. 67; *Atlantic Coast Line v. Wharton*, 207 U. S. 328; *Employers' Liability Cases*, 207 U. S. 463; *Dick v. United States*, 208 U. S. 340; *Darnell & Son v. Memphis*, 208 U. S. 113; *Adair v. United States*, 208 U. S. 161; *Burke v. Wells*, 208 U. S. 14; *General Oil Co. v. Crain*, 209 U. S. 211; *Ware & Leland v. Mobile County*, 209 U. S. 405; *Asbell v. Kansas*, 209 U. S. 251; *Galveston, Harrisburg Railway Co. v. Texas*, 210 U. S. 217; *Silz v. Hesterberg*, 211 U. S. 31; *United States v. Delaware & Hudson Co.*, 213 U. S. 366; *Adams Express Co. v. Kentucky*, 214 U. S. 218; *District of Columbia v. Brooke*, 214 U. S. 138; *El Paso & Northeastern Ry. Co. v. Gutierrez*, 215 U. S. 578.

87; *Western Union Telegraph v. Kansas*, 216 U. S. 1; *Pullman Co. v. Kansas*, 216 U. S. 56; *Atlantic Coast Line Co. v. Mazursky*, 216 U. S. 122; *Ludwig v. Western Union Telegraph Co.*, 216 U. S. 146; *Missouri Pacific Ry. Co.*, 216 U. S. 262; *Monongahela Bridge Co. v. United States*, 216 U. S. 177; *Southern Ry. Co. v. King*, 217 U. S. 524; *St. Louis S. W. Ry. v. Arkansas*, 217 U. S. 136; *Standard Oil Co. v. Tennessee*, 217 U. S. 413; *International Textbook Co. v. Pigg*, 217 U. S. 91; *Brown-Forman Co. v. Kentucky*, 217 U. S. 563; *Chiles v. Chesapeake & O. Ry. Co.*, 218 U. S. 71; *Dozier v. Alabama*, 218 U. S. 124; *W. U. Tel.*

*Co. v. Commercial Milling Co.*, 218 U. S. 406; *Herndon v. Chicago, R. I. & P. Ry. Co.*, 218 U. S. 135; *Roach v. Atchison, T. & S. F. Ry. Co.*, 218 U. S. 159; *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 219 U. S. 186; *Broadnax v. Missouri*, 219 U. S. 285; *Engel v. O'Malley*, 219 U. S. 128.

Decisions of Nevada Supreme Court: *Maynard v. Newman*, 1 Nev. 279; *Ex parte Crandall*, 1 Nev. 302, 312; *Milliken v. Sloat*, 1 Nev. 573, 587; *W. U. Tel. Co. v. A. & P. States Tel. Co.*, 5 Nev. 108; *Ex parte Martin*, 7 Nev. 140, 142 (88 A. R. 707); *Ex parte Rosenblatt*, 19 Nev. 439 (3 A. S. 901).

### Naturalization and Bankruptcy.

114. To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

*Sturges v. Crowninshield*, 4 Wh. 122; *McMillan v. McNeil*, 4 Wh. 209; *Farmers and Mechanics' Bank, Pennsylvania, v. Smith*, 6 Wh. 131; *Ogden v. Saunders*, 12 Wh. 213; *Boyle v. Zacharie and Turner*, 6 Pet. 348; *Gassies v. Ballou*, 6 Pet. 761; *Beers v. Haughton*, 9 Pet. 329; *Suydam v. Broadnax*, 14 Pet. 67; *Cook v. Moffat*, 5

*How*, 295; *Dred Scott v. Sanford*, 19 How. 393; *Nishimura Ekiu v. The United States*, 142 U. S. 651; *Hanover National Bank v. Moyses*, 186 U. S. 181; *Holmgren v. United States*, 217 U. S. 509.

Decision of Nevada Supreme Court: *Ex Parte Crandall*, 1 Nev. 306.

### Coinage, weights, and measures.

115. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

*Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Pet. 257; *Fox v. The State of Ohio*, 5 How. 410; *United States v. Marigold*, 9 How. 560; *Ling Su Fan v. United States*, 218 U. S. 302.

Decisions of Nevada Supreme Court: *Maynard v. Newman*, 1 Nev. 271, 276, 277, 278, 280, 282, 289; *Ex Parte Crandall*, 1 Nev. 306; *Milliken v. Sloat*, 1 Nev. 586, 588.

### Counterfeiting.

116. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

*Fox v. State of Ohio*, 5 How. 410; *United States v. Marigold*, 9 How. 560.

### Post-office and post-roads.

117. To establish Post Offices and post Roads;

*State of Pennsylvania v. Wheeling and Belmont Bridge Company*, 18 How. 421; *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1; *Ex Parte Jackson*, 96 U. S. 727; *In re Rapier*, 143 U. S. 110; *Horne v. United States*, 143 U. S. 207; *In re Debs, Petitioner*,

158 U. S. 564; *Illinois Central Railroad Co. v. Illinois*, 163 U. S. 142; *Gladson v. Minnesota*, 166 U. S. 427; *Public Clearing House v. Coyne*, 194 U. S. 497; *Western Union Telegraph Co. v. Pennsylvania R. R. Co.*, 185 U. S. 540; *Martin v. Pittsburg & Lake Erie R. R.*, 203 U. S. 284.

### Patents and copyrights.

118. 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;

*Grant v. Raymond*, 6 Pet. 218; *Wheaton v. Peters*, 8 Pet. 591; *Trade-mark Cases*, 100 U. S. 82; *Burrow Giles Lithographic Co. v. Sarony*, 111 U. S. 53; *United States*

*v. Duell*, 172 U. S. 576; *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339.

### Inferior Courts.

119. To constitute Tribunals inferior to the supreme Court;

Decision of Nevada Supreme Court: *Ex Parte Crandall*, 1 Nev. 306.

### Piracies and offenses against law of nations.

120. To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

*United States v. Palmer*, 3 Wh. 610; *United States v. Wiltberger*, 5 Wh. 76; *United States v. Smith*, 5 Wh. 153;

*United States v. Pirates*, 5 Wh. 184; *United States v. Arjona*, 120 U. S. 479.

### Declarations of war and maritime operations.

121. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

*Brown v. United States*, 8 Cr. 110; *American Insurance Company et al. v. Canter* (356 bales cotton), 1 Pet. 511; *Mrs. Alexander's cotton*, 2 Wall. 404; *Miller v. United States*, 11 Wall. 268; *Tyler v. Defrees*, 11 Wall. 331; *Stewart v. Kahn*, 11 Wall. 493; *Hamilton v. Dillon*, 21 Wall. 73; *Lamar, ex. v. Brown, et al.*, 92 U. S. 187; *Mayfield v.*

*Richards*, 115 U. S. 137; *The Chinese Exclusion Cases*, 130 U. S. 581; *Mormon Church v. United States*, 136 U. S. 1; *Nishimura Ekiu v. The United States*, 142 U. S. 651.

Decisions of Nevada Supreme Court: *Maynard v. Newman*, 1 Nev. 279; *Milliken v. Sloat*, 5 Nev. 573, 587.

**Raising and support of armies.**

122. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Crandall v. State of Nevada, 6 Wall 35; Nishimura Ekiu v. The United States, 142 U. S. 651.

Decisions of Nevada Supreme Court: Maynard v. Newman, 1 Nev. 279; Ex Parte Crandall, 1 Nev. 306.

**Provisions for a navy.**

123. To provide and maintain a Navy;

United States v. Bevans, 3 Wh. 336; Dynes v. Hoover, 20 How. 65.

Decisions of Nevada Supreme Court: Maynard v. Newman, 1 Nev. 279; Milliken v. Sloat, 1 Nev. 573, 587.

**Land and naval forces.**

124. To make Rules for the Government and Regulation of the land and naval Forces;

Decision of Nevada Supreme Court: Ex Parte Crandall, 1 Nev. 306; Milliken v. Sloat, 1 Nev. 573, 587.

**Calling out the militia.**

125. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Houston v. Moore, 5 Wh. 1; Martin v. Mott, 12 Wh. 19; Luther v. Borden, 7 How. 1; Crandall v. State of Nevada,

6 Wall. 35; Texas v. White, 7 Wall. 700.

**Power over the militia.**

126. 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;

Houston v. Moore, 5 Wh. 1; Martin v. Mott, 12 Wh. 19; Luther v. Borden, 7 How. 1; Presser v. Illinois, 116 U. S. 252.

Decision of Nevada Supreme Court: Ex Parte Crandall, 1 Nev. 306.

**Power over territory of the United States.**

127. 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, and Arsenals, dock-Yards, and other needful Buildings;—And

Hepburn v. Ellzey, 2 Cr. 444; Loughborough v. Blake, 5 Wh. 317; Cohens v. Virginia, 6 Wh. 264; American Insurance Company v. Canter (356 bales cotton), 1 Pet. 511; Kendall, Postmaster-General, v. The United States, 12 Pet. 524; United States v. Dewitt, 9 Wall. 41; Dunphy v. Kleinsmith et al. 11 Wall. 610; Willard v. Presbury, 14 Wall. 676; Kohl et al. v. United States, 91 U. S. 367; Phillips v. Payne, 92 U. S. 130; United States v. Fox, 94 U. S. 315; Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525; Gibbons v. District of Columbia, 116 U. S. 404; Van Brocklin v. State of Tennessee, 117 U. S. 151; Stouten-

burgh v. Hennick, 129 U. S. 141; Geofroy v. Riggs, 133 U. S. 258; Benson v. United States, 146 U. S. 325; Shoemaker v. United States, 147 U. S. 282; Chappell v. United States, 160 U. S. 499; Ohio v. Thomas, 173 U. S. 276; Wight v. Davidson, 181 U. S. 371; Battle v. United States, 209 U. S. 36; Western Union Telegraph Co. v. Chile, 214 U. S. 274; El Paso & Northeastern Ry. Co. v. Gutierrez, 215 U. S. 87.

Decision of Nevada Supreme Court: State ex rel Jones v. Mack, 23 Nev. 359, 362, 364-368 (47 P. 763, 62 A. S. 811).

**General legislative power.**

128. 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.

McCulloch v. The State of Maryland, 4 Wh. 316; Wayman v. Southard, 10 Wh. 1; Bank of United States v. Halstead, 10 Wh. 51; Hepburn v. Griswold, 8 Wall. 603; National Bank v. Commonwealth, 9 Wall. 353; Thomson v. Pacific Railroad, 9 Wall. 579; Parker v. Davis, 12 Wall. 457; Railroad Company v. Johnson, 15 Wall. 195; Railroad Company v. Peniston, 18 Wall. 5; United States v. Fox, 95 U. S. 670; United States v. Hall, 98 U. S. 343; Tennessee v. Davis, 100 U. S. 257; Ex Parte Curtis, 106 U. S. 371; Legal Tender case, 110 U. S. 421; Stoutenburgh v. Hennick, 129 U. S. 141; The Chinese Exclusion Case, 130 U. S. 581; Crenshaw v. United States, 134 U. S. 99; Cherokee Nation v.

Southern Kansas R. R., 135 U. S. 641; Nishimura Ekiu v. The United States, 142 U. S. 651; Field v. Clark, 143 U. S. 649; Logan v. United States, 144 U. S. 263; Fong Yue Ting v. United States, 149 U. S. 698; Lees v. United States, 150 U. S. 476; Interstate Commerce Commission v. Brimson, 154 U. S. 447; Clune v. United States, 159 U. S. 590; Motes v. United States, 178 U. S. 458; Buttfield v. Stranahan, 192 U. S. 470.

Decisions of Nevada Supreme Court: Maynard v. Newman, 1 Nev. 287, 288; Meadow Valley M. Co. v. Dodds, 7 Nev. 143, 145 (88 A. R. 709).

**Migration or importation of persons.**

129. SECTION 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.

*Dred Scott v. Sanford*, 19 How. 393; *Oceanic Navigation Co. v. Stranahan*, 214 U. S. 320.

**Writ of habeas corpus.**

130. 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.

*United States v. Hamilton*, 3 Dall. 17; *Hepburn et al. v. Ellzey*, 2 Cr. 445; *Ex Parte Bollman and Swartwout*, 4 Cr. 75; *Ex Parte Kearney*, 7 Wh. 38; *Ex Parte Tobias Watkins*, 3 Pet. 192; *Ex Parte Milburn*, 9 Pet. 704; *Holmes v. Jennison*, 14 Pet. 540; *Ex Parte Dorr*, 3 How. 103; *Luther v. Borden*, 7 How. 1; *Ableman v. Booth and United States v. Booth*, 21 How. 506; *Ex Parte Vallandigham*, 1 Wall. 243; *Ex Parte Mulligan*, 4 Wall. 2; *Ex Parte McCardle*, 7 Wall. 506; *Ex Parte Yerger*, 8 Wall. 85; *Tarble's case*, 13

Wall. 397; *Ex Parte Lange*, 18 Wall. 163; *Ex Parte Parks*, 93 U. S. 18; *Ex Parte Karstendick*, 93 U. S. 396; *Ex Parte Virginia*, 100 U. S. 339; *In re Neagle*, 135 U. S. 1; *In re Frederick*, 149 U. S. 70; *United States v. Sing Tuck*, 194 U. S. 161; *United States v. Ju Toy*, 198 U. S. 253; *Carfer v. Caldwell*, 200 U. S. 293; *McNichols v. Pease*, 207 U. S. 100.   
Decision of Nevada Supreme Court: *Maynard v. Newman*, 1 Nev. 271, 277, 282-284.

**Bills of attainder and ex post facto laws.**

131. No Bill of Attainder or ex post facto Law shall be passed.

*Fletcher v. Peck*, 6 Cr. 87; *Ogden v. Saunders*, 12 Wh. 213; *Watson v. Mercer*, 8 Pet. 88; *Carpenter v. Commonwealth of Pennsylvania*, 17 How. 456; *Locke v. New Orleans*, 4 Wall. 172; *Cummings v. The State of Missouri*, 4 Wall. 277; *Ex parte Garland*, 4 Wall. 333; *Drehman v. Stiffe*, 8 Wall. 595; *Klinger v. State of Missouri*, 13 Wall. 257; *Pierce v. Karskadon*, 16 Wall. 234; *Hopt v. Utah*,

110 U. S. 547; *Cook v. United States*, 138 U. S. 157; *Neely v. Henkel (No. 1)*, 180 U. S. 109; *Southwestern Coal Co. v. McBride*, 185 U. S. 499; *Delamater v. South Dakota*, 205 U. S. 93; *Kentucky Union Co. v. Kentucky*, 219 U. S. 140.

Decision of Nevada Supreme Court: *Esser v. Spaulding*, 17 Nev. 290, 309 (30 P. 896).

**Capitation and direct taxes.**

132. No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

*License Tax Cases*, 5 Wall. 462; *Springer v. United States*, 102 U. S. 586; *Nichol v. Ames*, 173 U. S. 599;

*South Carolina v. United States*, 199 U. S. 437.

**Export duties.**

133. No Tax or Duty shall be laid on Articles exported from any State.

*Cooley v. Board of Wardens of Port of Philadelphia*, 12 How. 299; *Pace v. Burgess, collector*, 92 U. S. 372; *Turpin v. Burgess*, 117 U. S. 504; *Pittsburg & Southern Coal Co. v. Bates*, 156 U. S. 577; *Nichols v. Ames*, 173 U. S. 509; *Williams v. Fears*, 179 U. S. 270; *De Lima v.*

*Bidwell*, 182 U. S. 1; *Dooley v. United States*, 183 U. S. 151; *Fourteen Diamond Rings v. United States*, 183 U. S. 176; *Cornell v. Coyne*, 192 U. S. 418; *South Carolina v. United States*, 199 U. S. 437; *Armour Packing Co. v. United States*, 209 U. S. 56.

**Freedom of commerce.**

134. 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.

*Cooley v. Board of Wardens of Port of Philadelphia*, 12 How. 299; *State of Pennsylvania v. Wheeling and Belmont Bridge Company*, 18 How. 421; *Munn v. Illinois*, 94 U. S. 113; *Packet Co. v. St. Louis*, 100 U. S. 423; *Packet Co. v. Catlettsburg*, 105 U. S. 559; *Sprague v. Thompson*,

118 U. S. 90; *Morgan v. Louisiana*, 118 U. S. 455; *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S. 388; *South Carolina v. United States*, 199 U. S. 437; *Armour Packing Co. v. United States*, 209 U. S. 56.

**Appropriations and accounting of public money.**

135. 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.

*Hooe v. United States*, 218 U. S. 322.

**Titles of nobility and gifts from foreign states.**

136. 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.

States not to make treaties, coin money, pass ex post facto laws, impair contracts, etc.

137. SECTION 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.

Calder v. Bull, 3 Dall. 386; Fletcher v. Peck, 6 Cr. 87; New Jersey v. Wilson, 7 Cr. 164; Sturgis v. Crowningshield, 4 Wh. 122; McMillan v. McNeil, 4 Wh. 209; Dartmouth College v. Woodward, 4 Wh. 518; Owings v. Speed, 5 Wh. 420; Farmers and Merchants' Bank v. Smith, 6 Wh. 131; Green v. Biddle, 8 Wh. 1; Ogden v. Saunders, 12 Wh. 213; Mason v. Haile, 12 Wh. 370; Satterlee v. Matthewson, 2 Pet. 380; Hart v. Lampshire, 3 Pet. 280; Craig v. Missouri, 4 Pet. 410; Providence Bank v. Billings and Pitman, 4 Pet. 514; Byrne v. Missouri, 8 Pet. 40; Watson v. Mercer, 8 Pet. 88; Mumma v. Potomac Company, 8 Pet. 281; Beers v. Houghton, 9 Pet. 329; Briscoe v. Bank of the Commonwealth of Kentucky, 11 Pet. 257; Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 11 Pet. 420; Armstrong v. Treasurer of Athens County, 16 Pet. 281; Bronson v. Kinzie, 1 How. 311; McCracken v. Hayward, 2 How. 608; Gordon v. Appeal Tax Court, 3 How. 133; Maryland v. Baltimore and Ohio R. R. Co., 3 How. 534; Neil, Moore & Co. v. Ohio, 3 How. 720; Cook v. Moffatt, 5 How. 295; Planters' Bank v. Sharp, 6 How. 301; West River Bridge Company v. Dix, 6 How. 507; Crawford v. Branch Bank of Mobile, 7 How. 279; Woodruff v. Trapnall, 10 How. 190; Paup v. Drew, 10 How. 218; Baltimore and Susquehanna R. R. Co. v. Nesbitt, 10 How. 395; Butler v. Pennsylvania, 10 How. 402; Darrington v. Bank of Alabama, 13 How. 12; Richmond R. R. Co. v. Louise R. R. Co., 13 How. 71; Trustees for Vincennes University v. Indiana, 14 How. 268; Curran v. Arkansas, 15 How. 304; State Bank of Ohio v. Knoop, 16 How. 369; Carpenter v. Commonwealth of Pennsylvania, 17 How. 456; Dodge v. Woolsey, 18 How. 331; Beers v. Arkansas, 20 How. 527; Aspinwall v. Commissioners of County of Daviess, 22 How. 364; Rector of Christ Church, Philadelphia, v. County of Philadelphia, 24 How. 300; Howard v. Bugbee, 24 How. 461; Jefferson Branch Bank v. Skelley, 1 Black, 436; Franklin Branch Bank v. Ohio, 1 Black, 474; Trustees of the Wabash and Erie Canal Company v. Beers, 2 Black, 448; Gilman v. City of Sheboygan, 2 Black, 510; Bridge Proprietors v. Hoboken Company, 1 Wall. 116; Hawthorne v. Calef, 2 Wall. 10; Binghampton Bridge, 3 Wall. 51. Turnpike Company v. State, 3 Wall. 210; Locke v. City of New Orleans, 4 Wall. 172; Railroad Company v. Rock, 4 Wall. 177; Cummings v. Missouri, 4 Wall. 277; Ex parte Garland, 4 Wall. 333; Von Hoffman v. City of Quincy, 4 Wall. 335; Mulligan v. Corbin, 7 Wall. 487; Furman v. Nichol, 8 Wall. 44; Home of the Friendless v. Rouse, 8 Wall. 430; Washington University v. Rouse, 8 Wall. 439; Butz v. City of Muscatine, 8 Wall. 575; Drehman v. Stifle, 8 Wall. 595; Heppburn v. Griswold, 8 Wall. 603; Gut v. State, 9 Wall. 35; Railroad Company v. McClure, 10 Wall. 511; Parker v. Davis, 12 Wall. 457; Curtis v. Whiting, 13 Wall. 68; Pennsylvania College Cases, 13 Wall. 190; Wilmington R. R. v. Reid, 13 Wall. 264; Salt Company v. East Saginaw, 13 Wall. 373; White v. Hart, 13 Wall. 646; Osborn v. Nicholson, 13 Wall. 654; Railroad Company v. Johnson, 15 Wall. 195; Case of

the State tax on foreign-held bonds, 15 Wall. 300; Tomlinson v. Jessup, 15 Wall. 454; Tomlinson v. Branch, 15 Wall. 460; Miller v. State, 15 Wall. 478; Holyoke Company v. Lyman, 15 Wall. 500; Gunn v. Barry, 15 Wall. 610; Humphrey v. Pegues, 16 Wall. 244; Walker v. Whitehead, 16 Wall. 314; Sohn v. Waterson, 17 Wall. 596; Barings v. Dabney, 19 Wall. 1; Head v. University, 19 Wall. 526; Pacific R. R. Co. v. Maguire, 20 Wall. 36; Garrison v. City of New York, 21 Wall. 196; Ochiltree v. Railroad Company, 21 Wall. 249; Wilmington Railroad v. King, 91 U. S. 3; County of Moultrie v. Rockingham Ten Cent Savings Bank, 92 U. S. 631; Home Insurance Company v. City Council of Augusta, 93 U. S. 116; West Wisconsin R. R. Co. v. Supervisors, 93 U. S. 595; New Jersey v. Yard, 95 U. S. 104; Railroad Company v. Hecht, 95 U. S. 168; Terry v. Anderson, 95 U. S. 628; Farrington v. Tennessee, 95 U. S. 679; Blount v. Windley, 95 U. S. 173; Murray v. Charleston, 96 U. S. 432; Edwards v. Kearzey, 96 U. S. 595; Tennessee v. Snead, 96 U. S. 69; William v. Bruffy, 96 U. S. 176; Railroad Co. v. Richmond, 96 U. S. 521; Beer Company v. Massachusetts, 97 U. S. 25; Fertilizing Co. v. Hyde Park, 97 U. S. 659; Railroad Co. v. Gaines, 97 U. S. 697; United States v. Memphis, 97 U. S. 284; Keith v. Clark, 97 U. S. 454; Railroad Co. v. Georgia, 98 U. S. 359; University v. People, 99 U. S. 309; Newton v. Commissioners, 100 U. S. 543; Railroad Co. v. Tennessee, 101 U. S. 337; Wright v. Nagle, 101 U. S. 791; Stone v. Mississippi, 101 U. S. 814; Railroad Co. v. Alabama, 101 U. S. 832; Louisiana v. New Orleans, 102 U. S. 203; Hall v. Wisconsin, 103 U. S. 5; Penniman's Case, 103 U. S. 714; Wolff v. New Orleans, 103 U. S. 358; Koshkonong v. Burton, 104 U. S. 668; Railroad Co. v. Hammersley, 104 U. S. 1; County of Clay v. Society for Savings, 104 U. S. 579; Guaranty Co. v. Board of Liquidation, 105 U. S. 622; Greenwood v. Freight Co., 105 U. S. 13; Asylum v. New Orleans, 105 U. S. 362; Louisiana v. Pillsbury, 105 U. S. 278; New Orleans v. Morris, 105 U. S. 600; Kring v. Missouri, 107 U. S. 221; Close v. Glenwood Cemetery, 107 U. S. 466; Antoni v. Greenhow, 107 U. S. 769; Vance v. Vance, 108 U. S. 514; Memphis Gas Light Co. v. Taxing District of Shelby County, 109 U. S. 398; Canada Southern Railway v. Gebhard, 109 U. S. 527; Louisiana v. New Orleans, 109 U. S. 285; Gilfillan v. Union Canal Co., 109 U. S. 401; Spring Valley Water Works v. Schottler, 110 U. S. 347; Butchers' Union Co. v. Crescent City Company, 111 U. S. 746; Nelson v. St. Martin's Parish, 111 U. S. 716; Mary's v. Parsons (Virginia Tax), 114 U. S. 325; Virginia Coupon Cases, 114 U. S. 269; Allen v. Baltimore & Ohio R. R. Co., 114 U. S. 311; Jaehne v. New York, 128 U. S. 189; Medley, Petitioner, 134 U. S. 160; Thompson v. Missouri, 171 U. S. 380; McDonald v. Massachusetts, 180 U. S. 311; Mallett v. North Carolina, 181 U. S. 589; Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611; Keetz v. Michigan, 188 U. S. 505; American Smelting Co. v. Colorado, 204 U. S. 103; Cleveland Electric Railway Co. v. Cleveland, 204 U. S. 116; Rochester Railway Co. v. Rochester, 205 U. S. 236; Chan-

ler v. Kelsey, 205 U. S. 466; Vicksburg v. Waterworks Co., 206 U. S. 496; Bernheimer v. Converse, 206 U. S. 516; Sauer v. City of New York, 206 U. S. 536; Smith v. Jennings, 206 U. S. 276; Sullivan v. Texas, 207 U. S. 416; Hunter v. Pittsburg, 207 U. S. 161; Polk v. Mutual Reserve Fund Association, 207 U. S. 310; Sullivan v. Texas, 207 U. S. 416; Jetton v. University of the South, 208 U. S. 489; Northern Pacific Railway v. Duluth, 208 U. S. 583; Cosmopolitan Club v. Virginia, 208 U. S. 378; Hudson Water Co. v. McCarter, 209 U. S. 349; Yazoo & Mississippi Railroad Co. v. Vicksburg, 209 U. S. 358; St. Louis v. United Railways Co., 210 U. S. 266; Berea College v. Kentucky, 211 U. S. 45; Home Telephone Co. v. Los Angeles, 211 U. S. 265; McLean v. Arkansas, 211 U. S. 539; Hammond Packing

Co. v. Arkansas, 212 U. S. 322; Des Moines v. City Railway Co., 214 U. S. 179; Minneapolis v. Street Ry. Co., 215 U. S. 417; Henley v. Myers, 215 U. S. 373; Hubert v. New Orleans, 215 U. S. 170; Scott County Road Co. v. Hines, 215 U. S. 336; Missouri Pacific Ry. Co. v. Kansas, 216 U. S. 262; Wright v. Georgia R. R. & Banking Co., 216 U. S. 420; Great Western Ry. Co. v. Minnesota, 216 U. S. 254; Great Northern Ry. Co. v. Minnesota, 216 U. S. 206; Frelsen & Co. v. Crandell, 217 U. S. 71; Moffitt v. Kelly, 218 U. S. 400; Arkansas S. Ry. Co. v. Louisiana & A. Ry. Co., 218 U. S. 431; Fisher v. New Orleans, 218 U. S. 438; Griffith v. Connecticut, 218 U. S. 563; Columbus v. Mercantile T. & D. Co., 218 U. S. 645.

### States not to lay impost or duties.

138. No State shall, without the consent of the Congress, lay any Impost or Duties on Imports or Exports, except what may be absolutely necessary for executing it's 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 Controul of the Congress.

McCulloch v. State of Maryland, 4 Wh. 316; Gibbons v. Ogden, 9 Wh. 1; Brown v. The State of Maryland, 12 Wh. 439; Mager v. Grima et al., 8 How. 490; Cooley v. Board of Wardens of Port of Philadelphia et al., 12 How. 299; Almy v. State of California, 24 How. 169; License Tax Cases, 5 Wall. 462; Crandall v. State of Nevada, 6 Wall. 35; Waring v. The Mayor, 8 Wall. 110; Woodruff v. Perham, 8 Wall. 123; Hinson v. Lott, 8 Wall. 148; State Taxation Tax Cases, 12 Wall. 204; State Tax on railway gross receipts, 15 Wall. 284; Inman Steamship Company v. Tinker, 94 U. S. 238; Cook v. Pennsylvania, 97 U. S. 566; Packet Co. v. Keokuk, 95 U. S. 80; People v. Campagnie Général Transatlantique, 107 U. S. 59; Turner v. Maryland, 107 U. S. 38; Brown et al. v. Houston, Collector, et al., 114 U. S. 622; Coe v. Errol, 116 U. S. 517; Turpin v.

Burgess, 117 U. S. 504; Pittsburg & Southern Coal Co. v. Bates, 156 U. S. 577; Pittsburg & Southern Coal Co. v. Louisiana, 156 U. S. 590; Scott v. Donald, 165 U. S. 58; Patapasco Guano Co. v. North Carolina, 171 U. S. 345; May & Co. v. New Orleans, 178 U. S. 496; Dooley v. United States, 183 U. S. 151; Cornell v. Coyne, 192 U. S. 418; American Steel & Wire Co. v. Speed, 192 U. S. 500; Delaware, L. & C., R. & R. Co. v. Pennsylvania, 198 U. S. 341; McLean v. Denver & Rio Grande R. R., 203 U. S. 38; Selliger v. Kentucky, 213 U. S. 200.

Decisions of Nevada Supreme Court: Maynard v. Newman, 1 Nev. 271, 277, 283, 284; Ex Parte Crandall, 1 Nev. 294, 302-304, 308-311, 313; Ex Parte Martin, 7 Nev. 140, 142 (88 A. R. 707).

### States not to lay tonnage taxes, make compacts, or go to war.

139. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into an 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.

Green v. Biddle, 8 Wh. 1; Poole v. The Lessee of Fleecker, 11 Pet. 185; Cooley v. Board of Wardens of Port of Philadelphia, 12 How. 299; Peete v. Morgan, 19 Wall. 581; Cannon v. New Orleans, 20 Wall. 577; Inman Steamship Company v. Tinker, 94 U. S. 238; Transportation Co. v. Wheeling, 99 U. S. 273; Packet Co. v. St. Louis, 100 U. S. 423; Packet Co. v. Keokuk, 95 U. S. 80; Vicksburg v. Tobin, 100 U. S. 430; Packet Co. v. Catlettsburg, 105 U. S. 559; Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365; Transportation

Company v. Parkersburg, 107 U. S. 691; Presser v. Illinois, 116 U. S. 252; Morgan v. Louisiana, 118 U. S. 455; Huse v. Glover, 119 U. S. 543; Ouachita Packet Co. v. Aiken, 121 U. S. 444; Indiana v. Kentucky, 136 U. S. 479; Virginia v. Tennessee, 148 U. S. 503; Wharton v. Wise, 153 U. S. 155; St. Louis & San Francisco Railway Co. v. James, 161 U. S. 545.

Decisions of Nevada Supreme Court: Ex Parte Crandall, 1 Nev. 133.

## ARTICLE. II.

### Terms of the President and Vice-President.

140. SECTION 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:

Field v. Clark, 143 U. S. 649; Garfield v. Goldsby, 211 U. S. 249; Monongahela Bridge Co. v. United States, 216

U. S. 177; United States v. Grimaud, 216 U. S. 614.

### Electors of President and Vice-President and their qualifications.

141. 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 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.

*Chisholm v. Georgia*, 2 Dall. 419; *Leitensdorfer v. Webb*, 134 U. S. 377; *McPherson v. Blacker*, 146 U. S. 1, 20 How. 176; *Ex Parte Siebold*, 100 U. S. 271; *In re Green*,

142. <sup>1</sup>[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List 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 shall be the President, if such Number be a majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing 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. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

**Time of choosing electors and time at which their votes are given.**

143. The Congress may determine the Time of chusing the Electors,<sup>2</sup> and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

*In re Green*, 134 U. S., 377.

**Qualifications of President of the United States.**

144. 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.

*English v. The Trustees of the Sailors' Snug Harbor*, 3 Pet. 99.

**Succession in case of removal, death, resignation, or disability of President and Vice-President.**

145. 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 according, until the Disability be removed, or a President shall be elected.

**Compensation of President.**

146. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased 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.

<sup>1</sup>The portion in brackets has been superseded by the 12th amendment.

<sup>2</sup>The time for choosing the electors is the first Tuesday after the first Monday in November.

**Oath of the President.**

147. 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."

In re Neagle, 135 U. S. 1.

**The President the Commander in Chief—Opinions of the President's advisers—President grants reprieves and pardons.**

148. SECTION 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 Offences against the United States, except in Cases of Impeachment.

United States v. Wilson, 7 Pet. 150; Ex Parte William Wells, 18 How. 307; Ex Parte Garland, 4 Wall. 333; Armstrong's Foundry, 6 Wall. 766; The Grape Shot, 9 Wall. 129; United States v. Padelford, 9 Wall. 542; United States v. Klein, 13 Wall. 128; Armstrong v. United

States, 13 Wall. 152; Pargoud v. The United States, 13 Wall. 156; Hamilton v. Dillin, 21 Wall. 73; Mechanics and Traders' Bank v. Union Bank, 22 Wall. 276; Lamar v. Browne, 92 U. S. 187; Wallach v. Van Riswick, 92 U. S. 202; Eustis v. Holmes, 150 U. S. 361.

**President makes treaties—Appointing power of the President.**

149. 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.

Ware v. Hylton, 3 Dall. 199; Marbury v. Madison, 1 Cr. 137; United States v. Kirkpatrick, 9 Wh. 720; American Insurance Company v. Canter (356 bales cotton), 1 Pet. 511; Foster and Elam v. Neilson, 2 Pet. 253; Cherokee Nation v. State of Georgia, 5 Pet. 1; Patterson v. Gwinn, 5 Pet. 233; Worcester v. State of Georgia, 6 Pet. 515; City of New Orleans v. De Armas, 9 Pet. 224; Holden v. Joy, 17 Wall. 211; United States v. Germaine, 99 U. S. 508;

United States v. Corson, 114 U. S. 619; United States v. Perkins, 116 U. S. 483; United States v. Raucher, 119 U. S. 407; Mormon Church v. United States, 136 U. S. 1; Field v. Clark, 143 U. S. 649; Shoemaker v. United States, 147 U. S. 282; Parsons v. United States, 167 U. S. 324; Rice v. Ames, 180 U. S. 371; Fourteen Diamond Rings v. United States, 183 U. S. 176; Dorr v. United States, 195 U. S. 138.

**President's power to fill vacancies during recess of the Senate.**

150. 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.

United States v. Kirkpatrick, 9 Wh. 720.

**Messages from the President—Power of President as to convening and adjourning Congress—President receives ambassadors, executes the laws, and commissions officers.**

151. SECTION 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.

Marbury v. Madison, 1 Cr. 137; Kendall, Postmaster-General, v. The United States, 12 Pet. 524; Luther v. Borden, 7 How. 1; The State of Mississippi v. Johnson,

President, 4 Wall. 475; Stewart v. Kahn, 11 Wall. 493; In re Neagle, 135 U. S. 1.

**Impeachment of civil officers.**

152. SECTION 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.

Langford v. United States, 101 U. S. 341.

**ARTICLE III.****The judges, their terms, and compensation.**

153. SECTION 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 Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Chisholm v. Georgia, 2 Dall. 419; Stuart v. Laird, 1 Cr. 299; United States v. Peters, 5 Cr. 115; Cohens v. Virginia, 6 Cr. 264; Martin v. Hunter's Lessee, 1 Wh. 304; Osborn v. United States Bank, 9 Wh. 738; Benner v. Porter, 9 How. 235; The United States v. Ritchie, 17 How. 525; Murray's Lessee v. Hoboken Land and Improvement Company, 18 How. 272; Ex Parte Vallandigham, 1 Wall. 243; Penoyer v. Neff, 95 U. S. 714; United States v. Union Pacific Railroad Co., 98 U. S. 569; Mitchell v.

Clark, 110 U. S. 633; Ames v. Kansas, 111 U. S. 449; In re Loney, 134 U. S. 373; In re Green, 134 U. S. 377; McAllister v. United States, 141 U. S. 174; Robertson v. Baldwin, 165 U. S. 275; Hanover National Bank v. Moyses, 186 U. S. 181; Turner v. Williams, 194 U. S. 279; Ex Parte Wisner, 203 U. S. 449; Muskrat v. United States, 219 U. S. 346.

Decision of Nevada Supreme Court: Beatty v. Rhodes, 3 Nev. 252.

See "An Act to codify, revise, and amend the laws relating to the Judiciary," U. S. Stats. 1910-1911, p. 1087.

**Extent of the judicial power.**

154. SECTION 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.

Hayburn's case (note), 2 Dall. 410; Chisholm v. Georgia, 2 Dall. 419; Glass v. Sloop Betsey, 3 Dall. 6; United States v. La Vengeance, 3 Dall. 297; Hollingsworth v. Virginia, 3 Dall. 378; Mossman v. Higginson, 4 Dall. 12; Marbury v. Madison, 1 Cr. 137; Hepburn v. Ellezley, 2 Cr. 444; United States v. Moore, 3 Cr. 159; Strawbridge v. Curtiss, 3 Cr. 267; Ex Parte Bollman and Swartwout, 4 Cr. 75; Rose v. Himely, 4 Cr. 241; Chappedelaine v. Dechenaux, 4 Cr. 305; Hope Insurance Company v. Boardman, 5 Cr. 57; Bank of United States v. Deveaux, 5 Cr. 61; Hodgson v. Bowerbank, 5 Cr. 303; Owings v. Norwood's Lessee, 5 Cr. 344; Durrousseau v. United States, 6 Cr. 307; United States v. Hudson and Goodwin, 7 Cr. 32; Martin v. Hunter, 1 Wh. 304; Colson v. Lewis, 2 Wh. 377; United States v. Bevans, 3 Wh. 336; Cohens v. Virginia, 6 Wh. 264; Ex Parte Kearney, 7 Wh. 38; Matthews v. Zane, 7 Wh. 164; Osborn v. United States Bank, 9 Wh. 738; United States v. Ortega, 11 Wh. 467; American Insurance Company v. Canter (356 bales cotton), 1 Pet. 511; Jackson v. Twentyman, 2 Pet. 136; Cherokee Nation v. State of Georgia, 5 Pet. 1; State of New Jersey v. State of New York, 5 Pet. 283; Davis v. Packard, 6 Pet. 41; United States v. Arredondo, 6 Pet. 691; Davis v. Packard, 7 Pet. 276; Breedlove v. Nicolet, 7 Pet. 413; Brown v. Keene, 8 Pet. 112; Davis v. Packard, 8 Pet. 312; City of New Orleans v. De Armas, 9 Pet. 224; State of Rhode Island v. Commonwealth of Massachusetts, 12 Pet. 657; Bank of Augusta v. Earle, 13 Pet. 519; Commercial and Railroad Bank of Vicksburg v. Slocumb, 14 Pet. 60; Suydam v. Broadnax, 14 Pet. 67; Prigg v. Commonwealth of Pennsylvania, 16 Pet. 539; Louisville, Cincinnati and Charleston Railway Company v. Letson, 2 How. 497; Cary v. Curtis, 3 How. 236; Warring v. Clark, 5 How. 441; Luther v. Borden, 7 How. 1; Sheldon v. Sill, 8 How. 441; The Propeller Genesee Chief v. Fitzhugh, 12 How. 443; Fretz v. Ball, 12 How. 466; Neves v. Scott, 13 How. 268; State of Pennsylvania v. Wheeling Bridge Company, 13 How. 518; Marshall v. Baltimore and Ohio R. R. Co., 16 How. 314; United States v. Guthrie, 17 How. 284; Smith v. State of Maryland, 18 How. 71; Jones v. League, 18

How. 76; Murray's Lessee v. Hoboken Land and Improvement Company, 18 How. 272; Hyde v. Stone, 20 How. 170; Irvine v. Marshall, 20 How. 558; Fenn v. Holmes, 21 How. 481; Moorewood v. Erequist, 23 How. 491; Commonwealth of Kentucky v. Dennison, Governor, 24 How. 66; Ohio and Mississippi Railroad Company v. Wheeler, 1 Black, 286; The Steamer Saint Lawrence, 1 Black, 522; The Propeller Commerce, 1 Black, 574; Ex Parte Vallandigham, 1 Wall. 243; Ex Parte Milligan, 4 Wall. 1; The Moses Taylor, 4 Wall. 411; State of Mississippi v. Johnson, President, 4 Wall. 475; The Hine v. Trevor, 4 Wall. 555; City of Philadelphia v. The Collector, 5 Wall. 720; State of Georgia v. Stanton, 6 Wall. 50; Payne v. Hook, 7 Wall. 425; The Alicia, 7 Wall. 571; Ex Parte Yergler, 8 Wall. 85; Insurance Company v. Dunham, 11 Wall. 1; Virginia v. West Virginia, 11 Wall. 39; Coal Company v. Blatchford, 11 Wall. 172; Railway Company v. Whitton's Adm., 13 Wall. 270; Tarble's Case, 13 Wall. 397; Blyew v. United States, 13 Wall. 581; Davis v. Gray, 16 Wall. 203; Case of the Sewing Machine Companies, 18 Wall. 553; Insurance Company v. Morse, 20 Wall. 445; Vannevar v. Bryant, 21 Wall. 41; The Lottawanna, 21 Wall. 558; Gaines v. Fuentes, 92 U. S. 10; Claffin v. Houseman, assignee, 93 U. S. 130; Muller v. Dows, 94 U. S. 444; Doyle v. Continental Insurance Company, 94 U. S. 535; United States v. Union Pacific Railroad Co., 98 U. S. 569; Tennessee v. Davis, 100 U. S. 257; Ex Parte Boyd, 105 U. S. 647; Bush v. Kentucky, 107 U. S. 110; Transportation Company v. Parkersburg, 107 U. S. 691; Goss v. United States Mortgage Company, 108 U. S. 477; Chicago and Alton R. Co. v. Wiggins Ferry Co., 108 U. S. 18; Louisiana v. New Orleans, 108 U. S. 568; Ellis v. Davis, 109 U. S. 485; Carroll County v. Smith, 111 U. S. 556; Southern Pacific Railroad Co. v. California, 118 U. S. 109; Barron v. Burnside, 121 U. S. 186; Lincoln County v. Luning, 133 U. S. 529; Hans v. Louisiana, 134 U. S. 1; North Carolina v. Temple, 134 U. S. 22; In re Neagle, 135 U. S. 1; Nashua and Lowell R. R. v. Boston and Lowell R. R., 136 U. S. 356; Jones v. United States, 137 U. S. 202; Cook County v. Calumet and Chicago Canal Co. 138 U. S. 635; Manchester v. Massachusetts, 139 U. S. 240; In re

Garnett, 141 U. S. 1; *United States v. Texas*, 143 U. S. 621; *Southern Pacific Company v. Denton*, 146 U. S. 202; *Cooke v. Avery*, 147 U. S. 375; *Cates v. Allen*, 149 U. S. 451; *McNulty v. California*, 149 U. S. 645; *In re Tyler*, 149 U. S. 164; *Newport Light Co. v. Newport*, 151 U. S. 527; *New York and New England Railroad Co. v. Bristol*, 151 U. S. 556; *Israel v. Arthur*, 152 U. S. 355; *Michigan v. Fillet and Pere Marquette R. R. Co.*, 152 U. S. 363; *New Orleans v. Benjamin*, 153 U. S. 411; *Mobile and Ohio Railroad Co. v. Tennessee*, 153 U. S. 486; *Reagan v. Farmers' Loan and Trust Co.*, 154 U. S. 362; *Interstate Commerce Commission v. Brimson*, 154 U. S. 447; *Plumley v. Massachusetts*, 155 U. S. 461; *Andrews v. Schwarz*, 156 U. S. 272; *St. Louis and San Francisco Railway Co. v. Gill*, 156 U. S. 649; *Stevens Administrator v. Nichols*, 157 U. S. 370; *In re Debs*, petitioner, 158 U. S. 564; *Central Land Co. v. Laidley*, 159 U. S. 103; *Folsom v. Ninety-Six*, 159 U. S. 611; *Laird v. Rigney*, 160 U. S. 531; *St. Louis and San Francisco Railway Co. v. James*, 161 U. S. 545; *Woodruff v. Mississippi*, 162 U. S. 291; *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112; *Scott v. Donald*, 165 U. S. 107; *Robertson v. Baldwin*, 165 U. S. 275; *Chicago, Burlington and Quincy R. R. Co. v. Chicago*, 166 U. S. 226; *Forsyth v. Hammond*, 166 U. S. 506; *Oxley State Company v. Butler County*, 166 U. S. 648; *In re Lennon*, 166 U. S. 548; *City Railway Company v. Citizens' Street R. Co.*, 166 U. S. 557; *Douglas v. Kentucky*, 168 U. S. 488; *Miller v. Cornwall R. R. Co.*, 168 U. S. 131; *Baker v. Grice*, 169 U. S. 284; *Smyth v. Ames*, 169 U. S. 466; *Backus v. Fort Street Union Depot Co.*, 169 U. S. 557; *Tinsley v. Anderson*, 171 U. S. 101; *Walla Walla City v. Walla Walla Water Co.*, 172 U. S. 1; *Green Bay and Mississippi Canal Co. v. Patten Paper Co.*, 172 U. S. 58; *Meyer v. Richmond*, 172 U. S. 82; *McCullough v. Virginia*, 172 U. S. 102; *Fitts v. McChee*, 172 U. S. 516; *Dewey v. Des Moines*, 173 U. S. 193; *Nicol v. Ames*, 173 U. S. 509; *Covington v. Kentucky*, 173 U. S. 231; *La Arbra Silver Mining Co. v. United States*, 175 U. S. 423; *Louisiana v. Texas*, 176 U. S. 1; *Whitman v. Oxford National Bank*, 176 U. S. 559; *Hancock National Bank v. Farnum*, 176 U. S. 640; *Carter v. Texas*, 177 U. S. 442; *Smith v. Reeves*, 178 U. S. 436; *Western Union Telegraph Company v. Ann Arbor Railroad Co.*, 178 U. S. 239; *Wiley v. Sinkler*, 179 U. S. 58; *Missouri v. Illinois*, 180 U. S. 208; *Eastern Building Association v. Welling*, 181 U. S. 47; *Dooley v. United States*, 182 U. S. 222; *Tullock v. Mulvane*, 184 U. S. 497; *Patton v.*

*Brady*, 184 U. S. 608; *Kansas v. Colorado*, 185 U. S. 125; *Swafford v. Templeton*, 185 U. S. 487; *Mobile Transportation Co. v. Mobile*, 187 U. S. 479; *Andrews v. Andrews*, 188 U. S. 14; *Hooker v. Los Angeles*, 188 U. S. 314; *Cummings v. Chicago*, 188 U. S. 410; *Schaefer v. Werling*, 188 U. S. 516; *The Roanoke*, 189 U. S. 185; *Detroit, &c., Ry. v. Osborn*, 189 U. S. 383; *Patterson v. Bark Eudora*, 190 U. S. 169; *Howard v. Fleming*, 191 U. S. 126; *Arbuckle v. Blackburn*, 191 U. S. 405; *Deposit Bank v. Frankfort*, 191 U. S. 499; *Spencer v. Duplan Silk Co.*, 191 U. S. 526; *Wabash R. R. Co. v. Pearce*, 192 U. S. 179; *Rogers v. Alabama*, 192 U. S. 226; *South Dakota v. North Carolina*, 192 U. S. 286; *Bankers' Casualty Co. v. Minn., St. P., &c. Ry.*, 192 U. S. 371; *Spreckels Sugar Refining Co. v. McClain*, 192 U. S. 397; *Minnesota v. Northern Securities Co.*, 194 U. S. 48; *Pacific Electric Ry. Co. v. Los Angeles*, 194 U. S. 112; *Hooker v. Burr*, 194 U. S. 415; *Cleveland v. Cleveland City Ry. Co.*, 194 U. S. 517; *Traction Company v. Mining Co.*, 196 U. S. 239; *Dawson v. Columbia Trust Co.*, 197 U. S. 178; *Jacobson v. Massachusetts*, 197 U. S. 11; *Leonard v. Vicksburg, &c., R. R. Co.*, 198 U. S. 416; *Farrell v. O'Brien*, 199 U. S. 89; *South Carolina v. United States*, 199 U. S. 437; *Carfer v. Caldwell*, 200 U. S. 293; *Security Mutual Life Ins. Co. v. Prewitt*, 202 U. S. 246; *Kansas v. United States*, 204 U. S. 331; *The Winnebago*, 205 U. S. 354; *Lee v. New Jersey*, 207 U. S. 67; *St. Louis & Iron Mountain Railway v. Taylor*, 210 U. S. 281; *Berea College v. Kentucky*, 211 U. S. 45; *North American Cold Storage Co. v. Chicago*, 211 U. S. 306; *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 112; *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19; *American Express Co. v. Mullins*, 212 U. S. 311; *Honner v. Gorman*, 212 U. S. 86; *Acheson, Topeka & Santa Fe Ry. v. Sowers*, 213 U. S. 55; *Adams Express Co. v. Kentucky*, 214 U. S. 218; *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320; *Goodrich v. Ferris*, 214 U. S. 7; *Smithsonian Institution v. St. John*, 214 U. S. 19; *Western Union Telegraph Co. v. Chile*, 214 U. S. 274; *El Paso & North-eastern Ry. Co. v. Gutierrez*, 215 U. S. 87; *Weems v. United States*, 217 U. S. 349; *Ladew v. Tennessee Copper Co.*, 218 U. S. 357; *Wetmore v. Tennessee Copper Co.*, 218 U. S. 369; *Virginia v. West Virginia*, 220 U. S. 31; *31 S. C. R. 330*; *Muskrat v. United States*, 219 U. S. 346; *Decision of Nevada Supreme Court: Meadow Valley M. Co. v. Dodds*, 7 Nev. 143, 145 (88 A. R. 709).

### Original and appellate jurisdiction of the Supreme Court.

155. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a 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.

*Chisholm v. Georgia*, 2 Dall. 419; *Wiscart v. Dauchy*, 3 Dall. 221; *Marbury v. Madison*, 1 Cr. 137; *Durosseau v. United States*, 6 Cr. 307; *Martin v. Hunter's Lessee*, 1 Wh. 304; *Cohens v. Virginia*, 6 Wh. 234; *Ex Parte Kearney*, 7 Wh. 38; *Wayman v. Southard*, 10 Wh. 1; *Bank of the United States v. Halstead*, 10 Wh. 51; *United States v. Ortega*, 11 Wh. 467; *The Cherokee Nation v. State of Georgia*, 5 Pet. 1; *Ex Parte Crane*, 5 Pet. 189; *State of New Jersey v. State of New York*, 5 Pet. 283; *Ex Parte Sibbald v. United States*, 12 Pet. 488; *State of Rhode Island v. State of Massachusetts*, 12 Pet. 657; *State of Pennsylvania v. Wheeling Bridge Company*, 13 How. 518; *In re Kaine*, 14 How. 103; *Ableman v. Booth* and *United*

*States v. Booth*, 21 How. 506; *Freeborn v. Smith*, 2 Wall. 160; *Ex Parte McCardle*, 6 Wall. 318; *Ex Parte McCardle*, 7 Wall. 506; *Ex Parte Yerger*, 8 Wall. 85; *The Lucy*, 8 Wall. 307; *The Justices v. Murray*, 9 Wall. 274; *Pennsylvania v. Quicksilver Company*, 10 Wall. 553; *Murdock v. City of Memphis*, 20 Wall. 590; *The "Francis Wright"*, 105 U. S. 381; *Börs v. Preston*, 111 U. S. 252; *Ames v. Kansas*, 111 U. S. 449; *Craig v. Leitensdorfer*, 127 U. S. 764; *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 265; *United States v. Texas*, 143 U. S. 621; *Louisiana v. Texas*, 176 U. S. 1; *Wilkes County v. Coler*, 180 U. S. 506; *W. W. Carrill Co. v. Minnesota*, 180 U. S. 452; *Mallett v. North Carolina*, 181 U. S. 589; *United States v. Bitty*, 208 U. S. 393.

### Places of trial of crimes by jury.

156. 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 Crimes 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.

*Ex Parte Milligan*, 4 Wall. 2; *Barton v. Barbour*, 104 U. S. 126; *Ex Parte Wall*, 107 U. S. 265; *Callan v. Wilson*, 127 U. S. 540; *Nashville, Chattanooga, &c., Railway v. Alabama*, 128 U. S. 96; *Eilenbecker v. Plymouth County*, 134 U. S. 31; *Jones v. United States*, 137 U. S. 202; *Cook v. United States*, 138 U. S. 157; *In re Ross*, 140 U. S. 453; *Fong Yu Ting v. United States*, 149 U. S. 698;

*In re Debs*, petitioner, 158 U. S. 564; *Thompson v. Utah*, 170 U. S. 343; *Schick v. United States*, 195 U. S. 65; *Dorr v. United States*, 195 U. S. 138; *Matter of Strauss*, 197 U. S. 324; *Marvin v. Trout*, 199 U. S. 212; *Martin v. Texas*, 200 U. S. 316; *Tinsley v. Treat*, 205 U. S. 20; *Armour Packing Co. v. United States*, 209 U. S. 56; *Haas v. Henkel*, 216 U. S. 462.

### Treason against the United States.

157. SECTION. 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.

United States v. The Insurgents, 2 Dall. 335; United States v. Mitchell, 2 Dall. 348; Ex Parte Bollman and

Swartwout, 4 Cr. 75; United States v. Aaron Burr, 4 Cr. 469.

**Punishment for treason.**

158. 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.

Bigelow v. Forest, 9 Wall. 339; Day v. Micou, 18 Wall. 156; Ex Parte Lange, 18 Wall. 163; Wallach v. Van Riswick, 92 U. S. 202.

**ARTICLE IV.**

**Each State to give credit to acts, records, etc., of other States.**

159. SECTION. 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.

Mills v. Duryee, 7 Cr. 481; Hampton v. McConnel, 3 Wh. 234; Mayhew v. Thatcher, 6 Wh. 129; Darby's Lessee v. Mayer, 10 Wh. 465; The United States v. Amedy, 11 Wh. 392; Caldwell v. Carrington's heirs, 9 Pet. 86; M'Elmoyle v. Cohen, 13 Pet. 312; The Bank of Augusta v. Earle, 13 Pet. 519; Bank of the State of Alabama v. Dalton, 9 How. 522; D'Arcy v. Ketchum, 11 How. 165; Christmas v. Russell, 5 Wall. 290; Green v. Van Buskirk, 7 Wall. 139; Paul v. Virginia, 8 Wall. 168; Board of Public Works v. Columbia College, 17 Wall. 521; Thompson v. Whitman, 18 Wall. 457; Pennoyer v. Nebb, 95 U. S. 714; Bonaparte v. Tax Court, 104 U. S. 592; Robertson v. Pickrell, 109 U. S. 608; Brown v. Houston, Collector, 114 U. S. 622; Hanley v. Donoghue, 116 U. S. 1; Renaud v. Abbott, 116 U. S. 277; Chicago & Alton R. R. v. Wiggins Ferry Co., 119 U. S. 615; Borer v. Chapman, 119 U. S. 587; Cole v. Cunningham, 133 U. S. 107; Blount v. Walker, 134 U. S. 607; Simmons v. Saul, 138 U. S. 439; Reynolds v. Stockton, 140 U. S. 254; Carpenter v. Strange, 141 U. S. 87; Huntington v. Attrill, 146 U. S. 657; Glenn v. Garth, 147 U. S. 360; Laing v. Rigney, 160 U. S. 531; Chicago, Rock Island & Pacific Railway Co. v. Sturm, 174 U. S. 710; Thormann v. Frame, 176 U. S. 350; Hancock National Bank v. Farnum, 176 U. S. 640; Clarke v. Clarke, 178 U. S. 186; Wilkes County v. Coler, 180 U. S. 506; W. W. Cargill Co. v. Minnesota,

180 U. S. 452; Johnson v. New York Life Ins. Co., 187 U. S. 491; Andrews v. Andrews, 188 U. S. 14; Blackstone v. Miller, 188 U. S. 189; Finney v. Guy, 189 U. S. 335; Anglo-American Provision Co. v. Davis Provision Co., 191 U. S. 373; Wabash R. R. Co. v. Flannigan, 192 U. S. 29; German Savings Society v. Dormitzer, 192 U. S. 125; Wedding v. Meyler, 192 U. S. 573; National Mutual Building and Loan Ass. v. Brahan, 193 U. S. 635; Minnesota v. Northern Securities Co., 194 U. S. 48; National Exchange Bank v. Wiley, 185 U. S. 257; Jaster v. Currie, 198 U. S. 144; Harding v. Harding, 198 U. S. 317; Harris v. Balk, 198 U. S. 215; Louisville & Nashville R. R. v. Deer, 200 U. S. 176; Haddock v. Haddock, 201 U. S. 562; Northern Assurance Co. v. Grand View Building Association, 203 U. S. 106; Wetmore v. Karrick, 205 U. S. 141; Old Wayne Life Association v. McDonough, 204 U. S. 8; Tilt v. Kelsey, 207 U. S. 43; Brown v. Fletcher's Estate, 210 U. S. 82; Fauntleroy v. Lum, 210 U. S. 230; Athon, Topeka & Santa Fe Ry. Co. v. Sowers, 213 U. S. 55; Everett v. Everett, 215 U. S. 203; Fall v. Eastin, 215 U. S. 1; Olmsted v. Olmsted, 216 U. S. 386; Sistare v. Sistare, 218 U. S. 1; Louisville & N. Ry. Co. v. Melton, 218 U. S. 36; Hunter v. Mutual R. I. Ins. Co., 218 U. S. 573; West Side Belt R. R. Co. v. Pittsburg Construction Co., 219 U. S. 92.

**Privileges and immunities of citizens.**

160. SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Bank of United States v. Devereux, 5 Cr. 61; Gassius v. Ballou, 6 Pet. 761; The State of Rhode Island v. The Commonwealth of Massachusetts, 12 Pet. 657; The Bank of Augusta v. Earle, 13 Pet. 519; Moore v. The People of the State of Illinois, 14 How. 13; Conner v. Elliott, 18 How. 591; Dred Scott v. Sandford, 19 How. 393; Crandall v. State of Nevada, 6 Wall. 35; Woodruff v. Parham, 8 Wall. 123; Paul v. Virginia, 8 Wall. 168; Downham v. Alexandria Council, 10 Wall. 173; Liverpool Insurance Company v. Massachusetts, 10 Wall. 566; Ward v. Maryland, 12 Wall. 418; Slaughterhouse Cases, 16 Wall. 36; Bradwell v. The State, 16 Wall. 130; Chemung Bank v. Lowery, 93 U. S. 72; McCready v. Virginia, 94 U. S. 391; Philadelphia Fire Association v. New York, 119 U. S. 110; Pembina Mining Co. v. Pennsylvania, 125 U. S. 181;

Kimmish v. Ball, 129 U. S. 217; Cole v. Cunningham, 133 U. S. 107; Manchester v. Massachusetts, 139 U. S. 240; Pittsburg & Southern Coal Co. v. Bates, 156 U. S. 577; Vance v. W. A. Vandercook, No. 1, 170 U. S. 438; Blake v. McClung, 172 U. S. 239; Williams v. Fears, 179 U. S. 270; Travelers Insurance Co. v. Connecticut, 185 U. S. 364; Chadwick v. Kelley, 187 U. S. 540; Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611; Blackstone v. Miller, 188 U. S. 189; Anglo American Provision Co. v. Davis Provision Co., 191 U. S. 373; Chambers v. Baltimore and Ohio Railroad Co., 207 U. S. 142; Hudson Water Co. v. McCarter, 209 U. S. 349.

Decision of Nevada Supreme Court: Ex Parte Spinney, 10 Nev. 335.

**Extradition for treason, felony or other crime.**

161. 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.

Holmes v. Jennison, 14 Pet. 540; Commonwealth of Kentucky v. Dennison, governor, 24 How. 66; Taylor v. Tainter, 16 Wall. 366; Carroll County v. Smith, 111 U. S. 556; Ex Parte Reggel, 114 U. S. 642; Mahon v. Justice, 127 U. S. 700; Lascelles v. Georgia, 148 U. S. 537; Utter v. Franklin, 172 U. S. 416; Munsey v. Clough, 196 U. S. 364; Appleyard v. Massachusetts, 203 U. S. 222; Pettibone v.

Nichols, 203 U. S. 192; McNichols v. Pease, 207 U. S. 100; Bossing v. Cody, 208 U. S. 386; Pierce v. Creedy, 210 U. S. 387; Marbles v. Creedy, 215 U. S. 63; Franklin v. South Carolina, 218 U. S. 161.

Decision of Nevada Supreme Court: In re Waterman, 29 Nev. 288, 291, 294; 89 P. 291, 11 L. R. A. (N. S.) 424.

**Persons held to service or labor.**

162. No Person held to Service or Labour 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 Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

*Prigg v. Commonwealth of Pennsylvania*, 16 Pet. 539; *Jones v. Van Zandt*, 5 How. 215; *Strader v. Graham*, 10 How. 82; *Moore v. The People of the State of Illinois*, 14

How. 13; *Dred Scott v. Sanford*, 19 How. 393; *Ableman v. Booth and United States v. Booth*, 21 How 506.

**Admission and formation of new States.**

163. SECTION. 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.

*American Insurance Company v. Canter* (356 bales cotton), 1 Pet. 511; *Pollard's Lessee v. Hagan*, 3 How. 212; *Cross v. Harrison*, 16 How. 164; *Benson v. United States*,

146 U. S. 325; *Ward v. Race Horse*, 163 U. S. 504; *Bolln v. Nebraska*, 176 U. S. 83; *Louisiana v. Mississippi*, 202 U. S. 1.

**Power of Congress over territory and other national property.**

164. 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.

*McCulloch v. Maryland*, 4 Wh. 316; *American Insurance Company v. Canter*, 1 Pet. 511; *United States v. Gratiot*, 14 Pet. 526; *United States v. Rogers*, 4 How. 567; *Cross v. Harrison*, 16 How. 164; *Muckey v. Cox*, 18 How. 100; *Dred Scott v. Sanford*, 19 How. 393; *Gibson v. Chouteau*, 13 Wall. 92; *Clinton v. Englebert*, 13 Wall. 434; *Beall v. New Mexico*, 16 Wall. 535; *National Bank v. Yankton County*, 101 U. S. 129; *United States v. Waddell*, 112 U. S. 76; *Van Brocklin v. Tennessee*, 117 U. S. 151; *Clayton v. Utah Territory*, 132 U. S. 632; *Wisconsin Central Railroad Co. v. Price*, 133 U. S. 496; *Geofroy v. Riggs*, 133 U. S. 258; *Mormon Church v. United States*, 136 U. S. 1; *Jones v. United States*, 137 U. S. 202; *St. Paul and Minneapolis Railway Co. v. Phelps*, 137 U. S. 528; *Talton v. Mayes*, 163 U. S. 376; *American Publishing Company v. Fisher*, 166

U. S. 464; *Campfield v. United States*, 167 U. S. 518; *Thompson v. Utah*, 170 U. S. 343; *Green Bay & Mississippi Canal Co. v. Patten Paper Co.*, 173 U. S. 179; *Neely v. Henkel* (No. 1), 180 U. S. 109; *De Lima v. Bidwell*, 182 U. S. 1; *Dooley v. United States*, 182 U. S. 222; *Downes v. Bidwell*, 182 U. S. 244; *Fourteen Diamond Rings v. United States*, 183 U. S. 176; *Hawaii v. Mankichi*, 190 U. S. 197; *Binns v. United States*, 194 U. S. 486; *Dorr v. United States*, 195 U. S. 138; *Rasmussen v. United States*, 197 U. S. 516; *United States v. Heinsgen*, 206 U. S. 370; *Grafton v. United States*, 206 U. S. 333; *Ponce v. Roman Catholic Church*, 210 U. S. 296; *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 213 U. S. 55; *El Paso & Northeastern Ry. Co. v. Gutierrez*, 215 U. S. 87; *Weems v. United States*, 217 U. S. 349.

**Republican form of government and protection from domestic violence guaranteed to the States.**

165. SECTION. 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.

*Luther v. Borden*, 7 How. 1; *Texas v. White*, 7 Wall. 700; *In re Duncan*, 139 U. S. 449; *Taylor v. Beckham*

(No. 1), 178 U. S. 548; *South Carolina v. United States*, 199 U. S. 437.

## ARTICLE V.

**Amendments to the Constitution.**

166. 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 VI.

**Validity of debts and engagements.**

167. 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.

**Constitution, laws, and treaties the supreme law of the land.**

168. 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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Hayburn's case, 2 Dall. 409; Ware v. Hylton, 3 Dall. 199; Calder v. Bull, 3 Dall. 386; Marbury v. Madison, 1 Cr. 137; Chirac v. Chirac, 2 Wh. 259; McCulloch v. Maryland, 4 Wh. 316; Society v. New Haven, 8 Wh. 464; Gibbons v. Ogden, 9 Wh. 1; Foster and Elam v. Neilson, 2 Pet. 253; Buckner v. Finley, 2 Pet. 586; Worcester v. Georgia, 6 Pet. 515; Kennett v. Chambers, 14 How. 38; Dodge v. Woolsey, 18 How. 331; State of New York v. Dibble, 21 How. 366; Ableman v. Booth and United States v. Booth, 21 How. 506; Sinnot v. Davenport, 22 How. 227; Foster v. Davenport, 22 How. 244; Haver v. Yaker, 9 Wall. 32; Claffin v. Houseman, 93 U. S. 130; United States v. 43 Gallons of Whisky, 93 U. S. 188; Hanenstein v. Lynham, 100 U. S. 483; Neal v. Delaware, 103 U. S. 370; Ex Parte Crow Dog, 109 U. S. 556; Carroll County v. Smith, 111 U. S. 556; Head Money Cases, 112 U. S. 580; Van Brocklin v. State of Tennessee, 117 U. S. 151; United States v. Rauscher, 119 U. S. 407; Kerr v. Illinois, 119 U. S. 436;

Whitney v. Robinson, 124 U. S. 190; The Chinese Exclusion Cases, 130 U. S. 581; Geoffroy v. Riggs, 133 U. S. 253; In re Neagle, 135 U. S. 1; Horner v. United States, 143 U. S. 570; Fong Yue Ting v. United States, 149 U. S. 698; Gulf, Colorado and Santa Fe Railway Co. v. Hefley, 158 U. S. 98; Ward v. Race Horse, 163 U. S. 594; McClellan v. Chipman, 164 U. S. 347; Smyth v. Ames, 169 U. S. 466; Missouri, Kansas & Texas Railway Co. v. Haber, 169 U. S. 613; Ohio v. Thomas, 173 U. S. 276; Lone Wolf v. Hitchcock, 187 U. S. 553; South Carolina v. United States, 199 U. S. 437; Paddell v. City of New York, 211 U. S. 446; Berea College v. Kentucky, 211 U. S. 45; McLean v. Arkansas, 211 U. S. 539; Atchison, Topeka & Santa Fe Ry. Co. v. Sowers, 213 U. S. 55; Sanchez v. United States, 216 U. S. 167.

Decision of Nevada Supreme Court: Milliken v. Sloat, 1 Nev. 573, 581.

**Oaths of public officers; and prohibition of religious tests.**

169. 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.

Ex Parte Garland, 4 Wall. 333; Davis v. Beason, 133 U. S. 333; Mormon Church v. United States, 136 U. S. 1.

## ARTICLE VII.

**Ratification of the Constitution.**

170. The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names.

G<sup>o</sup> WASHINGTON—

*Presidt. and Deputy from Virginia.*

*New Hampshire—*

John Langdon,  
Nicholas Gilman.

*Massachusetts—*

Nathaniel Gorham,  
Rufus King.

*Connecticut—*

Wm. Saml. Johnson,  
Roger Sherman.

*New York—*

Alexander Hamilton.

*Delaware—*

Geo: Read,  
Gunning Bedford, Jun'r,  
John Dickinson,  
Richard Bassett,  
Jaco: Broom.

*Maryland—*

James McHenry,  
Dan: of St Thos Jenifer,  
Danl. Carroll.

*Virginia—*

John Blair,  
James Madison, Jr.

*New Jersey—*

Wil: Livingston,  
David Brearley,  
Wm. Paterson,  
Jona: Dayton.

*North Carolina—*

Wm. Blount,  
Richd. Dobbs Spaight,  
Hu. Williamson.

*Pennsylvania—*

B. Franklin,  
Thomas Mifflin,  
Robt. Morris,  
Geo: Clymer,  
Thos: Fitzsimmons,  
Jared Ingersoll,  
James Wilson,  
Gouv: Morris.

*South Carolina—*

J. Rutledge,  
Charles Cotesworth Pinckney,  
Charles Pinckney,  
Pierce Butler.

39  
16  
55

*Georgia—*

William Few,  
Abr. Baldwin.

Attest:

WILLIAM JACKSON,  
*Secretary.*

The following-named delegates from other States were present, but did not sign the Constitution.

*Massachusetts—*

Eldridge Gerry,  
Caleb Strong.

*New Jersey—*

Wm. C. Houston.

*Connecticut—*

Oliver Ellsworth.

*Virginia—*

Edmund Randolph,  
George Mason,  
George Wythe,  
James McClurg.

14

*New York—*

John Lansing, Jr.  
Robert Yates.

*North Carolina—*

Alexander Martin,  
Wm. R. Davie.

*Maryland—*

John Francis Mercer,  
Luther Martin.

*Georgia—*

Wm. Pierce,  
Wm. Houston.

Of the 63 delegates originally appointed 10 did not attend, 2 of which vacancies were filled. Of those attending, 39 signed and 16 did not.

The Constitution was adopted by the Convention on the 17th of September, 1787, appointed in pursuance of the resolution of the Congress of the Confederation of the 21st of February, 1787, and ratified by the conventions of the several States, as follows:

Delaware, December 7, 1787, unanimously.

Pennsylvania, December 12, 1787, by a vote of 46 to 23.

New Jersey, December 18, 1787, unanimously.

Georgia, January 2, 1788, unanimously.

Connecticut, January 9, 1788, by a vote of 128 to 40.

Massachusetts, February 6, 1788, by a vote of 187 to 168.

Maryland, April 28, 1788, by a vote of 63 to 12.

South Carolina, May 23, 1788, by a vote of 149 to 73.

New Hampshire, June 21, 1788, by a vote of 57 to 47.

Virginia, June 25, 1788, by a vote of 89 to 79.

New York, July 26, 1788, by a vote of 30 to 25.

North Carolina, November 21, 1789, by a vote of 193 to 75.

Rhode Island, May 29, 1790, by a majority of 2.

Vermont, January 10, 1791, by a vote of 105 to 4.

Declared ratified by resolution of the old Congress, September 13, 1788.

[The adoption of the Constitution was opposed by many who believed that the extensive powers granted by it to Congress and the executive would be dangerous to the liberties of the people. It was, however, finally adopted chiefly through the exertions and writings of James Madison, John Jay, and Alexander Hamilton. Virginia ratified the Constitution with

the declaration that she was at liberty to withdraw from the Union whenever its powers were used for oppression; and New York, after Hamilton had declared that no State should ever be coerced by an armed force. There were two great parties: The Federalists, in favor of a strong, centralized government, and the Anti-Federalists, supporters of State's rights. Washington and Adams, Federalist leaders, were elected, and the government was organized with Thomas Jefferson, Secretary of State; Alexander Hamilton, Secretary of the Treasury; Henry Knox, Secretary of War, and John Jay, Chief Justice of the Supreme Court.]

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.<sup>1</sup>

[ARTICLE I.]

**Freedom of religion, of speech, and of peaceable assembly.**

171. 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.

Terret v. Taylor, 9 Cr. 43; Vidal v. Girard, 2 How. 127; Ex Parte Garland, 4 Wall. 333; United States v. Cruikshank, 92 U. S. 542; Reynolds v. United States, 98 U. S. 145; Spies v. Illinois, 123 U. S. 131; Davis v. Beason, 133 U. S. 333; Eilenbecker v. Plymouth County, 134 U. S. 31;

Mormon Church v. United States, 136 U. S. 1; in re Rapier, 143 U. S. 110; Horner v. United States, 143 U. S. 207; Bradford v. Roberts, 175 U. S. 291; Turner v. Williams, 194 U. S. 279; Jack v. Kansas, 199 U. S. 372; Quick Bear v. Leupp, 210 U. S. 50; Twining v. New Jersey, 211 U. S. 78.

[ARTICLE II.]

**The right to bear arms.**

172. 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.

Presser v. Illinois, 116 U. S. 252; Spies v. Illinois, 123 U. S. 131; Eilenbecker v. Plymouth County, 134 U. S. 31;

Jack v. Kansas, 199 U. S. 372; Twining v. New Jersey, 211 U. S. 78.

[ARTICLE III.]

**Quartering of soldiers in houses.**

173. 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.

Spies v. Illinois, 123 U. S. 131; Eilenbecker v. Plymouth County, 134 U. S. 31; Jack v. Kansas, 199 U. S.

372; Twining v. New Jersey, 211 U. S. 78.

[ARTICLE IV.]

**Security from unreasonable searches and seizures.**

174. 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.

Smith v. Maryland, 18 How. 71; Murray's Lessee v. Hoboken Land and Improvement Company, 18 How. 272; Ex Parte Milligan, 4 Wall. 2; Boyd v. United States, 116 U. S. 616; Spies v. Illinois, 123 U. S. 131; Eilenbecker v. Plymouth County, 134 U. S. 31; Fong Yue Ting v. United States, 149 U. S. 698; Interstate Commerce Commission

v. Brimson, 154 U. S. 447; In re Chapman, 166 U. S. 661; Adams v. New York, 192 U. S. 585; Morris v. Hitchcock, 194 U. S. 384; Public Clearing House v. Coyne, 194 U. S. 497; Interstate Commerce Commission v. Baird, 194 U. S. 25; Jack v. Kansas, 199 U. S. 372; Hale v. Henkel 201 U. S. 43; Consolidated Rendering Co. v. Vermont, 207 U. S. 541;

<sup>1</sup> The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

American Tobacco Co. v. Werckmeister, 207 U. S. 284; Twining v. New Jersey, 211 U. S. 78; Hammond Packing Co. v. Arkansas, 212 U. S. 322; Bagley v. General Fire Extinguishing Co., 212 U. S. 477; Smithsonian Institution v. St. John, 214 U. S. 19; Rhodus v. Manning, 217 U. S. 597; Wilson v. United States, 220 U. S. —, 31 C. C. R. 538.

On account of the importance of the matter, an extract from above decision is here inserted:

"The enforced production before a grand jury engaged

in investigating the alleged criminal conduct of corporate officers, directors, and stockholders, of the letter-press copy books of the corporation for two specified months, in the possession of its president, under a subpoena duces tecum directed to the corporation, does not violate the provisions of U. S. Const., 4th amend., forbidding unreasonable searches and seizures." Wilson v. United States, 31 Sup. Ct. Rep. 538; 220 U. S. —, (Cent. Dig., sec. 5; Dec. Dig., sec. 7.)

## [ARTICLE V.]

### Security as to accusations, trials, and property.

175. 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 offence to be twice put in jeopardy of life or limb; nor shall he 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, with out just compensation.

United States v. Perez, 9 Wh. 579; Barron v. The City of Baltimore, 7 Pet. 243; Fox v. Ohio, 5 How. 410; West River Bridge Company v. Dix, 6 How. 507; Mitchell v. Harmony, 13 How. 115; Moore v. The People of the State of Illinois, 14 How. 13; Murray's Lessee v. Hoboken Land and Improvement Company, 18 How. 272; Dynes v. Hoover, 20 How. 65; Withers v. Buckley, 20 How. 84; Gilman v. The City of Sheboygan, 2 Black, 510; Ex Parte Milligan, 4 Wall. 2; Twitchell v. The Commonwealth, 7 Wall. 321; Hepburn v. Griswold, 8 Wall. 603; Miller v. United States, 11 Wall. 268; Legal Tender Cases, 12 Wall. 457; Pumpelly v. Green Bay Company, 13 Wall. 166; Osborn v. Nicholson, 13 Wall 654; Ex Parte Lanze, 18 Wall. 163; Kohl v. United States, 91 U. S. 367; Davidson v. New Orleans, 36 U. S. 97; Sinking Fund Cases, 99 U. S. 700; Langford v. United States, 101 U. S. 341; Kelly v. Pittsburgh, 104 U. S. 78; Ex Parte Wall, 107 U. S. 265; United States v. Jones, 109 U. S. 513; United States v. Great Falls Manufacturing Co., 112 U. S. 645; Ex Parte Wilson, 114 U. S. 417; Boyd v. United States, 116 U. S. 616; Mackin v. United States, 117 U. S. 348; Ex Parte Bain, 121 U. S. 1; Parkinson v. United States, 121 U. S. 281; Spier v. Illinois, 123 U. S. 131; Callan v. Wilson, 127 U. S. 540; United States v. De Walt, 129 U. S. 393; Manning v. French, 133 U. S. 186; Eilenbecker v. Plymouth County, 134 U. S. 31; Louisville and Nashville R. R. Co. v. Woodson, 134 U. S. 614; In re Ross, 140 U. S. 453; Counselman v. Hitchcock, 142 U. S. 547; Simmonds v. United States, 142 U. S. 148; Thornton v. Montgomery, 147 U. S. 490; Monongahela Navigation Co. v. United States, 148 U. S. 312; Fong Yue Ting v. United States, 149 U. S. 698; Lees v. United States, 150 U. S. 476; Marchant v. Pennsylvania Railroad Co., 153 U. S. 380; Linford v. Ellison, 155 U. S. 503; Johnson v. Sayre, 158 U. S. 109; Salet v. Rechel, 159 U. S. 380; Brown v. Walker, 161 U. S. 591; Wong Wing v. United States, 163 U. S. 228; Ralton v. Maves, 163 U. S. 376; Bauman v. Ross, 167 U. S. 548; Wilson v. Lambert, 168 U. S. 611; United States v. Joint Traffic Association, 171 U. S. 505; Maxwell v. Dow, 176 U. S. 581; Scranton v. Wheeler, 179 U. S. 141; McDonald v. Massachusetts, 180 U. S. 311; Neely v. Henkel (No. 1), 180 U. S. 109; French v. Barber Asphalt Paving Co., 181 U. S. 324; Wight v. Davidson, 181 U. S. 371; Toxawanda v. Lyon, 181 U. S. 389; Capital City Dairy Co. v. Ohio, 183 U. S. 238; Hanover National Bank v. Moyses, 186 U. S. 181; Dreyer v. Illinois, 187 U. S. 71; Lume Hoag v. Hitchcock, 187 U. S. 553; United States v. Lynch, 188 U. S. 445; The Japanese Immigrant Case, 189 U. S. 86; Hawaii v. Mankichi, 190 U. S. 197; Bedford v. United States, 192 U. S. 217; Butterfield v. Stranahan, 192 U. S. 470; Adams v. New York, 192 U. S. 585; Minneapolis & St. Louis R. R. Co. v. Minnesota, 193 U. S. 53; Beavers v. Henkel, 194 U. S. 73; Morris v. Hitchcock, 194 U. S. 384; Lloyd v. Dollison, 194 U. S. 445; Public Clearing House v. Coyne, 194 U. S. 497; Turner v. Williams, 194 U. S. 279; Shepard v. Barron, 194 U. S. 553; Interstate Commerce Commission v. Baird, 194

U. S. 25; Kepner v. United States, 195 U. S. 100; McCray v. United States, 195 U. S. 27; Rassmussen v. United States, 197 U. S. 516; Ju Toy v. United States, 198 U. S. 253; Jack v. Kansas, 199 U. S. 372; South Carolina v. United States, 199 U. S. 437; Trono v. United States, 199 U. S. 521; Chicago, B. & Q. Ry. Co. v. Drainage Commissioners, 200 U. S. 561; Southern Pacific R. R. Co. v. United States, 200 U. S. 341; Howard v. Kentucky, 200 U. S. 164; Hale v. Henkel, 201 U. S. 43; McAllister v. Henkel, 201 U. S. 90; Nelson v. U. S., 201 U. S. 23; Sawyer v. U. S., 202 U. S. 150; Matter of Moran, 202 U. S. 96; Union Bridge Co. v. U. S., 204 U. S. 364; Martin v. District of Columbia, 205 U. S. 135; Barrington v. Missouri, 205 U. S. 483; United States v. Heinszen, 206 U. S. 370; Ellis v. U. S., 206 U. S. 246; Grafton v. U. S., 206 U. S. 333; Hunter v. Pittsburgh, 207 U. S. 161; Taylor v. U. S., 207 U. S. 120; Shoener v. Pennsylvania, 207 U. S. 188; Consolidated Rendering Co. v. Vermont, 207 U. S. 541; American Tobacco Co. v. Werckmeister, 207 U. S. 284; Adair v. U. S., 208 U. S. 161; Bassing v. Cady, 208 U. S. 386; Garfield v. Goldsby, 211 U. S. 249; Twining v. New Jersey, 211 U. S. 78; Goon Shung v. United States, 212 U. S. 566; New York Central R. R. v. United States, 212 U. S. 481; United States v. Delaware & Hudson Co., 213 U. S. 366; Keerl v. Montana, 213 U. S. 135; Oceanic Navigation Co. v. Stranahan, 214 U. S. 320; District of Columbia v. Brooke, 214 U. S. 138; Sanchez v. United States, 216 U. S. 167; Monongahela Bridge Co. v. United States, 216 U. S. 177; Brantley v. Georgia, 217 U. S. 284; Rhodus v. Manning, 217 U. S. 597; United States v. Welch, 217 U. S. 333; Interstate Commerce Com. v. Chicago R. I. & P. Ry. Co., 218 U. S. 88; Interstate Commerce Com. v. Chicago B. & Q. Ry. Co., 218 U. S. 113; Holt v. United States, 218 U. S. 245; Hooe v. United States, 218 U. S. 322; Cincinnati I. & W. Ry. Co. v. Connersville, 218 U. S. 336; Louisville and Nashville R. R. Co. v. Motley, 219 U. S. 467; Noble State Bank v. Haskell, 219 U. S. 575; United States v. Grizzard, 219 U. S. 180; Wilson v. United States, 220 U. S. —, 31 S. C. R. 538.

On account of importance of matter, an extract from this decision is here inserted:

"The privilege against self-crimination afforded by the U. S. Const., 5th amend., does not protect the officer of a corporation in resisting the compulsory production before the grand jury under a subpoena duces tecum directed to the corporation, of the letter-press copy books of such corporation in his possession, because the contents thereof may tend to incriminate him, even though the inquiry before the grand jury was not directed to the corporation itself." Wilson v. United States, 31 Sup. Ct. Rep. 538; 220 U. S. —, (Cent. Dig., sec. 1038-10; Dec. Dig., sec. 298.)

Decision of Nevada Supreme Court: State v. Millain, 3 Nev. 409, 438, 479, 480; State v. Rover, 10 Nev. 395 (21 A. R. 745); Wallace v. Mayor, 27 Nev. 77 (73 P. 528, 103 A. S. 747).

## [ARTICLE VI.]

### Right to trial by jury and to confront witnesses and secure testimony.

176. 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 previ-

ously 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 defence.

United States v. Cooledge, 1 Wh. 415; *Ex Parte Kearney*, 7 Wh. 38; *United States v. Mills*, 7 Pet. 142; *Barron v. City of Baltimore*, 7 Pet. 243; *Fox v. Ohio*, 5 How. 410; *Withers v. Buckley*, 20 How. 84; *Ex Parte Milligan*, 4 Wall. 2; *Twichell v. The Commonwealth*, 7 Wall. 321; *Miller v. The United States*, 11 Wall. 268; *United States v. Cook*, 17 Wall. 168; *United States v. Cruikshank*, 92 U. S. 542; *Reynolds v. United States*, 98 U. S. 145; *Spies v. Illinois*, 123 U. S. 131; *Brooks v. Missouri*, 124 U. S. 394; *Callan v. Wilson*, 127 U. S. 540; *Eilenbecker v. Plymouth County*, 134 U. S. 31; *Jones v. United States*, 137 U. S. 202; *Cook v. United States*, 138 U. S. 157; *In re Shubuya Jugiro*, 140 U. S. 291; *In re Ross*, 140 U. S. 453; *Fong Yue Ting v. United States*, 149 U. S. 698; *Mattox v. United States*, 156 U. S. 237; *Rosen v. United States*, 161 U. S. 29; *United States v. Zucker*, 161 U. S. 475; *Wong Wing v. United States*, 163 U. S. 228; *Thompson v. Utah*, 170 U. S. 343; *Maxwell v. Dow*, 176 U. S. 581; *Motes v. United States*,

178 U. S. 458; *Fidelity and Deposit Co. v. United States*, 187 U. S. 315; *Hawaii v. Mankichi*, 190 U. S. 197; *Lloyd v. Dollison*, 194 U. S. 445; *West v. Louisiana*, 194 U. S. 258; *Turner v. Williams*, 194 U. S. 279; *Schirck v. United States*, 195 U. S. 65; *Dorr v. United States*, 195 U. S. 138; *Rasmussen v. United States*, 197 U. S. 516; *Beavers v. Haubert*, 198 U. S. 77; *Marvin v. Trout*, 199 U. S. 212; *Jack v. Kansas*, 199 U. S. 372; *Martin v. Texas*, 200 U. S. 316; *Howard v. Kentucky*, 200 U. S. 164; *Sawyer v. United States*, 202 U. S. 150; *Tinsley v. Treat*, 205 U. S. 20; *Ughbanks v. Armstrong*, 208 U. S. 481; *Armour Packing Co. v. United States*, 209 U. S. 56; *Twining v. New Jersey*, 211 U. S. 78; *Goon Shung v. United States*, 212 U. S. 566; *Knoxville v. Knoxville Water Co.*, 212 U. S. 1; *United States v. Stevenson*, 215 U. S. 190; *Haas v. Henkel*, 216 U. S. 462.

Decision of Nevada Supreme Court: *State v. Jones*, 7 Nev. 408, 415.

## [ARTICLE VII.]

### Jury trial in suits at common law.

177. 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.

*United States v. La Vengeance*, 3 Dall. 297; *Bank of Columbia v. Oakley*, 4 Wh. 235; *Parsons v. Bedford*, 3 Pet. 433; *Lessee of Livingston v. Moore*, 7 Pet. 469; *Webster v. Reid*, 11 How. 437; *State of Pennsylvania v. The Wheeling Bridge Company*, 13 How. 518; *The Justices v. Murray*, 9 Wall. 274; *Edwards v. Elliott*, 21 Wall. 532; *Pearson v. Yewdall*, 95 U. S. 294; *McElrath v. United States*, 102 U. S. 426; *Spies v. Illinois*, 123 U. S. 131; *Arkansas Valley Land & Cattle Co. v. Mann*, 130 U. S. 69; *Eilenbecker v. Plymouth County*, 134 U. S. 31; *Whitehead v. Shattuck*, 138 U. S. 146; *Scott v. Neely*,

140 U. S. 106; *Cates v. Allen*, 149 U. S. 451; *Fong Yue Ting v. United States*, 149 U. S. 698; *Coughran v. Bigelow*, 164 U. S. 301; *Walker v. New Mexico & Southern Pacific Railroad*, 165 U. S. 593; *Chicago, Burlington & Quincy v. Chicago*, 166 U. S. 226; *American Publishing Co. v. Fisher*, 166 U. S. 464; *Rasmussen v. United States*, 197 U. S. 516; *Marvin v. Trout*, 199 U. S. 212; *Jack v. Kansas*, 199 U. S. 372; *Fidelity Mutual Life Ins. Co. v. Clark*, 203 U. S. 64; *Twining v. New Jersey*, 211 U. S. 78.

## [ARTICLE VIII.]

### Excessive bail or fines and cruel punishments prohibited.

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

*Pervear v. Commonwealth*, 5 Wall. 475; *Spies v. Illinois*, 123 U. S. 131; *Manning v. French*, 133 U. S. 186; *Eilenbecker v. Plymouth County*, 134 U. S. 31; *McElvaine v. Brush*, 142 U. S. 155; *O'Neil v. Vermont*, 144 U. S. 323; *McDonald v. Massachusetts*, 180 U. S. 311; *Jack v. Kansas*,

199 U. S. 372; *Ughbanks v. Armstrong*, 208 U. S. 481; *Twining v. New Jersey*, 211 U. S. 78; *Weems v. United States*, 217 U. S. 349.

Decision of Nevada Supreme Court: *Ex Parte Kair*, 28 Nev. 127 (80 P. 463, 113 A. S. 817).

## [ARTICLE IX.]

### Rights reserved to the people.

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

*Lessee of Livingston v. Moore*, 7 Pet. 469; *Spies v. Illinois*, 123 U. S. 131; *Jack v. Kansas*, 199 U. S. 372.

## [ARTICLE X.]

### Powers reserved to the States.

180. 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.

*Chisholm v. State of Georgia*, 2 Dall. 419; *Hollingsworth v. The State of Virginia*, 3 Dall. 378; *Martin v. Hunter's Lessee*, 1 Wh. 304; *McCulloch v. State of Maryland*, 4 Wh. 316; *Anderson v. Dunn*, 6 Wh. 204; *Cohens v. Virginia*, 6 Wh. 264; *Osborn v. United States Bank*, 9 Wh. 738; *Buchler v. Finley*, 2 Pet. 586; *Ableman v. Booth*, 21 How. 506; *The Collector v. Day*, 11 Wall. 113; *Claffin v. Houseman*, assignee, 93 U. S. 130; *Inman Steamship Company v. Tinker*, 94 U. S. 238; *United States v. Fox*, 94 U. S. 315; *Tennessee v. Davis*, 100 U. S. 257; *Spies v. Illinois*, 123 U. S. 131; *Pollock v. Farmers' Loan & Trust*

*Co. (Income Tax case)*, 157 U. S. 429; *Forsyth v. Hammond*, 166 U. S. 506; *St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners*, 168 U. S. 349; *Missouri, Kansas & Texas Railway Co. v. Haber*, 169 U. S. 613; *Hancock Mutual Life Ins. Co. v. Warren*, 181 U. S. 73; *Kansas v. Colorado*, 185 U. S. 125; *Andrews v. Andrews*, 188 U. S. 14; *Northern Securities Co. v. United States*, 193 U. S. 197; *Turner v. Williams*, 194 U. S. 279; *McCray v. United States*, 195 U. S. 27; *Central of Georgia Ry. Co. v. Murphey*, 196 U. S. 194; *Matter of Heff (Indian)*, 197 U. S. 488; *South Carolina v. United States*, 199 U. S. 437;

Jack v. Kansas, 199 U. S. 372; Hodges v. United States, 203 U. S. 1; Kansas v. Colorado, 206 U. S. 46; Prentiss v. Atlantic Coast Line, 211 U. S. 210; Keller v. United States, 213 U. S. 138; Adams Express Co. v. Kentucky,

214 U. S. 218; Western Union Telegraph Co. v. Chiles, 214 U. S. 274; Holmgren v. United States, 217 U. S. 509. Decision of Nevada Supreme Court: Gibson v. Mason, 5 Nev. 284, 292.

## ARTICLE XI.<sup>1</sup>

### Extent of the judicial power.

181. 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.

State of Georgia v. Brailsford, 2 Dall. 402; Chisholm v. State of Georgia, 2 Dall. 419; Hollingsworth v. Virginia, 3 Dall. 378; Cohen v. Virginia, 6 Wh. 264; Osborn v. United States Bank, 9 Wh. 738; United States v. The Planters' Bank, 9 Wh. 904; The Governor of Georgia v. Juan Madrazo, 1 Pet. 110; Cherokee Nation v. State of Georgia, 5 Pet. 1; Briscoe v. The Bank of the Commonwealth of Kentucky, 11 Pet. 257; Curran v. State of Arkansas, 15 How. 304; Louisiana v. Jumel, 107 U. S. 711; New Hampshire v. Louisiana, 108 U. S. 76; Clark v. Barnard, 108 U. S. 436; Cunningham v. Macon & Brunswick Railroad, 109 U. S. 446; Poindexter v. Greenlow, 114 U. S. 270; Allen v. Baltimore & Ohio R. R. Co., 114 U. S. 311; Hagood v. Southern 117 U. S. 52; Ralston v. Missouri Fund Commissioners, 120 U. S. 390; In re Ayers, 123 U. S. 443; Lincoln County v. Luning, 133 U. S. 529; Christian v. Atlantic & North Carolina R. R. Co., 133 U. S. 238; Hans v. Louisiana, 134 U. S. 1; North Carolina v. Temple, 134 U. S. 22; New York Guaranty Co. v. Steele, 134 U. S. 230; Virginia Coupon Cases, 135 U. S. 662; Pennoyer v. McConaughy, 140 U. S. 1; United States v. Texas, 143 U. S. 621; In re Tyler, 149 U. S. 164;

Reagan v. Farmers' Loan & Trust Co., 154 U. S. 362; Scott v. Donald, 165 U. S. 58; Scott v. Donald, 165 U. S. 107; Tindal v. Wesley, 167 U. S. 204; Smyth v. Ames, 169 U. S. 466; Fitts v. McGhee, 172 U. S. 516; Louisiana v. Texas, 176 U. S. 1; Smith v. Reeves, 178 U. S. 436; Scranton v. Wheeler, 179 U. S. 141; Illinois Central Railroad Co. v. Adams, 180 U. S. 28; Prout v. Starr, 188 U. S. 537; South Dakota v. North Carolina, 192 U. S. 286; Chandler v. Dix, 194 U. S. 590; Jacobson v. Massachusetts, 197 U. S. 11; Graham v. Folsom, 200 U. S. 248; Gunter v. Atlantic Coast Line, 200 U. S. 273; McNeill v. Southern Railway Co., 202 U. S. 543; Mississippi R. R. Commission v. Illinois Central R. R., 203 U. S. 335; Scully v. Bird, 209 U. S. 481; Ex Parte Young, 209 U. S. 123; Murray v. Wilson Distilling Co., 213 U. S. 151; Ludwig v. Western Union Telegraph Co., 216 U. S. 146; Western Union Telegraph Co. v. Andrews, 216 U. S. 165; Herndon v. Chicago R. I. & P. Ry. Co., 218 U. S. 135; Roach v. Atchison T. & S. F. Ry. Co., 218 U. S. 159; Ladew v. Tennessee Copper Co., 218 U. S. 357; Wetmore v. Tennessee Copper Co., 218 U. S. 369.

## ARTICLE XII.<sup>2</sup>

### Meeting of the electors and transmission and count of their votes—Elections of President and Vice-President by the House and Senate in certain cases.

182. 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 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.

<sup>1</sup> The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress on the 5th of September, 1794; and was declared in a message from the President to Congress dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

<sup>2</sup> The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

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.

In re Green, 134 U. S. 377.

### ARTICLE XIII.<sup>1</sup>

#### Prohibition of slavery and involuntary servitude.

183. SECTION 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.

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

Dred Scott v. Sanford, 19 How. 393; White v. Hart, 13 Wall. 646; Osborn v. Nicholson, 13 Wall. 654; Slaughterhouse Cases, 16 Wall. 36; Ex Parte Virginia, 100 U. S. 339; Civil Rights Case, 109 U. S. 3; Plessy v. Ferguson, 163 U. S. 537; Robertson v. Balwin, 165 U. S. 275; Clyatt

v. United States, 197 U. S. 207; Hodges v. United States, 203 U. S. 1; Bailey v. Alabama, 211 U. S. 452; Chiles v. Chesapeake & O. Ry. Co., 218 U. S. 71; Franklin v. South Carolina, 218 U. S. 161; Bailey v. Alabama, 219 U. S. 219.

### ARTICLE XIV.<sup>2</sup>

#### Citizenship; security and equal protection of citizens.

185. SECTION 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.

Crandall v. Nevada, 6 Wall. 35; Paul v. Virginia, 8 Wall. 168; Ward v. Maryland, 12 Wall. 418; Slaughterhouse Cases, 16 Wall. 36; Bradwell v. State, 16 Wall. 130; Bartemeyer v. Iowa, 18 Wall. 129; Minor v. Happersett, 21 Wall. 162; Walker v. Sauvinet, 92 U. S. 90; Kennard v. State of Louisiana, 92 U. S. 480; United States v. Cruikshank, 92 U. S. 542; Munn v. Illinois, 94 U. S. 113; McMillen v. Anderson, 95 U. S. 37; Pennoyer v. Neff, 95 U. S. 714; Pearson v. Yewdall, 95 U. S. 294; Kirtland v. Hotchkiss, 100 U. S. 491; Railroad Co. v. Richmond, 96 U. S. 521; Dav-

idson v. New Orleans, 96 U. S. 97; Strauder v. West Virginia, 100 U. S. 303; Virginia v. Rivers, 100 U. S. 313; Ex parte Virginia, 100 U. S. 339; Missouri v. Louis, 101 U. S. 22; Neal v. Delaware, 103 U. S. 370; Fox v. Cincinnati, 104 U. S. 783; Kelly v. Pittsburg, 104 U. S. 78; Pace v. Alabama, 106 U. S. 583; Goss v. United States Mortgage Co., 108 U. S. 477; Civil Rights Cases, 109 U. S. 3; Louisiana v. New Orleans, 109 U. S. 285; Hurtado v. California, 110 U. S. 516; Hagar v. Reclamation Dist., 11 U. S. 701; Elk v. Wilkins, 112 U. S. 94; Foster v. Kansas, 112

<sup>1</sup> The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

<sup>2</sup> The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it);

U. S. 201; *Head v. Amoskeag Mfg. Co.*, 113 U. S. 9; *Barbier v. Connolly*, 113 U. S. 27; *Provident Institution for Savings v. Mayor and Aldermen of Jersey City*, 113 U. S. 506; *Soon Hing v. Crowley*, 113 U. S. 703; *Ex parte Reggel*, 114 U. S. 642; *Wurts v. Hoagland*, 114 U. S. 606; *Kentucky Railroad Tax Cases*, 115 U. S. 321; *Missouri Pacific R. R. Co. v. Humes*, 115 U. S. 512; *Campbell v. Holt*, 115 U. S. 620; *Presser v. Illinois*, 116 U. S. 252; *Railroad Commission Cases*, 116 U. S. 307, 347, 352; *Royall v. Virginia*, 116 U. S. 572; *Arrowsmith v. Harmoning*, 118 U. S. 194; *Yick Wo v. Hopkins*, 118 U. S. 356; *Santa Clara County v. Southern Pacific R. R.*, 118 U. S. 394; *Philadelphia Fire Association v. New York*, 119 U. S. 110; *Home Insurance Co. v. New York*, 119 U. S. 129; *Schmidt v. Cobb*, 119 U. S. 286; *Kerr v. Illinois*, 119 U. S. 436; *Hayes v. Missouri*, 120 U. S. 68; *Baldwin v. Franks*, 120 U. S. 678; *Church v. Kelsey*, 121 U. S. 282; *Spies v. Illinois*, 123 U. S. 131; *Sands v. Manistee River Improvement Co.*, 123 U. S. 288; *Mulzer v. Kansas*, 123 U. S. 623; *Pembina Mining Co. v. Pennsylvania*, 125 U. S. 181; *Pencer v. Merchant*, 125 U. S. 345; *Dow v. Beidelman*, 125 U. S. 680; *Bank of Redemption v. Boston*, 125 U. S. 60; *California v. Pacific Railroad Co.*, 127 U. S. 1; *Bardo v. Lamb*, 127 U. S. 58; *Missouri Pacific Railway Co. v. Mackey*, 127 U. S. 205; *Powell v. Pennsylvania*, 127 U. S. 678; *Mahon v. Justice*, 127 U. S. 700; *Kidd v. Pearson*, 128 U. S. 1; *Nashville, Chattanooga Railway v. Alabama*, 128 U. S. 96; *Watson v. Nevin*, 128 U. S. 578; *Minneapolis & St. Louis Railway v. Beckwith*, 129 U. S. 26; *Dent v. West Virginia*, 129 U. S. 114; *Huling v. Kaw Valley Railway & Improvement Co.*, 130 U. S. 559; *Freeland v. Williams*, 131 U. S. 405; *Cross v. North Carolina*, 132 U. S. 131; *Pennie v. Rejs*, 132 U. S. 464; *Sugg v. Thornton*, 132 U. S. 524; *Manning v. French*, 133 U. S. 186; *Davis v. Beason*, 133 U. S. 333; *Palmer v. McMahon*, 133 U. S. 690; *Eilenbecker v. Plymouth County*, 134 U. S. 31; *Bell Gap R. R. Co. v. Pennsylvania*, 134 U. S. 232; *Chicago, Milwaukee & St. Paul Railway Co. v. Minnesota*, 134 U. S. 418; *Minneapolis Eastern Railroad Co. v. Minnesota*, 134 U. S. 467; *Home Insurance Co. v. New York*, 134 U. S. 594; *Louisville & Nashville R. R. Co. v. Woodson*, 134 U. S. 614; *Cherokee Nation v. Southern Kansas R. R.*, 135 U. S. 641; *In re Kemmler*, 136 U. S. 436; *York v. Texas*, 137 U. S. 15; *Crowley v. Christensen*, 137 U. S. 86; *Wheeler v. Jackson*, 137 U. S. 245; *Holden v. Minnesota*, 137 U. S. 483; *In re Converse*, 137 U. S. 624; *Caldwell v. Texas*, 137 U. S. 692; *Kauffman v. Wooters*, 138 U. S. 285; *Leeper v. Texas*, 139 U. S. 462; *In re Manning*, 139 U. S. 504; *Natal v. Louisiana*, 139 U. S. 621; *Lent v. Tiltson*, 140 U. S. 316; *In re Rahrer*, 140 U. S. 545; *New Orleans v. New Orleans Water Works Co.*, 142 U. S. 79; *McElvaine v. Brush*,

142 U. S. 155; *Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co.*, 142 U. S. 254; *Charlotte, Augusta & Columbia Railroad Co. v. Gibbs*, 142 U. S. 386; *Pacific Express Co. v. Seibert*, 142 U. S. 339; *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *Budd v. New York*, 143 U. S. 517; *Schwab v. Berggren*, 143 U. S. 442; *Fielden v. Illinois*, 143 U. S. 452; *O'Neil v. Vermont*, 144 U. S. 323; *New York v. Squire*, 145 U. S. 175; *Brown v. Smart*, 145 U. S. 454; *McPherson v. Blacker*, 146 U. S. 1; *Morley v. Lake Shore & Michigan Southern R. R. Co.*, 146 U. S. 162; *Halling v. Davis*, 146 U. S. 314; *Yesler v. Washington Harbor Line Commissioners*, 146 U. S. 646; *Jennings v. Coal Ridge Improvement & Coal Co.*, 147 U. S. 147; *Glozza v. Tiernan*, 148 U. S. 657; *Paulson v. Portland*, 149 U. S. 30; *Minneapolis & St. Louis Railway v. Emmons*, 149 U. S. 364; *Fong Yue Ting v. United States*, 149 U. S. 698; *McNulty v. California*, 149 U. S. 645; *Columbus Southern Railway Co. v. Wright*, 151 U. S. 470; *New York & New England Railroad Co. v. Bristol*, 151 U. S. 556; *Lawton v. Steele*, 152 U. S. 133; *Montana Co. v. St. Louis Mining and Milling Co.*, 152 U. S. 169; *Duncan v. Missouri*, 152 U. S. 377; *Marchant v. Pennsylvania Railroad Co.*, 153 U. S. 380; *Braes v. Stoesser*, 153 U. S. 391; *McKane v. Durston*, 153 U. S. 684; *Scott v. McNeal*, 154 U. S. 34; *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362; *Pittsburg, Cincinnati, Chicago & St. Louis Railway Co. v. Backus*, 154 U. S. 421; *St. Louis & San Francisco Railway Co. v. Gill*, 156 U. S. 649; *Bergeman v. Backer*, 157 U. S. 655; *Gray v. Connecticut*, 159 U. S. 74; *Central Land Co. v. Laidley*, 159 U. S. 103; *Moore v. Missouri*, 159 U. S. 673; *Winona & St. Peter Land Co. v. Minnesota*, 159 U. S. 526; *Iowa Central Railway Co. v. Iowa*, 160 U. S. 389; *Eldridge v. Trezevant*, 160 U. S. 452; *Gibson v. Mississippi*, 162 U. S. 565; *Western Union Telegraph Co. v. Taggart*, 163 U. S. 1; *Lowe v. Kansas*, 163 U. S. 81; *Plessy v. Ferguson*, 163 U. S. 537; *Talton v. Mayes*, 163 U. S. 376; *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112; *Missouri Pacific Railway Co. v. Nebraska*, 164 U. S. 403; *Covington & Lexington Turnpike Co. v. Sandford*, 164 U. S. 578; *St. Louis & San Francisco Railway Co. v. Matthews*, 165 U. S. 1; *Gulf, Colorado & Santa Fé Railway v. Ellis*, 165 U. S. 150; *Jones v. Brim*, 165 U. S. 180; *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194; *Western Union Telegraph Co. v. Indiana*, 165 U. S. 304; *Allgeyer v. Louisiana*, 165 U. S. 578; *N. Y., N. H. & Hartford R. R. v. New York*, 165 U. S. 628; *Allen v. Georgia*, 166 U. S. 138; *Chicago, Burlington & Quincy R. R. Co. v. Chicago*, 166 U. S. 226; *Gladson v. Minnesota*, 166 U. S. 427; *Sentell v. New Orleans & Carrollton R. R. Co.*, 166 U. S. 698; *Henderson Bridge Co. v. Kentucky*, 166 U. S. 150; *Davis v. Massachusetts*, 167 U. S.

Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867 (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it); Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama July 13, 1868; Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterwards ratified by either State.

- 43; Merchants' & Manufacturers' Bank v. Pennsylvania, 167 U. S. 461; Turner v. New York, 168 U. S. 90; Craemer v. Washington State, 168 U. S. 124; Hodgson v. Vermont, 168 U. S. 262; Nobles v. Georgia, 168 U. S. 398; McHenry v. Alford, 168 U. S. 651; Holden v. Hardy, 169 U. S. 366; Smyth v. Ames, 169 U. S. 466; Wilson v. North Carolina, 169 U. S. 586; Savings & Loan Society v. Multnomah County, 169 U. S. 421; United States v. Wong Kim Ark, 169 U. S. 649; Backus v. Fort Street Union Depot Co., 169 U. S. 557; Williams v. Mississippi, 170 U. S. 213; Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283; Williams v. Eggleston, 170 U. S. 304; Tinsley v. Anderson, 171 U. S. 101; King v. Mullins, 171 U. S. 404; New York v. Roberts, 171 U. S. 658; Meyer v. Richmond, 172 U. S. 82; Blake v. McClung, 172 U. S. 239; Norwood v. Baker, 172 U. S. 269; Orient Insurance Co. v. Daggis, 172 U. S. 557; Wilson v. Eureka City, 173 U. S. 32; Dewey v. Des Moines, 173 U. S. 193; St. Louis, Iron Mountain & Southern Railway Co. v. Paul, 173 U. S. 404; Lake Shore & Michigan Southern Railway Co. v. Smith, 173 U. S. 684; Central Loan & Trust Co. v. Campbell Commission Co., 173 U. S. 84; Henderson Bridge Co. v. Henderson City, 173 U. S. 592; Atchison, Topeka & Santa Fé R. R. Co. v. Matthews, 174 U. S. 96; Brown v. New Jersey, 175 U. S. 172; Addyston Pipe and Steel Co. v. United States, 175 U. S. 211; Tullis v. Lake Erie & Western R. R. Co., 175 U. S. 348; Cummings v. Richmond County Board of Education, 175 U. S. 528; Bolln v. Nebraska, 176 U. S. 83; Clark v. Kansas City, 176 U. S. 114; Weyerhaeuser v. Minnesota, 176 U. S. 550; Maxwell v. Dow, 176 U. S. 581; Roller v. Holly, 176 U. S. 398; Adirondack Railway Co. v. New York State, 176 U. S. 335; Petit v. Minnesota, 177 U. S. 164; Grundling v. Chicago, 177 U. S. 183; Ohio Oil Co. v. Indiana, No. 1, 177 U. S. 190; Louisville & Nashville R. R. Co. v. Schmidt, 177 U. S. 230; Saranac Land & Timber Co. v. Comptroller of New York, 177 U. S. 318; Carter v. Texas, 177 U. S. 442; L'Hote v. New Orleans, 177 U. S. 587; Waters-Pierce Oil Co. v. Texas, 177 U. S. 28; Taylor v. Beckham (No. 1), 178 U. S. 548; Sully v. American National Bank, 178 U. S. 289; Wheeler v. N. Y., N. H. & Hartford R. R., 178 U. S. 321; American Sugar Refining Co. v. Louisiana, 179 U. S. 89; New York State v. Barker (No. 1), 179 U. S. 279; Williams v. Fears, 179 U. S. 270; Wisconsin, Minnesota and Pacific Railroad v. Jacobson, 179 U. S. 287; Mason v. Missouri, 179 U. S. 328; McDonald v. Massachusetts, 180 U. S. 311; W. W. Cargill Co. v. Minnesota, 180 U. S. 452; French v. Barber Asphalt Paving Co., 181 U. S. 324; Wight v. Davidson, 181 U. S. 371; Tonowanda v. Lyon, 181 U. S. 389; Webster v. Fargo, 181 U. S. 394; Farrell v. West Chicago Park Commissioners, 181 U. S. 404; Red River Valley Bank v. Craig, 181 U. S. 548; Mallett v. North Carolina, 181 U. S. 589; Simon v. Craft, 182 U. S. 427; Cotting v. Kansas City Stock Yards Company and the State of Kansas, 183 U. S. 79; Storti v. Massachusetts, 183 U. S. 138; Orr v. Gilman, 183 U. S. 278; Florida Central and Peninsular Railroad Co. v. Reynolds, 183 U. S. 471; Louisville & Nashville Railroad Co. v. Kentucky, 183 U. S. 471; Nutting v. Massachusetts, 183 U. S. 553; McChord v. Louisville & Nashville Railroad Co., 183 U. S. 483; King v. Portland City, 184 U. S. 61; Clark v. Titusville, 184 U. S. 329; Booth v. Illinois, 184 U. S. 425; Goodrich v. Detroit, 184 U. S. 432; St. Louis Consolidated Coal Co. v. Illinois, 185 U. S. 203; Fidelity Mutual Life Association v. Mettler, 185 U. S. 308; Travelers' Insurance Co. v. Connecticut, 185 U. S. 364; Swafford v. Templeton, 185 U. S. 487; Turpin v. Lemon, 187 U. S. 51; Dreyer v. Illinois, 187 U. S. 71; Reid v. Colorado, 187 U. S. 137; Fidelity & Deposit Co. v. Maryland, 187 U. S. 315; Chadwick v. Kelley, 187 U. S. 540; Otis v. Parker, 187 U. S. 606; Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611; Billings v. Illinois, 188 U. S. 97; Blackstone v. Miller, 188 U. S. 189; Hooker v. Los Angeles, 188 U. S. 314; Louisville Ferry Co. v. Kentucky, 188 U. S. 399; Williams v. Parker, 188 U. S. 491; Reetz v. Michigan, 188 U. S. 505; Kidd v. Alabama, 188 U. S. 730; Glidden v. Harrington, 189 U. S. 255; Farmers' Ins. Co. v. Dabney, 189 U. S. 301; Detroit Ry. v. Osborn, 189 U. S. 383; Patterson v. Bark Eudora, 190 U. S. 169; Howard v. Fleming, 191 U. S. 126; Joplin v. Light Co., 191 U. S. 150; Missouri v. Dockery, 191 U. S. 165; Atkin v. Kansas, 191 U. S. 207; Hibben v. Smith, 191 U. S. 310; Board of Assessors v. Comptoir National, 191 U. S. 388; Arbuuckle v. Blackburn, 191 U. S. 405; Cronin v. Adams, 192 U. S. 108; Stanislaus County v. San Joaquin C. & I. Co., 192 U. S. 201; Rogers v. Alabama, 192 U. S. 226; Adams v. New York, 192 U. S. 585; Minneapolis & St. Louis R. R. Co. v. Minnesota, 193 U. S. 53; Leigh v. Green, 193 U. S. 79; Great Southern Hotel Co. v. Jones, 193 U. S. 532; Newburyport Water Co. v. Newburyport, 193 U. S. 561; Pope v. Williams, 193 U. S. 621; Cincinnati Street Railway Co. v. Snell, 193 U. S. 30; Rippey v. Texas, 193 U. S. 504; Lloyd v. Dollison, 194 U. S. 445; Missouri, Kansas & Texas R. R. v. May, 194 U. S. 267; Field v. Barber Asphalt Co., 194 U. S. 618; Fischer v. St. Louis, 194 U. S. 361; Pacific Electric Ry. Co. v. Los Angeles, 194 U. S. 112; West v. Louisiana, 194 U. S. 258; Shepard v. Barron, 194 U. S. 553; United States v. Sing Tuck, 194 U. S. 464; Bradley v. Lightcap, 195 U. S. 1; Helena Water Works Co. v. Helena, 185 U. S. 383; Seattle v. Kelleher, 185 U. S. 351; Dobbins v. Los Angeles, 185 U. S. 223; Aikens v. Wisconsin, 195 U. S. 194; Olsen v. Smith, 195 U. S. 332; National Exchange Bank v. Wiley, 195 U. S. 257; Hodge v. Muscatine County, 196 U. S. 276; Cory v. Mayor and Council of Baltimore, 196 U. S. 466; Scottish Union & National Insurance Co. v. Bowland, 196 U. S. 611; Cook v. Marshall County, 196 U. S. 261; Coulter v. Louisville & Nashville R. R. Co., 196 U. S. 599; Smiley v. Kansas, 196 U. S. 447; Dawson v. Columbia Trust Co., 197 U. S. 178; Kehrer v. Stewart, 197 U. S. 60; National Cotton Oil Co. v. Texas, 197 U. S. 115; Dallemagne v. Moisan, 197 U. S. 169; New Orleans Gas Co. v. Drainage Commission, 197 U. S. 453; Louisville & Nashville R. R. Co. v. Asphalt Co., 197 U. S. 430; Jacobson v. Massachusetts, 197 U. S. 11; Iron Cliffs Co. v. Negaunee Iron Co., 197 U. S. 463; Matter of Heff (Indian), 197 U. S. 488; Muhler v. New York & Harlem R. R. Co., 197 U. S. 544; Lochner v. New York, 198 U. S. 45; Clark v. Nash, 198 U. S. 361; Cunniss v. Reading School District, 198 U. S. 458; Delaware, L. R. R. Co. v. Pennsylvania, 198 U. S. 341; Savannah, Thunderbolt Ry. v. Savannah, 198 U. S. 392; Ah Sin v. Wittman, 198 U. S. 500; Minnesota Iron Co. v. Kline, 199 U. S. 593; Carroll v. Greenwich Insurance Co., 199 U. S. 401; Metropolitan Street Ry. Co. v. New York, 199 U. S. 1; Rogers v. Peck, 199 U. S. 425; Lieberman v. Van De Carr, 199 U. S. 552; Jack v. Kansas, 199 U. S. 372; Farrell v. O'Brien, 199 U. S. 89; Kies v. Lowrey, 199 U. S. 233; Marvin v. Trout, 199 U. S. 212; Union Transit Co. v. Kentucky,

199 U. S. 194; Gardner v. Michigan, 199 U. S. 325; Jack v. Kansas, 199 U. S. 372; Manigault v. Springs, 199 U. S. 473; Gardner v. Michigan, 199 U. S. 325; Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306; Strickley v. Highland Boy Mining Co., 200 U. S. 527; Chicago B. & Q. Co. v. Drainage Commissioners, 200 U. S. 561; Carfer v. Caldwell, 200 U. S. 293; Howard v. Kentucky, 200 U. S. 164; Waterworks Co. v. Owensboro, 200 U. S. 38; Martin v. Texas, 200 U. S. 316; Armour Packing Co. v. Lacy, 200 U. S. 226; Campbell v. California, 200 U. S. 87; Felts v. Murphy, 201 U. S. 633; Kentucky v. Powers, 201 U. S. 1; Otis Co. v. Ludlow Felts v. Murphy, 201 U. S. 123; Rowlings v. Georgia, 201 U. S. 638; West Chicago Railroad v. Chicago, 201 U. S. 506; Michigan Central Railroad v. Powers, 201 U. S. 245; St. John v. New York, 201 U. S. 633; Kentucky v. Powers, 201 U. S. 1; Otis Co. v. Ludlow Co., 201 U. S. 140; Soper v. Lawrence Brothers, 201 U. S. 359; Devine v. Los Angeles, 202 U. S. 313; Cox v. Texas, 202 U. S. 446; National Council v. State Council, 203 U. S. 151; St. Mary's Petroleum Co. v. West Virginia, 203 U. S. 183; Northwestern Life Ins. Co. v. Riggs, 203 U. S. 243; Atlantic Coast Line v. Florida, 203 U. S. 254; Martin v. Pittsburg & Lake Erie R. R., 203 U. S. 284; Western Turf Association v. Greenberg, 204 U. S. 359; Cosmopolitan Club v. Virginia, 208 U. S. 378; Hairston v. Danville & Western Railway, 208 U. S. 598; Northern Pacific Railway v. Duluth, 208 U. S. 583; Disconto Gesellschaft v. Umbreit, 208 U. S. 570; Ughbanks v. Armstrong, 208 U. S. 481; Muller v. Oregon, 208 U. S. 412; Darnell & Son v. Memphis, 208 U. S. 113; Thompson v. Kentucky, 209 U. S. 340; Central Railroad Co. v. Jersey City, 209 U. S. 473; Longyear v. Toolan, 209 U. S. 414; Hudson Water Co. v. McCarter, 209 U. S. 349; Ex parte Young, 209 U. S. 123; Thompson v. Kentucky, 209 U. S. 340; Lang v. New Jersey, 209 U. S. 467; Londoner v. Denver, 210 U. S. 373; Delmar Jockey Club v. Missouri, 210 U. S. 324; Cleveland, Cincinnati, Railway Co. v. Porter, 210 U. S. 177; Paddell v. City of New York, 211 U. S. 446; Silz v. Hesterberg, 211 U. S. 31; Home Telephone Co. v. Los Angeles, 211 U. S. 265; McLean v. Arkansas, 211 U. S. 539; North American Cold Storage Co. v. Chicago, 211 U. S. 306; Lemieux v. Young, 211 U. S. 489; Beers v. Glynn, 211 U. S. 477; Busch v. John Duncan Co., 211 U. S. 526; Prentiss v. Atlantic Coast Line, 211 U. S. 210; Twining v. New Jersey, 211 U. S. 78; Bailey v. Alabama, 211 U. S. 452; Hammond Packing Co. v. Arkansas, 212 U. S. 322; Moyer v. Peabody, 212 U. S. 78; Waters-Pierce Oil Co. v. Texas, 212 U. S. 86; Louisville & Nashville R. R. Co. v. Stock Yards Co., 212 U. S. 132; Ontario Land Co. v. Yordy, 212 U. S. 152; Wilcox v. Consolidated Gas Co., 212 U. S. 19; Bonner v. Gorman, 213 U. S. 86; Keerl v. Montana, 213 U. S. 135; Welch v. Swasey, 214 U. S. 91; Goodrich v. Ferris, 214 U. S. 71; St. Paul, Minnesota & Manitoba Ry. Co. v. Minnesota, 214 U. S. 497; Scott County Road Co. v. Hines, 215 U. S. 336; Marbles v. Creecy, 215 U. S. 63; Western Union Telegraph Co. v. Kansas, 216 U. S. 1; Missouri Pacific Ry. v. Kansas, 216 U. S. 262; King v. West Virginia, 216 U. S. 92; Withnell v. Bush Construction Co., 216 U. S. 603; Laurel Hill

Cemetery v. San Francisco, 216 U. S. 358; Board of Assessors v. New York Life Insurance Co., 216 U. S. 517; Southern Ry. Co. v. Greene, 216 U. S. 400; Brown-Forman Co. v. Kentucky, 217 U. S. 563; Grenada Lumber Co. v. Mississippi, 217 U. S. 433; Citizens' National Bank v. Kentucky, 217 U. S. 443; Missouri Pacific Ry. v. Nebraska, 217 U. S. 196; Boston Chamber of Commerce v. Boston, 217 U. S. 189; Fay v. Crozier, 217 U. S. 455; Kidd, Dater & Price Co. v. Musselman Grocer Co., 217 U. S. 461; Southwestern Oil Co. v. Texas, 217 U. S. 114; Standard Oil Co. v. Tennessee, 217 U. S. 413; Williams v. Arkansas, 217 U. S. 79; International Text-Book Co. v. Pigg, 217 U. S. 91; Louisville & N. Ry. Co. v. Melton, 218 U. S. 36; Shevlin-Carpenter Co. v. Minnesota, 218 U. S. 57; Chiles v. Chesapeake & O. Ry. Co., 218 U. S. 71; Franklin v. South Carolina, 218 U. S. 161; Watson v. Maryland, 218 U. S. 173; Ong Chang Wing v. United States, 218 U. S. 272; Ling Su Fan v. United States, 218 U. S. 302; Cincinnati I. & W. Ry. Co. v. Connersville, 218 U. S. 336; Moffitt v. Kelly, 218 U. S. 400; Western U. Tel. Co. v. Commercial Milling Co., 218 U. S. 406; Harlin v. McGourin, 218 U. S. 442; United States v. Heinze, 218 U. S. 532; Illinois Central Ry. Co. v. Kentucky, 218 U. S. 551; Griffith v. Connecticut, 218 U. S. 563; Memphis v. Cumberland T. & T. Co., 218 U. S. 624; C. B. & Q. R. Co. v. McGuire, 219 U. S. 549; Noble State Bank v. Haskell, 219 U. S. 104; American Land Co. v. Zeiss, 219 U. S. 47; Mobile, Jackson & K. C. R. R. Co. v. Turnipseed, 219 U. S. 35; Bailey v. Alabama, 219 U. S. 219; Engel v. O'Malley, 219 U. S. 128; Kentucky Onion Co. v. Kentucky, 219 U. S. 140; Atlantic Coast Line v. Riverside Mills, 219 U. S. 186; Brodnax v. Missouri, 219 U. S. 285; German Alliance Ins. Co. v. Hale, 219 U. S. 307; Chicago R. I. & P. R. R. Co. v. Arkansas, 219 U. S. 453; Assaria State Bank v. Dolley, 219 U. S. 121; House v. Mayes, 219 U. S. 270; Shallenberger v. First State Bank, 219 U. S. 114; Lindsley v. Natural C. G. Co., 220 U. S. —; 31 S. C. R. 337; Flint v. Stone Tracy Co., 220 U. S. —; 31 S. C. R. 343; Arnett v. Reade, 220 U. S. —; 31 S. C. R. 425; Spirre & H. Co. v. Rhodes, 220 U. S. —; 31 S. C. R. 490; Texas & N. O. R. Co. v. Miller, 220 U. S. —; 31 S. C. R. 534; Texas & N. O. R. R. Co. v. Gross, 220 U. S. —; 31 S. C. R. 536; Grand Trunk U. R. R. Co. v. R. R. Com., 220 U. S. —; S. C. R. 537; Liverpool & L. & G. Ins. Co. v. Board of Assessors, 220 U. S. —; 31 S. C. R. 550; Orient Ins. Co. v. Board of Assessors, 220 U. S. —; 31 S. C. R. 554; Dowdell v. United States, 220 U. S. —; 31 S. C. R. 590.

Decisions of Nevada Supreme Court: Ex Parte Crandall, 1 Nev. 294; State v. Duffy, 7 Nev. 355 (88 A. R. 713); Ex Parte Spiney, 10 Nev. 323, 325, 326, 333-337; State v. Ab Chew, 16 Nev. 50, 58-61 (40 A. R. 488); State v. McKenney, 18 Nev. 194, 195, 209 (2 P. 171); Ex Parte Böyce, 27 Nev. 299, 336, 357 (75 P. 1, 65 L. R. A. 47); Ex Parte Kair, 28 Nev. 433, 439 (82 P. 453); Pyramid L. & S. Co. v. Pierce, 30 Nev. 256 (95 P. 210); Branson v. I. W. W., 30 Nev. 295 (95 P. 354); Ex Parte Pittman, 31 Nev. 52 (99 P. 700, 704, 22 L. R. A. (N. S., 266)); State ex rel Sparks v. State Bank & Tr. Co., 31 Nev. 465 (103 P. 408); Russell v. Esmeralda Co., 32 Nev. 304 (107 P. 891, 892).

### Apportionment of representation.

186. SECTION 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.

McPherson v. Blacker, 146 U. S. 1.

#### Loyalty as a qualification of Senators and Representatives.

187. SECTION 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.

#### Validity of the national debt, etc.

188. SECTION 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 nor 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.

189. SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

### ARTICLE XV.<sup>1</sup>

#### Suffrage not to be abridged for race, color, etc.

190. SECTION 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.

191. SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

United States v. Reece, 92 U. S. 214; United States v. Cruikshank, 92 U. S. 542; Ex Parte Yarbrough, 110 U. S. 651; Neal v. Delaware, 103 U. S. 370; United States v. Waddell, 112 U. S. 76; McPherson v. Blacker, 146 U. S. 1; James v. Bowman, 190 U. S. 127; Hodges v. United States, 203 U. S. 1; Chiles v. Chesapeake & O. Ry. Co. 218 U. S. 71.

<sup>1</sup> The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: From North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9-12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13-14, 1869; New York, March 17-April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it); New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15-17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

# ACT OF CONGRESS

## ORGANIZING THE TERRITORY OF NEVADA

### AN ACT TO ORGANIZE THE TERRITORY OF NEVADA

[Approved March 2, 1861]

The organic act, in a territory, to some extent, stands in the place of a constitution. *Sawyer v. Hayden*, 1 Nev. 79.

#### **Boundaries—California may cede—Rights of Indians—Territory may be divided.**

192. *Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled,* That all that part of the territory of the United States, included within the following limits, to-wit:—Beginning at the point of intersection of the forty-second degree of north latitude with the thirty-ninth degree of longitude west from Washington; thence, running south on the line of said thirty-ninth degree of west longitude, until it intersects the northern boundary line of the territory of New Mexico; thence due west, to the dividing ridge separating the waters of Carson Valley from those that flow into the Pacific; thence on said dividing ridge northwardly to the forty-first degree of north latitude; thence due north to the southern boundary line of the state of Oregon; thence due east to the point of beginning, be, and the same is hereby, erected into a temporary government, by the name of the territory of Nevada; provided, that so much of the territory within the present limits of the state of California, shall not be included within this territory until the state of California shall assent to the same, by an act irrevocable without the consent of the United States; provided, further, that nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe to be included within the territorial limits, or jurisdiction of any state or territory, but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Nevada, until said tribe shall signify their assent to the President of the United States, to be included within the said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed; provided, further, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

The courts of this state have no jurisdiction to try an Indian belonging to a tribe which is recognized and treated as such by the government of the United States, having its chief and tribal laws, for killing another Indian belonging to the same tribe. *State v. McKenney*, 18 Nev. 182, 193.

As both Indians were under the authority and subjection of such tribal laws, the authorities of the tribe alone have the right to take cognizance of the crime. It is not

the intention of the legislature that the territorial or state laws defining crime and providing for their punishment should apply to crimes committed by Indians against each other, living in their tribal relations. The courts of this state could only obtain jurisdiction of such offenses by an affirmative act of the legislature, or a self-enacting clause of the constitution. *State v. McKenney*, 18 Nev. 182, 193.

#### **Executive power—Commander-in-chief—Superintendent of Indian affairs—Governor, powers of.**

193. SEC. 2. *And be it further enacted,* That the executive power and authority in and over said territory of Nevada, shall be vested in a governor,

who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offenses against the laws of said territory, and reprieves for offenses against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

The Governor of Nevada Territory was, by law, made a part of the legislative body; as such he could only concur in the passage of a law, whilst the other branches had a legal existence. The act in question is not a law, because it was not approved by the Governor before the adjournment of the legislative assembly. School Trus-

tees v. County Commissioners of Ormsby County, 1 Nev. 340, 341.

Said Governor had the right to pardon absolutely or conditionally, but no right to commute one punishment for another. Ex Parte James, 1 Nev. 319, 321.

See State v. McKenney, 18 Nev. 182, 193, under sec. 1 of this act.

#### Secretary of territory, duties of—When Acting Governor.

194. SEC. 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the President of the United States, and at the same time two copies of the laws to the speaker of the house of representatives and president of the senate, for the use of congress; and in case of the death, removal, or resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required, to execute and perform all the powers and duties of the governor, during such vacancy, or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

#### Legislative power, in whom vested—Council, members of—House of Representatives, members of—Apportionment—Census—Election—Legislative Assembly, meeting of—Term of.

195. SEC. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in the governor, and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and of the house of representatives, giving to each section of the territory representation in the ratio of its population (Indians excepted), as nearly as may be; and the members of the council and of the house of representatives shall reside in, and be inhabitants of the district for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken; and the first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and he shall, at the same time, declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this

act. The number of persons authorized to be elected having the highest number of votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives; provided, that in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly, shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representations, in the several counties or districts, to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly; provided, that no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

See *State v. McKenney*, 18 Nev. 182, 193, under sec. 1 of this act.

See *School Trustees v. County Commissioners of Ormsby County*, 1 Nev. 340, 341, under sec. 2 of this act.

#### Voters, qualification of—Who to hold office.

196. SEC. 5. *And be it further enacted*, That every free white male inhabitant of the United States above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly; provided, that the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States.

#### Legislative power, what to extend to.

197. SEC. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States, and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; nor shall any law be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed.

Taxation of the possessory right is not in violation of this section. The object of this section was to protect the government, and not to prevent the taxation of

settlers on public lands. *Hale and Norcross G. & S. M. Co. v. Storey County*, 1 Nev. 104, 105, 106, 107.

See *State v. McKenney*, 18 Nev. 182, 193, under sec. 1 of this act.

#### Certain officers, how appointed.

198. SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed, or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory. The governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and, in the first instance, the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

**Restrictions on members of legislative assembly.**

199. SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

**Judicial power, how vested—Supreme Court, what to consist—Judicial Districts—Jurisdiction of Courts—Proviso—Register in Chancery—Writs, etc.—Courts, clerk of—Writs of error and appeals, proceedings on—Habeas corpus—Fees of clerks of court.**

200. SEC. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of the justices of the peace, shall be as limited by law; provided, that justices of the peace shall not have jurisdiction of any matter in controversy when the title of boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction; and authority for redress of all wrongs committed against the constitution or laws of the United States, or the territory, affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeals in all such

cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of Utah Territory now receive for similar services.

Under the organic act and laws of the Territory of Nevada, no appeal could be taken from an order made by a referee. *Hamilton v. Kneeland*, 1 Nev. 40, 55.

The right of appeal must be governed by the laws in force at the time the appeal is taken. A case commenced in the territorial courts, and appealed to the Supreme Court of the territory, but decided by the Supreme Court of the State of Nevada, cannot be taken to the Supreme Court of the United States, merely because the organic act of the territory allowed it at the time the action was

commenced. Such an inchoate right of appeal is not a vested right. *Hamilton v. Kneeland*, 1 Nev. 60, 63, 66, 67.

The organic act of the territory limiting the jurisdiction of Justices of the Peace to cases where the debt or sum claimed does not exceed \$100, is applicable to an action in tort for damages, as well as to an action on contract. *Armstrong v. Paul*, 1 Nev. 134, 139, 140.

Prior to the adoption of the constitution, the district courts had jurisdiction in all cases over \$100. *Paul v. Beegan*, 1 Nev. 330.

**Attorney for territory, compensation—Marshal, compensation.**

201. SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Utah. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

**Territorial officers, appointment of—Oaths of office, how taken—To be certified to—Salaries, how paid—Members of legislative assembly, compensation of—Contingent expenses—Incidental and legislative expenses.**

202. SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice, or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs; the chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars; the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars for

every twenty miles' travel in going to and returning from the said session, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses, and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

**Legislative assembly, time for holding first session.**

203. SEC. 12. *And be it further enacted,* That the legislative assembly of the territory of Nevada shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

**Delegate to congress—First territorial election.**

204. SEC. 13. *And be it further enacted,* That a delegate to the house of representatives of the United States, to serve during each congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly.

**Land reserved for school purposes.**

205. SEC. 14. *And be it further enacted,* That when the land in said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in the states hereafter to be erected out of the same.

**Governor to define judicial districts and assign judges.**

206. SEC. 15. *And be it further enacted,* That temporarily, and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

**Constitution and laws of United States applicable.**

207. SEC. 16. *And be it further enacted,* That the constitution and all laws of the United States which are not locally inapplicable, shall have the

same force and effect within the said territory of Nevada as elsewhere within the United States.

See *State v. McKenney*, 18 Nev. 182, 193, under sec. 1 of this act.

**Surveyor-general, how appointed, etc.—Compensation.**

208. SEC. 17. *And be it further enacted*, That the president of the United States, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a surveyor-general for Nevada, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor-general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may, from time to time deem it advisable to give him.

## ENABLING ACT PASSED BY CONGRESS

ACT OF CONGRESS TO ENABLE THE PEOPLE OF NEVADA TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF SUCH STATE INTO THE UNION ON AN EQUAL FOOTING WITH THE ORIGINAL STATES.

**Territory of Nevada to be made a State, etc.**

209. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:* That the inhabitants of that portion of the Territory of Nevada included in the boundaries hereinafter designated, be and they are, hereby authorized to form for themselves, out of said Territory, a State Government with the name aforesaid, which said State, when formed, shall be admitted into the Union upon an equal footing with the original States in all respects whatsoever.

**Boundaries.**

210. SEC. 2. *And be it further enacted,* That the said State of Nevada shall consist of all the territory included within the following boundaries to wit: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a northwesterly direction along the said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude and said eastern boundary line of the State of California to the forty-second degree of north latitude; thence due east along the forty-second degree of north latitude to a point formed by its intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning.

**Who may vote at first election—Apportionment of representatives—Time of first election, etc.**

211. SEC. 3. *And be it further enacted,* That all persons qualified by law to vote for representatives to the general assembly of said Territory at the date of the passage of this Act shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a convention, under such rules and regulations as the Governor of said Territory may prescribe; and also to vote upon the acceptance or rejection of such Constitution as may be formed by said convention, under such rules and regulations as the said convention may prescribe; and if any of said citizens are enlisted in the army of the United States, and are still within said Territory, they shall be permitted to vote at their place of rendezvous; and if any are absent from said Territory, by reason of their enlistment in the army of the United States, they shall be permitted to vote at their place of service, under the rules and regulations in each case to be prescribed as aforesaid; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said Territory in proportion to the population, as near as may be; and said apportionment shall be made for said Territory by the Governor, United States District Attorney, and Chief Justice thereof, or any two of them; and the Governor of said Territory shall, by proclamation on or before the first Monday of May next, order an election of the representatives as aforesaid, to, be held on the first Monday in June

thereafter throughout the Territory, and such election shall be conducted in the same manner as is prescribed by the laws of said Territory regulating elections therein for members of the House of Representatives, and the number of members to said convention shall be the same as now constitute both branches of the Legislature of the aforesaid Territory.

**Meeting of convention to form State Constitution—Proviso—No slavery or involuntary servitude—Religious toleration—Unappropriated public lands—Taxes.**

212. SEC. 4. *And be it further enacted*, That the members of the Convention, thus elected, shall meet at the capital of said Territory, on the first Monday in July next, and, after organization, shall declare, on behalf of the people of said Territory, that they adopt the Constitution of the United States. Whereupon the said Convention shall be, and it is hereby authorized to form a Constitution and State Government for said Territory. *Provided*, That the Constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence; and, *provided further*, That said Convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said State:

First. That there shall be neither slavery nor involuntary servitude in the said State, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted.

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

Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by the United States.

**Constitution to be submitted to popular vote—Voting and returns.**

213. SEC. 5. *And be it further enacted*, That in case a Constitution and State Government shall be formed for the people of said Territory of Nevada, in compliance with the provision of this Act, that said Convention forming the same shall provide by ordinance for submitting said Constitution to the people of said State for their ratification or rejection at an election to be held on the second Tuesday of October, one thousand eight hundred and sixty-four, at such places and under such regulations, as may be prescribed therein, at which election the lawful voters of said new State shall vote directly for or against the proposed Constitution, and the returns of said election shall be made to the acting Governor of the Territory, who with the United States District Attorney, and Chief Justice of said Territory, or any two of them, shall canvass the same; and if a majority of legal votes shall be cast for said Constitution in said proposed State, the said acting Governor shall certify the same to the President of the United States, together with a copy of said Constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

This election ordinance applied only to the election held in pursuance of the mandate of Congress, found in this section, and the provisions of said ordinance do not, and

were not intended to apply to future elections held under the constitution and state government. State ex rel. McMillan v. Sadler, 25 Nev. 167.

**Representative in Congress.**

214. SEC. 6. *And be it further enacted*, That until the next general census shall be taken, said State of Nevada shall be entitled to one representative in the House of Representatives of the United States, which representative, together with the Governor and State and other officers provided for in said Constitution, may be elected on the same day a vote is taken for or against the proposed Constitution and State government.

**School lands.**

215. SEC. 7. *And be it further enacted*, That sections numbers sixteen and thirty-six, in every township, and where such sections have been sold or otherwise disposed of by an Act of Congress, other lands equivalent thereto in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be, and are hereby granted to said State for the support of common schools.

The state was entitled to all 16th and 36th sections of the public lands as fast as they were segregated by survey, and the survey affirmed. Wall v. Blasdel, 4 Nev. 246.

Assuming that the proper construction of above section is, that the grant of the 16th and 36th sections took effect absolutely upon the admission of this state into the union, and that the title to said lands then vested in this state: Held, that the Congress could thereafter, with the consent of this state, prior to the disposal by

the state of any of the lands embraced in said sections, and at any time prior to the survey, change the terms of the grant. Heydenfeldt v. Daney G. & S. M. Co., 10 Nev. 290, 308, 309, 317.

This section must be construed as a grant to the state *in presenti*, in the nature of a float, taking effect upon specific tracts of land as soon as the same are surveyed by the United States, and not before. Layton v. Farrell, 11 Nev. 451, 455, 456.

**Lands for public buildings.**

216. SEC. 8. *And be it further enacted*, That provided the State of Nevada shall be admitted into the Union, in accordance with the foregoing provisions of this Act, that twenty entire sections of the unappropriated public lands within said State to be selected, and located by direction of the legislature thereof, on or before the first day of January, Anno Domini eighteen hundred and sixty eight, shall be, and they are hereby granted, in legal subdivisions of not less than one hundred and sixty acres, to said State, for the purpose of erecting public buildings at the capital of said State, for legislative and judicial purposes, in such manner as the legislature shall prescribe.

**For penitentiary building.**

217. SEC. 9. *And be it further enacted*, That twenty other entire sections of land, as aforesaid, to be selected and located as aforesaid, in legal subdivisions as aforesaid, shall be and they are hereby granted to said State for the purpose of erecting a suitable building for a penitentiary or State Prison, in the manner aforesaid.

**Five per cent of sales of public lands, for roads, etc.**

218. SEC. 10. *And be it further enacted*, That five per centum of the proceeds of the sales of all public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural lands in the State, as the legislature shall direct.

The State stands in the position of an ordinary trustee as to all these lands, except the 90,000 acres granted for the purpose of establishing an agricultural or mining college, as to which it has undertaken to bear the

expenses of converting the trust lands into interest-bearing bonds without calling on the trust fund for reimbursement. State ex rel. Greenbaum v. Rhoades, 4 Nev. 312, 314.

**Laws of United States made applicable—Judicial district.**

219. SEC. 11. *And be it further enacted*, That from and after the admission of the said State of Nevada into the Union, in pursuance of this Act, the laws of the United States, not locally inapplicable, shall have the same force and effect within the said State, as elsewhere within the United States, and said State shall constitute one judicial district, and be called the District of Nevada.

Approved March 21, 1864.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ENABLE THE PEOPLE OF NEVADA TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF SUCH STATE INTO THE UNION ON AN EQUAL FOOTING WITH THE ORIGINAL STATES."

Constitution of Nevada to be submitted to popular vote, on the first Wednesday of September.

220. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That so much of the fifth section of the act to which this act is an amendment as provides by ordinance for submitting the Constitution to the people of said State, for their ratification or rejection, at an election to be held on the second Tuesday of October, be so amended as to read "on the first Wednesday of September," and that the election for the purposes aforesaid be held on that day instead of the second Tuesday of October.

Approved May 21, 1864.

PROCLAMATION

TERRITORY OF NEVADA, EXECUTIVE DEPARTMENT,  
CARSON CITY, May 2, 1864.

221. WHEREAS, By the foregoing Act entitled "An Act to enable the People of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," it is made obligatory upon the Governor, Chief Justice, and United States Attorney, to apportion "among the several counties in said Territory in proportion to the population, as near as may be," representatives to form the said Convention, and likewise obligatory upon the Governor, when said apportionment is made as aforesaid, to issue a proclamation ordering an election as prescribed in said Act.

222. Now, therefore, I, James W. Nye, Governor of the Territory of Nevada, do order and direct that an election be held in the several counties of this Territory, on the first Monday of June next, for the purpose of electing Delegates or Representatives to the Constitutional Convention for said Territory, "in the same manner as is prescribed by the laws of said Territory, regulating elections therein for members of the House of Representatives," and that the number of Representatives, to be elected in the several counties, as this day apportioned by the Governor, Chief Justice, United States Attorney, of the Territory of Nevada, shall be as follows:

Counties	No. of Delegates
Storey .....	10
Lyon .....	4
Churchill .....	1
Ormsby .....	5
Washoe and Roop .....	5
Douglas .....	2
Esmeralda .....	4
Humboldt .....	3
Lander .....	3
Nye .....	2

223. On testimony whereof, I have hereunto subscribed my hand and caused the great seal of the Territory to be affixed this second day of May, 1864, at the City of Carson, Territory of Nevada.

[SEAL]

JAMES W. NYE,  
*Governor of the Territory of Nevada.*

Attest: ORION CLEMENS,  
*Secretary of the Territory.*

ABSTRACT OF THE VOTE BY COUNTIES FOR AND AGAINST THE CONSTITUTION OF NEVADA

	Yes	No
224. Washoe County -----	1,055	115
Nye County -----	148	53
Humboldt County -----	320	544
Ormsby County -----	990	90
Churchill County -----	178	100
Storey County -----	5,448	142
Douglas County -----	470	76
Esmeralda County -----	859	72
Lyon County -----	898	92

Total yes, 10,375 Total no, 1284

Majority in favor of the Constitution ----- 9,091

225. The foregoing does not embrace the vote of Lander County, as it was not certified to the Board of Canvassers in time to be considered. There was no material difference in the vote, however, and consequently it could not have changed the result.

C. N. NOTEWARE,  
*Secretary of State.*

# CONSTITUTION OF NEVADA<sup>1</sup>

[As amended up to and including November 8, 1910]

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	ARTICLE 1.	352.	Taxation.
230-249.	Declaration of Rights.		ARTICLE 11.
	ARTICLE 2.	353-362.	Education.
250-257.	Right of Suffrage.		ARTICLE 12.
	ARTICLE 3.	363-364.	Militia.
258.	Distribution of Powers.		ARTICLE 13.
	ARTICLE 4.	365-367.	Public Institutions.
259-293.	Legislative Department.		ARTICLE 14.
	ARTICLE 5.	368.	Boundary
294-315.	Executive Department		ARTICLE 15.
	ARTICLE 6.	369-382.	Miscellaneous Provisions
316-333.	Judicial Department.		ARTICLE 16.
	ARTICLE 7.	383-384.	Amendments.
334-337.	Impeachment and Removal from Office.	385-410.	ARTICLE 17.
	ARTICLE 8.		Schedule.
338-347.	Municipal and Other Corporations.	411.	ARTICLE 18.
	ARTICLE 9.	412-413.	Right of Suffrage.
348-351.	Finance and State Debt.	414.	ARTICLE 19.
		415-427.	Initiative and Referendum. Election Ordinance. Ordinance.

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227. United States Constitution adopted.	252. Soldiers and sailors may vote.
228. Ordinance—Ordinance made irrevocable—Slavery inhibited—Freedom of worship secured—Right to public land disclaimed.	253. Civil process suspended.
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	231. Paramount allegiance—Right of secession denied.
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	237. Trial on indictment secured—Not to be twice put in jeopardy—Private property for public use.
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<sup>1</sup> A literal copy of the original in the office of the Secretary of State.

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- 294. Executive power vested.
- 295. Governor elected.
- 296. Who eligible to office of Governor.
- 297. Disposition of election returns.
- 298. Military authority of Governor.
- 299. Duties of Governor.
- 301. May fill vacancies.
- 302. May convene Legislature.
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- 304. May adjourn Legislature.
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- 308. Seal of State.
- 309. Grants in name of State.
- 310. Election and duties of Lieutenant-Governor.
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- 312. State officers, terms of office.
- 313. Duties of Secretary of State.
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- 369. Seat of Government.
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- 380. Office at Capital.
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ARTICLE 16.

- 383. Constitution amended, how.

ARTICLE 17.

- 385. Acts of Territory made valid.
- 386. Acts of Territory made valid.
- 388. Prosecutions in name of State—Civil actions determined by state courts.
- 389. Salaries of state officers.
- 390. Apportionment of legislators.
- 391. Territorial debt assumed by State.
- 393-402. Obsolete, historical only.
- 408. Obsolete, historical only.

ARTICLE 18.

- 411. Right of suffrage not to be withheld.

ARTICLE 19.

- 412. Laws to be submitted to people for approval or disapproval on petition of 10 per cent of voters.
- 413. Majority vote to approve or disapprove.
- 414. Election Ordinance.
- 415-426. Obsolete, historical only.
- 427. List of delegates to Constitutional Convention.

226. WHEREAS, The Act of Congress approved March Twenty First A. D. Eighteen Hundred and Sixty Four "To enable the People of the Territory of Nevada to form a Constitution and State Government and for the admission of such State into the Union on an equal footing with the Original States," requires that the Members of the Convention for framing said Constitution shall, after Organization, on behalf of the people of said Territory adopt the Constitution of the United States. Therefore, Be it Resolved,

227. That the Members of this Convention, elected by the Authority of the aforesaid enabling Act of Congress, Assembled in Carson City the Capitol of said Territory of Nevada, and immediately subsequent to its Organization,

do adopt, on behalf of the people of said Territory the Constitution of the United States.

### ORDINANCE.

228. In obedience to the requirements of An Act of the Congress of the United States approved March Twenty First A. D. Eighteen Hundred and Sixty four to enable the People of Nevada to form a Constitution and State Government: This Convention elected and convened in Obedience to said Enabling Act, Do ordain as follows, and this Ordinance shall be Irrevocable without the consent of the United States and the people of the State of Nevada.

First. That there shall be in this State neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.

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

Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States and that lands belonging to citizens of the United States, residing without the said State, shall never be taxed higher than the lands belonging to residents thereof; and that no taxes shall be imposed by Said State on lands or property therein belonging to, or which may hereafter be purchased by the United States.

The revenue laws, in no respect, contemplate taxation of government title to the public domain, but on the contrary have expressly forbidden it. Yet the right to impose a tax on the possession of individual claimants to such lands is equally as distinctly asserted by these laws—a right so universally upheld by judicial authority at the present day as to have become an established and recognized principle of law. *Wright v. Cradlebaugh*, 3 Nev. 352.

ernment land, and this power is subject to no limitation. No state legislation can interfere with this right, for it is well settled that the statute of limitations of a state cannot run against the United States, by the above provision. Therefore the statute does not begin to run against the plaintiff's cause of action until after the issuance of the patent. *Dissenting opinion of Murphy, C. J. South End Mining Co. v. Tinney*, 22 Nev. 66. (34 P. 1057.)

Congress has the absolute power to dispose of the gov-

### PREAMBLE

**Constitution proclaimed.**

229. We the people of the State of Nevada grateful to Almighty God for our freedom in order to secure its blessings, insure domestic tranquility, and form a more perfect Government, do establish this

*Treadwell, California Constitution, pp. 1, 459, hereinafter cited as T. C. C.*

## CONSTITUTION

### ARTICLE 1

#### DECLARATION OF RIGHTS

230. SECTION 1. All men are, by nature free and equal and have certain inalienable rights among which are those of Enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and happiness.

*T. C. C. pp. 2, 459.*

"Liberty" does not mean mere freedom from arrest or restraint, but it means liberty in a broader and more comprehensive sense. It means freedom of action; freedom in the selection of a business, calling or avocation; freedom in the control and use of one's property, so far as its use is not injurious to the community, and does not infringe the rights of others; freedom in exercising the rights, privileges and immunities that belong to citizens of the country generally; and freedom in the pursuit of any lawful business or calling selected by him. *Mary-*

*mont v. State Banking Board*, 33 Nev. —, 111 P. 295, 301.

The act of February 23, 1903 (1903, p. 33 c. 10), providing an eight hour day for workmen in mines, smelters and mills for the reduction of ores is not void under this section. *Ex Parte Boyce*, 27 Nev. 299, 352, 353, 358, 359, 366, 75 P. 1, 65 L. R. A. 47.

This act is sustainable as a valid health regulation under the police power. *Ex Parte Kair*, 28 Nev. 127. (113 A. S. 817, 80 P. 463.)

**Paramount allegiance—Right of secession denied.**

231. SEC: 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they

have the right to alter or reform the same whenever the public good may require it. But the Paramount Allegiance of every citizen is due to the Federal Government in the exercise of all its constitutional powers as the same have been or may be defined by the Supreme Court of the United States; and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith or perform any act tending to impair subvert, or resist the Supreme Authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or people thereof attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its Authority.

T. C. C. pp. 6, 460.

The maxim that all political power originates with the people lies at the foundation of our political system; but after the organization of a government it is only through their representatives that the people can exercise it. *Gibson v. Mason*, 5 Nev. 283.

The people, and through them the legislature, have supreme power in all matters of government, where not restricted by constitutional limitation. *Wallace v. Mayor of the City of Reno*, 27 Nev. 71, 77. (103 A. S. 747, 63 L. R. A. 337, 73 P. 528).

The power of the great body of people as an organized body politic to amend or revise the constitution of the state is a fundamental principle of the governments of the states of the union. *State v. Board of Examiners*, 21 Nev. 70 (9 L. R. A. 385, 24 P. 614).

The direct primary law of March 23, 1909 (Stats. 1909, c. 198), is not unconstitutional as violating this section. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444, 447, 451).

#### Trial by jury secured.

232. SEC: 3. The right of trial by Jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law; and in civil cases, if three-fourths of the Jurors agree upon a verdict it shall stand and have the same force and effect as a verdict by the whole Jury. Provided, the Legislature by a law passed by a two-thirds vote of all the members elected to each branch thereof may require a unanimous verdict, notwithstanding this provision.

T. C. C. pp. 9, 460.

It is the constitutional privilege of a person to stand upon his strict legal right, and he is entitled to a trial conducted in accordance with the legal formula prescribed. *State v. McNamara*, 3 Nev. 75.

The provisions of this section refer to the right of trial by jury as it existed at the time of the adoption of the constitution. *State v. McClear*, 11 Nev. 39, 44, 52.

The term "jury" and "trial by jury," as used in this section, means twelve competent men, disinterested and impartial, not of kin, nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly empaneled and sworn to render a true verdict according to the law and the evidence. *State v. McClear*, 11 Nev. 39, 44-48, 49, 52, 56, 60, 64, 68, 69.

If a juror is challenged for cause, that challenge is overruled, and he is then challenged peremptorily, there does not necessarily arise any inference that the challenging party is thereby injured. An injury can only arise in case the challenging party was compelled to

exhaust all his peremptory challenges, and afterwards had an objectionable juror placed on the panel for want of another challenge. *State v. Raymond*, 11 Nev. 99.

A fair and impartial jury is the ultimate object to be secured by the constitutional right to challenge a juror. *State v. Raymond*, 11 Nev. 108.

A defendant indicted for a misdemeanor may be tried by a jury of eleven men, if he consents to such a jury, and his consent is not a waiver of a jury trial. *State v. Borowsky*, 11 Nev. 119.

It seems to be implied in the language of this section, that on the trial of an indictment a jury cannot be waived. *State v. Borowsky*, 11 Nev. 127.

In accordance with this section the supreme court will not determine questions of fact on which a verdict is based. *State v. Preston*, 30 Nev. 301, 308 (95 P. 918).

Provisions of an act providing for trial of infractions of police ordinances in an incorporated city shall be summary in character, without a jury, are not in violation of this section. *State v. Ruhe*, 24 Nev. 251 (52 P. 274).

#### Freedom of worship secured.

233. SEC: 4. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State, and no person shall be rendered incompetent to be a witness on account of his Opinions on matters of his 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.

T. C. C. pp. 7, 460.

#### Habeas corpus suspended, when.

234. SEC: 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 its suspension.

T. C. C. pp. 8, 460.

When accused avers that the indictment does not allege an offense, and the state admits that the facts are stated therein, the court on habeas corpus will determine whether

the indictment states an offense, and, if it does not, must discharge the accused. Ex Parte Rickey, 31 Nev. 82, 99 (100 P. 134, 135 A. S. 651).

**Bail, fines and punishments limited.**

**235. SEC: 6.** Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

T. C. C. pp. 8, 461.

Upon proper showing on habeas corpus excessive bail will be reduced. Ex Parte Douglass, 25 Nev. 425 (62 P. 49).

**236. SEC: 7.** All persons shall be bailable by sufficient sureties; unless for Capital Offenses when the proof is evident, or the presumption great.

T. C. C. pp. 8, 461.

In construing the above section, it was held that, as the petition for the writ of habeas corpus contained allegations, which, if true, showed the offense of petitioner to be manslaughter only, the petitioner was entitled to have the evidence of the witnesses before the grand jury reviewed for the purpose of enabling the

court or judge to ascertain whether the proof is evident or the presumption great and thereby determine whether the offense committed—as shown by this and other testimony—is a bailable offense. Ex Parte Finlen, 20 Nev. 141, 144 (18 P. 827).

**Trial on indictment secured—Not to be twice put in jeopardy—Private property for public use.**

**237. SEC: 8.** No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the Militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny under the regulation of the Legislature) except on presentment or indictment of a Grand Jury; and in any trial in any court whatever the party accused shall be allowed to appear and defend in person, and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he 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 having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

T. C. C. pp. 12, 20, 36, 461.

This section does not restrict the legislature in prescribing the form of the indictment. It only requires that the grand jury should in some form express its approval of the prosecution before a party can be put on trial for such offense. State v. Millain, 3 Nev. 409, 433, 480, 481.

Where an indictment which omitted the essential allegation of venue, was amended in that respect: Held, it was no longer an "indictment of a grand jury" within the meaning of this section. State v. Chamberlain, 6 Nev. 257, 260.

Our constitution does not require formality of statement in the indictment. State v. Derst, 10 Nev. 445; State v. McClear, 11 Nev. 44.

When the people adopted this section they had in view a grand jury as it existed under the common law and the statutes at the time the constitution was adopted. State v. Hartley, 22 Nev. 342, 354 (28 L. R. A. 33, 40 P. 372).

Upon an indictment and trial for murder, and a verdict adjudging the defendant guilty of rape, the court has no jurisdiction to sentence and imprison defendant for such crime of rape, since this section requires presentment and indictment for the particular offense before conviction is had, and, further, because the defendant is thereby deprived of his liberty without due process of law. Ex Parte Dela, 25 Nev. 346, 354 (83 A. S. 603, 60 P. 217), cited Egan v. Jones, 21 Nev. 436.

When the verdict is so defective that no judgment can be entered upon it, the defendant, who might have had it perfected when rendered, is considered as consenting to it, and as waiving any objections to being put to answer before another jury. State v. Rover, 10 Nev. 399, 400 (21 A. R. 745).

Whenever the accused has been placed upon trial, on a valid indictment before a competent court, and a jury

duly empaneled, sworn and charged with the case, his jeopardy attaches, and the discharge of the jury before a verdict, unless with the consent of the defendant, or the intervention of some unavoidable accident or some overruling necessity, operates as an acquittal. Ex Parte Maxwell, 11 Nev. 428, 434.

It will be admitted that jeopardy attaches when the jury is sworn to try the case. State v. Pritchard, 16 Nev. 106.

Where a defendant is convicted, and he asks for a second trial to relieve himself of the jeopardy in which he finds himself by reason of the conviction and judgment, and his prayer is granted, he is estopped from asserting a former acquittal on his second trial, and waives his constitutional right of pleading once in jeopardy, or that the right has been in any way infringed, because by his own voluntary assent, act and petition he has been relieved of a bar which prevented him from interposing this plea. In re Somers, 31 Nev. 531, 536 (103 P. 1073).

The provisions of this section guarantee to a person prosecuted for an offense before a court martial, organized under the laws of this state, the right to defend with counsel. State v. Crosby, 24 Nev. 115, 120 (77 A. S. 786, 50 P. 127).

Compelling a defendant, against his objection, to exhibit his arm, in such manner as to show the marks thereon to the jury is not a violation of this section. State v. Ah Chuey, 14 Nev. 79, 81, 83, 85, 86, 95, 98, 100, 103, 104, 114 (33 A. R. 530).

A witness not only cannot be compelled to testify against himself in a criminal case, but this exemption extends also to his private books and papers. Ex Parte Hedden, 29 Nev. 362, 363 (90 P. 737).

Where the defense in a homicide case was sadistic insanity, and accused was examined by a physician for

the purpose of testifying for accused as to his physical condition as bearing upon the question of insanity, accused's examination upon an order of court by physicians appointed by it upon the state's request to enable them to testify as to the same facts did not compel him to become a witness against himself. *State v. Petty*, 32 Nev. 384 (108 P. 934, 935); cited, *Ex Parte Smith*, 33 Nev. — (111 P. 932).

Under the 4th and 5th amendments to the Constitution of the United States, "The officer of a corporation having in his possession the books of the corporation, described in a subpoena duces tecum directed to the corporation, must produce the books or be held in contempt; and a corporation cannot resist, upon the ground of the constitutional protection against self-crimination, the compulsory production of its books and papers before the grand jury under a subpoena duces tecum." *Wilson v. U. S.*, 31 Sup. Ct. Rep. 538; 220 U. S. Cent. Dig., secs. 19-27; *Dec. Dig.*, sec. 16.

"Due process of law" requires that a party shall be properly brought into court, and when there, shall have a right to set up any lawful defense to any proceeding against him. The legislature, under pretense of regulating pleadings, cannot deprive a party of substantial rights. *Wright v. Cradlebaugh*, 3 Nev. 342, 349.

By "due process of law" is meant such general legal forms and course of proceedings as were known either to the common law, or were generally recognized in this country at the time of the adoption of the constitution. *Gibson v. Mason*, 5 Nev. 284, 301-303.

The proceeds of sale under execution are the property of the judgment creditor to the extent of his judgment, and the judgment debtor is not only the owner of the surplus, but he has a right to insist that no part of the proceeds shall be applied to the payment of any claim against him that has not been ascertained and determined by due process of law. *Cosia v. Kyle*, 15 Nev. 397.

"Due process of law." It has been universally held, under a like constitutional restriction, that it does not mean "the process"—or otherwise expressed "the proceeding" shall be the same as pursued at common law, but that the mode and manner of their procedure may be regulated and prescribed by statute. *State v. Millain*, 3 Nev. 466.

The summary process provided by statute for the sale of property for delinquent taxes amounting to less than three hundred dollars does not deprive a person of property without due process of law. *Sawyer v. Dooley*, 21 Nev. 390 (32 P. 437).

Such summary proceedings do not deprive a person owning less than three hundred dollars of the equal protection of the laws; although, where the amount is more than that sum, there must be a regular action in court for its collection. This is only a reasonable exercise by the legislature of the right to classify the taxpayers. *Sawyer v. Dooley*, 21 Nev. 390 (32 P. 437).

This provision does not require that delinquent taxes shall be collected by an action in court under the form of legal procedure. If that method is adopted, the procedure is very much in the discretion of the legislature. All that is required under any system is that the substantial and fundamental rights of the taxpayers shall be protected. All defenses that savor of technicality only, or that do not show that he is being unjustly subjected to taxation, may be excluded. *State v. C. P. R. R. Co.*, 21 Nev. 260, 264 (30 P. 689).

Although public policy demands that credence should be given to the findings and judgments of courts of general jurisdiction, yet it must not be carried to the extent of establishing conclusive presumptions which would have a tendency to deprive a citizen of these rights. *Lonkey v. Keyes S. M. Co.*, 21 Nev. 321 (17 L. R. A. 351, 31 P. 57).

The privilege of admission to the common schools of the state is no more inherent in or connected with the status of citizenship than is the election franchise. This privilege is not embraced within any meaning which has ever been attributed to the words "life, liberty or property". *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 355, per *Garber*, J. dissenting (8 A. R. 713).

"Due process of law" not only requires that a party shall be properly brought into court, but that he shall have the opportunity in court to establish any facts, which, according to the usages of the common law or the

provisions of the constitution, will be a protection to himself and property. *Persing v. Reno Stock Brokerage Co.*, 30 Nev. 342, 349 (96 P. 1054).

The term, "life, liberty and property," embraces every right which the law protects. They include not only the right to hold and enjoy, but also the means of holding, enjoying, acquiring, and disposing of property. *Branson v. I. W. W.*, 30 Nev. 295 (95 P. 354).

The unsworn motion of defendant's attorney to dismiss the complaint upon the allegations thereof was not sufficient to warrant the court in taking such judicial notice of such motion as to deprive plaintiff of its constitutional right, of being heard upon the merits of the motion, in a proper proceeding, as to whether it had complied with the law before doing business in the State. *Symons-Kraussman Co. v. Reno Wholesale Liquor Co.*, 32 Nev. 241 (107 P. 96, 97).

The "Banking Act" of March 24, 1909 (Stats. 1909, c. 191), provided by section 2 that it should be unlawful under penalty for any corporation, partnership, firm or individual to engage in the banking business except by means of a corporation duly organized for such purpose under the laws of the state. Sections 5 and 6 created a state banking board to have general supervision of banks and banking. Section 12 provided that it should be unlawful to engage in banking without obtaining a license from such board, which license should issue only to corporations duly organized to do a banking business. *Held*, that such act was in conflict with this section. *Marymont v. State Banking Board*, 33 Nev. — (111 P. 295, 296).

Due process of law requires an orderly proceeding, adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing and an opportunity to be heard is absolutely essential. *State ex rel. Howell v. Wildes*, 33 Nev. — (116 P. 595, citing to same effect *Hettel v. Court*, 30 Nev. 382 (96 P. 1062, 133 A. S. 730); *Golden v. Court*, 31 Nev. 250 (101 P. 1021)).

The legislature has an undoubted right to confer upon the county commissioners the power to open roads, upon a proper compensation being made to those whose property is taken for such purpose, but until such compensation is made, the state cannot legally appropriate the property of the citizen except in certain cases mentioned in this section. *Champion v. Sessions*, 1 Nev. 478, 484.

This provision does not, in any way, restrict the power of the state to seize, upon summary process, any property for taxes, and that, too, without securing or making compensation therefor. *Gibson v. Mason*, 5 Nev. 303.

The constitution secures a "just compensation," not a compensation to be regulated by the necessities which may compel its appropriation to the public use. The actual value in money, to be ascertained by its location, the price at which similar land may be or has been sold in its vicinity, or which it would sell at, is the measure of damage. *Virginia and Truckee R. R. Co. v. Elliott*, 5 Nev. 367.

The manner in which private property shall be taken is not pointed out in the constitution, hence, it would seem the legislature has the power to prescribe any method which will produce a just and fair result. *Virginia and Truckee R. R. Co. v. Elliott*, 5 Nev. 368.

The word "just" in this provision is evidently intended to intensify the meaning of the word "compensation"—to convey the idea that the equivalent to be rendered shall be real, substantial, full and ample. *Virginia & Truckee R. R. Co. v. Henry*, 8 Nev. 165, 171, 174.

When the legislative power of appropriation of the private property of a citizen is attempted to be exercised, the true test of its validity is, whether or not the use for which the property is to be appropriated is a "public use" within the meaning of these words as used in this section. *Dayton G. & S. M. Co. v. Seawall*, 11 Nev. 394, 398-401, 412.

Stats. 1903, p. 190, c. 102, sec. 20, subdivision 9, providing that moneys received from licenses in cities shall be apportioned one-fourth to the state, one-fourth to the county in which the city is located, and the remainder to the city, is in contravention to this section. *State v. Boyd*, 27 Nev. 249, 257 (74 P. 654); cited, *State v. Burns*, 27 Nev. 292 (74 P. 983); cited, *Bell v. District Court*, 28 Nev. 296 (163 A. S. 854, 1 L. R. A. (N. S.) 843, 81 P. 875).

[ASSEMBLY JOINT AND CONCURRENT RESOLUTION NO. 17, RELATIVE TO AMENDING SECTION EIGHT OF ARTICLE ONE OF THE CONSTITUTION OF THE STATE OF NEVADA PERTAINING TO INDICTMENTS IN CRIMINAL CASES.

Approved March 22, 1909, 346.

*Resolved by the Assembly, the Senate concurring*, That section eight of article one of the Constitution of the State of Nevada be amended to read as follows:

SECTION 8. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a District Attorney or Attorney-General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he 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 having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.]

[Proposed and passed at the Twenty-fourth Session of the Legislature, March 22, 1909, Stats. 1909, p. 346; agreed to and passed at the Twenty-fifth Session, February 20, 1911, Stats. 1911, p. 454. and is now subject to ratification by the people at the next general election to be held in 1912.]

#### Freedom of speech and press.

238. SEC: 9. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels the truth may be given in evidence to the Jury; and if it shall appear to the Jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated.

T. C. C. pp. 13, 461.

#### Right of assembly and petition.

239. SEC: 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives and to petition the Legislature for redress of Grievances.

T. C. C. pp. 14, 462.

The direct primary law of March 23, 1909 (Stats. 1909, c. 198), is not unconstitutional as violating this section. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444, 451).

#### Military establishment limited.

240. SEC: 11. The military shall be subordinate to the civil power; no standing army shall be maintained by this State in time of peace, and in time of war, no appropriation for a standing army shall be for a longer time than two years.

T. C. C. pp. 19, 462.

#### Soldier quartered, how.

241. SEC: 12. No soldier 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 to be prescribed by law.

T. C. C. pp. 19, 462.

#### Representation.

242. SEC: 13. Representation shall be apportioned according to population.

T. C. C. p. 462.

It is impracticable to apportion representation by any other method than by geographical lines, and it will be presumed that the lines have been fixed in conformity with the requirements of the constitution in the absence of a showing to the contrary. *State v. Ruhe*, 24 Nev. 263 (52 P. 274).

The constitution contains no restrictive nor mandatory provisions as to the time when, or how often, the legislature may make the representative apportionment. The legislature, therefore, may make such apportionment as often as it so wills. *State v. Stoddard*, 25 Nev. 452, 456 (51 L. R. A. 229, 62 P. 237).

#### Debtor's property exempt from execution.

243. SEC: 14. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in cases of fraud, libel, or slander, and no person shall be imprisoned for a Militia fine in time of peace.

T. C. C. pp. 46, 463.

This section discussed, *Elder v. Williams*, 16 Nev. 423. This section does not prohibit the arrest and detention of a defendant for the fraudulent disposition of his prop-

erty with intent to defraud his creditors, under a judgment in an action for tort. *Ex Parte Bergman*, 18 Nev. 332, 341, 342 (4 P. 209).

It is the policy of our constitution and laws to allow debtors, within reasonable limits, to retain those things that are necessary to enable them to enjoy the necessary comforts of life, and to carry on their usual employments.

*Edgecomb v. Creditors*, 19 Nev. 154 (7 P. 533), per Leonard, J., dissenting. Cited, *State ex rel. Quinn v. District Court*, 16 Nev. 77. Cited, *Ex Parte Smith*, 33 Nev. — (111 P. 931).

#### Certain inhibitions.

**244. SEC: 15.** No bill of attainder, ex-post-facto law, or law impairing the obligation of contracts, shall ever be passed.

T. C. C. pp. 46, 463.

When there are a number of warrants outstanding against a county, and payable out of the "general fund," and certain new statutes were passed providing that the revenues to be collected, which would otherwise have gone into such fund, shall constitute a "redemption fund" for the payment of such warrants as shall be offered at the lowest price; Held, that as the holders of such outstanding warrants never had any security for payment except the good faith of the state, and as the legislature had entire control over revenues to be raised, the statutes in question did not impair the obligation of any contract. *Youngs v. Hall*, 9 Nev. 212, 224.

The salary law (Stats. 1879, 133) authorizing the county commissioners to transfer money from the general fund to the salary fund of the county, is not in violation of the constitutional provisions against impairing the obligation of contracts. *Esser v. Spaulding*, 17 Nev. 289 (30 P. 896).

The constitutional prohibition against the passage of laws that impair the obligation of contracts has no application where the statute in question is a public law relative to a public subject within the domain of the general legislative power of the state, and involving the public right and public welfare of the entire community affected by it. *Esser v. Spaulding*, 17 Nev. 290, 304 (30 P. 896).

The certificates of indebtedness issued by the county auditor for allowances on the general fund of the county do not create a contract to pay the same out of the general fund in the order of presentment out of the first money in, or to come into, the treasury and apportioned to that fund. The only contract created by the certificate of indebtedness is that it shall be paid out of the

general fund in the order of presentation or allowance. *Esser v. Spaulding*, 17 Nev. 289 (30 P. 896).

The constitution of this state does not forbid the passing of retrospective laws, and the inhibition contained in the constitution of the United States against any *ex post facto* law does not embrace civil laws of this character. *Esser v. Spaulding*, 17 Nev. 290 (30 P. 896).

No right can be considered a vested right unless it is something more than a mere expectation based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from a demand, made by another. *Esser v. Spaulding*, 17 Nev. 290 (30 P. 896).

Section 20, subdivision 8, of the act incorporating the city of Reno, approved March 16, 1903, and sections 1 and 3 of the act empowering city and other boards to revoke and discontinue business licenses, approved March 10, 1903, are not repugnant to any provision of our state or federal constitution, and under them, a license may be revoked without notice to the licensee, where there is reason to believe that the business is a nuisance, a menace to public health, or detrimental to peace or morals. *Wallace v. Mayor, etc. of the city of Reno*, 27 Nev. 71, 77 (103 A. S. 747, 63 L. R. A. 337, 73 P. 528).

Where the remedy has attached itself to the right, and is being prosecuted by due course of law, to separate between them and to take away the remedy is to do violence to the right, and comes within that section of our constitution which prohibits laws from being passed impairing the obligation of contracts. *State ex rel. Howell v. Wildes*, 33 Nev. — (116 P. 595).

#### Rights of foreigners.

**245. SEC: 16.** Foreigners who are, or may hereafter become Bona-fide residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment and inheritance of property, as native-born citizens.

T. C. C. pp. 54, 463.

A citizen and subject of the Chinese Empire, who is a bona fide resident of this state, is entitled, under the laws of this state, to locate and purchase any of the public lands belonging to this state. *State v. Preble*, 18 Nev. 251, 252, 253 (2 P. 754).

No act authorized by the constitution can be said to be against the public policy of the state. *State v. Preble*, 18 Nev. 251, 252, 253 (2 P. 754).

#### Slavery prohibited

**246. SEC: 17.** Neither Slavery nor involuntary Servitude unless for the punishment of crimes shall ever be tolerated in this State.

T. C. C. pp. 55, 463.

#### Search and seizure regulated.

**247. SEC: 18.** The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

T. C. C. pp. 55, 463. Cited, *Ex Parte Hedden*, 29 Nev. 363.

#### Treason defined.

**248. SEC: 19.** Treason against the State shall consist only in levying war against it, adhering to its enemies or giving them aid or comfort. And 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.

T. C. C. pp. 56, 463.

#### Rights in general retained.

**249. SEC: 20.** This enumeration of rights shall not be construed to impair or deny others retained by the people.

T. C. C. pp. 59, 464.

The powers reserved by the people from the federal government have never been, nor are they in any instance exercised by the people at large, but by the governments of the states, which are clothed with all the sovereign authority so reserved. *Gibson v. Mason*, 5 Nev. 284.

The direct primary law of March 23, 1909 (Stats. 1909, c. 198), is not in derogation of this section. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444, 451).

The act of March 24, 1909 (Stats. 1908-09, c. 191), the "Banking Act," provided by section 2 that it should be unlawful under penalty for any corporation, partner-

ship, firm, or individual to engage in the banking business except by means of a corporation duly organized for such purpose under the laws of the state. Sections 5 and 6 created a state banking board to have general supervision of banks and banking. Section 12 provided that it should be unlawful to engage in banking without obtaining a license from such board, which license should issue only to corporations duly organized to do a banking business. *Held*, that such act was in conflict with this section. *Marymont v. State Banking Board*, 33 Nev.— (111 P. 295, 296).

## ARTICLE 2.

### RIGHT OF SUFFRAGE

#### How and by whom the franchise may be enjoyed.

**250. SECTION 1.** Every male citizen of the United States (not laboring under the disabilities named in this Constitution) of the age of twenty-one years and upwards who shall have actually and not constructively, resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; Provided that no person who has been or may be convicted of Treason or Felony in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of Eighteen years shall have voluntarily borne arms against the United States, or held civil or military office under the Socalled Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person shall be entitled to the privilege of an elector.

[Amended by striking out the word *white* before the word *male*. Proposed and passed at the Eighth Session of the Legislature, January 15, 1877, Statutes of 1877, page 213; agreed to and passed at the Ninth Session of the Legislature, January 27, 1879, Statutes of 1879, page 149, and approved and ratified by the people at the general election of 1880.]

T. C. C. pp. 60, 464, 465.

[SUBSTITUTE FOR ASSEMBLY JOINT AND CONCURRENT RESOLUTION NO. 6, RELATIVE TO AMENDING SECTION ONE OF ARTICLE TWO OF THE CONSTITUTION OF THE STATE OF NEVADA, PERTAINING TO THE RIGHT OF ELECTIVE FRANCHISE.

Approved March 18, 1911, 457.

*Resolved by the Assembly, the Senate concurring*, That section one of article two of the Constitution of the State of Nevada be amended to read as follows:

**SECTION 1.** All citizens of the United States not laboring under the disabilities named in this constitution, of the age of twenty-one years and upwards, who shall have actually, and not constructively, resided in this state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; *provided*, that no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no idiot or insane person shall be entitled to the privilege of an elector. There shall be no denial of the elective franchise at any election on account of sex.]

[Proposed and passed at the Twenty-fifth Session of the Legislature, Stats. 1911, p. 457.]

An election can only be held by virtue of some constitutional provision or legal enactment, either expressly or by direct implication authorizing that particular election. *Sawyer v. Hayden*, 1 Nev. 75, 79, 80.

Enactment of a primary election law is an inherent right of the legislature under the constitution.

The direct primary law of March 23, 1909 (Stats. 1909, c. 198), is not unconstitutional as destroying political parties, nor as denying electors the right to determine the political principles their candidates must espouse, nor as enabling electors of opposite political faith to name the candidates of their political opponents.

The state has the right under the police power vested in its legislature to make reasonable regulations in the interest of public welfare for the nomination of candidates of the various parties.

The rights of political parties can be no greater than the rights of electors under the constitution.

The legislature can, in regulating primary elections, prescribe qualifying classifications for political parties

who desire to be represented on official ballots. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444).

A person who was a qualified elector under the constitution of this state did not become disqualified by the failure to pay his poll tax and to have his name registered, until after the first week of October, A. D. 1865.

By the provisions of the registry law, all persons had until the last day in the first week of October, A. D. 1865, within which to have their names registered, no disqualification could result until after that time. An elector otherwise qualified would therefore be a competent juror until after the expiration of the first week in October. *State v. Salge*, 1 Nev. 450, 457.

The form of a law by which a person is deprived of a constitutional right is immaterial; it is a nullity, whatever be its form. *Davies v. McKehey*, 5 Nev. 369, 371.

*Held*, on application for registry by one who could not take the oath prescribed in the registry law (Stats. 1864-5, p. 382), but who was entitled under the constitution to the right of suffrage, that the oath required by

the registry law was unconstitutional, and that as the registry agents could not alter or modify it so as to leave out the objectionable part, the entire oath must fall. *Davies v. McKeedy*, 5 Nev. 369, 371, 373, 374.

A statute which makes the enjoyment of a constitutional right depend upon an impossible condition, or upon the doing of that which cannot legally be done, is equivalent to an absolute denial of the right under any condition. The effect, and not the language of the statute in such case, must determine its constitutionality. *Davies v. McKeedy*, 5 Nev. 369, 372.

Any person possessing the qualifications of an elector as defined by this section is entitled to the right of suffrage. It is not within the power of the legislature to deny, abridge, extend or change the qualifications of an elector as prescribed in the constitution. *State v. Findlay*, 20 Nev. 198, 199, 201 (19 A. S. 346, 19 P. 241).

The act prescribing the qualifications of electors (Stats. 1887, 106) prohibiting Mormons from voting and requiring applicants for registration to take an oath that they are not members of the Mormon church is in direct violation of this section, and is not authorized by sec. 6, art. 2, requiring provisions to be made by law for registration. *State v. Findlay*, 20 Nev. 198, 199, 201 (19 A. S. 346, 19 P. 241).

The qualifications of an elector are those prescribed by the constitution, and they cannot be altered or impaired by the legislature. Registration is not an electoral qualification, but is only a means for ascertaining and determining in a uniform mode whether the voter possesses the qualifications required by the constitution, and to secure in an orderly and convenient manner the right of voting. *State ex rel. Boyle v. Board of Examiners*, 21 Nev. 67, 69, 70 (9 L. R. A. 385, 24 P. 614).

#### Residence defined.

**251. SEC: 2.** For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a Student of any Seminary of learning; nor while kept at any alms-house or other asylum, at public expense; nor while confined at any public prison.

T. C. C. pp. 66, 407, 465, 503.

See "Residence" *post*.

#### Soldiers and sailors may vote.

**252. SEC: 3.** The right of suffrage shall be enjoyed by all persons, otherwise entitled to the same who may be in the Military or Naval service of the United States; provided, the votes so cast shall be made to apply to the County and Township of which said voters were bona-fide residents at the time of their enlistment; and provided further, that the payment of a poll tax or a registration of such voters shall not be required as a condition to the right of voting. Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this Constitution.

T. C. C. pp. 66, 407, 503.

See *State v. Sadler*, 25 Nev. 131 (58 P. 284, 83 A. S. 573).

#### Civil process suspended.

**253. SEC: 4.** During the day on which any general election shall be held in this State, no qualified elector shall be arrested by virtue of any civil process.

T. C. C. pp. 64, 465.

#### Elections by ballot.

**254. SEC: 5.** All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof shall be viva voce.

T. C. C. pp. 66, 128, 465, 475.

#### Electors registered.

**255. SEC: 6.** Provision shall be made by law for the registration of the names of the Electors within the counties of which they may be residents, and for the ascertainment by proper proofs of the persons who shall be

Section 34 of the act incorporating the town of Reno, requiring for the determination of certain questions, a majority of the votes cast by the qualified electors of a city, as shown by the last official registration, is not in violation of this section as being a disfranchisement of qualified electors who have become so since the last election. *State v. Ruhe*, 24 Nev. 251, 260 (52 P. 274).

Cited, *State v. Sadler*, 25 Nev. 170, 176 (83 A. S. 573, 58 P. 284).

The right to vote conferred by this section is a mere political privilege, and not an inherent, unqualified personal or political right. This section applies to the election of public officers, and not to the selection of party nominees. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444).

This section defines the qualifications of an elector, but the legislature may prescribe reasonable qualifications for an elector who may desire to become a candidate, providing such qualifications are not in conflict with some constitutional provisions. The qualifications required by the primary law are not, as we view the constitution, violative of any such requirement. *Riter v. Douglass*, 32 Nev. 400 (109 P. 455, 456).

Under the provisions of the constitution of this state, all necessary state, county and township officers must be elected by the people of the locality immediately concerned. *State ex rel. Perry v. Arrington*, 18 Nev. 412 (4 P. 735).

The constitutionality of the direct primary law of March 23, 1909 (Stats. 1909, c. 198), can be questioned on the ground that it precludes a qualified elector and candidate from appearing on the official ballot, or precludes any qualified elector from voting for any qualified candidate only by one deprived of such right. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444, 445).

entitled to the right of suffrage, as hereby established, to preserve the purity of elections, and to regulate the manner of holding and making returns of the same; and the Legislature shall have power to prescribe by law any other or further rules or oaths as may be deemed necessary, as a test of electoral qualification.

T. C. C. pp. 66, 502.

The oath required by section 5 of the registry law (Stats. 1865, 141) "being in terms in addition to the qualifications of an elector, which are now or hereafter may be prescribed by law," cannot be regarded as "a test of electoral qualification" within the meaning of this section, and is therefore unconstitutional. *Clayton v. Harris*, 7 Nev. 64, 67.

Under this section, the legislature can prescribe what oath or oaths may be necessary as a test of electoral qualifications, but it cannot impede or trammel the right of suffrage by adding new qualifications. *Clayton v. Harris*, 7 Nev. 64, 67, 68.

This section required the legislature to make provision for the registration of electors so as "to preserve the purity of elections," the provisions of the registry law when necessary to accomplish this purpose should be strictly pursued. *Stinson v. Sweeney*, 17 Nev. 314 (30 P. 997).

Where a non-compliance with the provisions of the registry or election laws, upon the part of the registry agent or officers of the elections, are not essential "to preserve the purity of elections," the courts recognizing the fact that the will of the people, when fairly expressed, should be the law of the land, have universally declared that the qualified electors should not, on that account, be deprived of their votes. *Stinson v. Sweeney*, 17 Nev. 315 (30 P. 997).

The act prescribing the qualifications of electors (Stats. 1887, 106) prohibiting Mormons from voting and requiring applicants for registration to take an oath that they are not members of the Mormon Church is in direct violation of section 2, article 2 of the constitution, and is not authorized by the above section. *State v. Findlay*, 20 Nev. 198, 201 (19 A. S. 346, 19 P. 241).

While the legislature cannot directly deprive the elector of his privilege of voting, this section specially authorizes it to enact laws for the registration of electors, to preserve the purity of elections, and to regulate the manner of holding and making returns of the same. Such laws will necessarily sometimes have the effect of preventing the elector from voting. For instance, a law for the registration of voters, to be effectual, must provide that one not registered, shall not vote; and to guard the purity of elections, it may require him to make his

ballot in a certain way, and to comply with many other conditions. But in all these matters the voter had the privilege of voting, by a compliance with the law, and his failure to do so is somewhat owing to his own negligence or misfortune. *Lynip v. Buckner*, 22 Nev. 438 (30 L. R. A. 354, 41 P. 762).

The constitution has committed the subject of registration of electors to the legislature for the purpose of determining who are qualified voters, and laws of this description must be calculated to facilitate and secure, rather than to subvert or impede, the exercise of the right to vote. The adoption by the legislature of the registry lists of the general election of 1888 for the special election held three months later in 1889 is not obnoxious to constitutional requirements, but on the contrary is commendable as being calculated to facilitate, rather than impede, the exercise of the right to vote. *State ex rel. Boyle v. Board of County Commissioners*, 21 Nev. 68 (9 L. R. A. 385, 24 P. 614).

The great constitutional right of an elector, of voting and having the vote counted, is not to be taken from him upon any doubtful construction of a statute. *Lynip v. Buckner*, 22 Nev. 439.

This section authorizes and requires the legislature to provide by law for the registration of all persons who possess the prescribed qualifications of electors, but it does not authorize the legislature to impose any condition on the right of registration, other than the prescribed qualifications of electors. And when the legislature does so, it exceeds its authority. *State v. Wilson*, 24 Nev. 308, 309.

The legislature can add qualifications to electors desiring to become candidates for specified offices if the qualifications are reasonable. *Riter v. Douglass*, 32 Nev. 400 (109 P. 445).

In these provisions of our constitution, we find full authority granted the legislature to pass all necessary legislation for general elections; and a further examination of our constitution will disclose no prohibition to enact a direct primary law so long as the act conforms in other respects to our constitution. As to the inherent right of the legislature under our constitution to enact a primary election law there can be no question. *Riter v. Douglass*, 32 Nev. 400 (109 p. 448).

**256. SEC. 7.** The Legislature shall provide by law for the payment of an annual poll tax of not less than two, nor exceeding four, dollars from each male resident in the State between the ages of twenty-one and sixty years (uncivilized American Indians excepted),<sup>1</sup> to be expended for the maintenance and betterment of the public roads.

T. C. C. p. 375.

[As amended. Proposed and passed at the Twenty-third Session of the Legislature, March 29, 1907, Statutes of 1907, page 450; agreed to and passed at the Twenty-fourth Session of the Legislature, March 16, 1909, Statutes of 1909, page 344, and approved and ratified by the people at the general election of 1910.]

The revenue laws of the state imposing a capitation tax of one dollar on all passengers carried out of the state is not a poll tax, and

does not conflict with the constitutional provision limiting the poll tax to four dollars. *Ex Parte Crandell*, 1 Nev. 294, 313.

<sup>1</sup> Original section was same as above to this mark, and continued, "one-half to be applied for state and one-half for county purposes; and the legislature may in its discretion make such payment a condition to the right of voting."

This case was reversed upon other grounds by the Supreme Court of the United States, which held that the taxation by the state of passengers running through or out of the state would be inconsistent with the objects for which the federal government was established. 6 Wall. 35.

As this section provides specifically what poll tax may be levied, such indication excludes from legislative power any other. *Hassett v. Walls*, 9 Nev. 387, 392, 393.

The highway act of 1873, in so far as it provides for a road tax upon individuals, is obnoxious to this section and is void. *Hassett v. Walls*, 9 Nev. 387, 392.

The act providing for the payment of a commission by the state of ten per cent of all poll taxes collected in the county (Stats. 1885, 62) does not violate this section; such commission

being an allowance for the expenses of collection, and the state being liable for its share. *State v. Donnelly*, 20 Nev. 214, 215 (19 P. 680).

The road tax of four dollars annually, or two days' labor, imposed upon individuals by the highway act of 1873, whether required as a levy in money or service, is a capitation or poll tax. *Hassett v. Walls*, 9 Nev. 387, 393.

The legislature may, by the enactment of a proper bill, add to the electoral qualifications prescribed by this section the payment of an annual poll tax, and when it does, the payment of such tax may be made one of the conditions of registration, and not before. *State ex rel. Wilson v. Stone*, 24 Nev. 308, 309, 310 (53 P. 497).

*Nevada Cons. Deb. & Pro.*, page 145, cited in *State v. McKenney*, 18 Nev. 201, with references to this section (2 P. 171).

### Who may vote on Constitution.

257. SEC. 8. All persons qualified by law to vote for representatives to the General Assembly of the Territory of Nevada on the twenty first day of March, A. D. Eighteen hundred and sixty-four, and all other persons who may be lawful voters in said Territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution.

T. C. C. p. 505.

### [SENATE SUBSTITUTE FOR ASSEMBLY' JOINT AND CONCURRENT RESOLUTION NO. 8, PROPOSING THAT SECTION NINE BE ADDED TO ARTICLE TWO OF THE CONSTITUTION OF THE STATE OF NEVADA.]

Approved March 22, 1909.

*Resolved by the Senate, the Assembly concurring,* That section nine be added to article two of the Constitution of the State of Nevada, to read as follows:

SECTION 9. Every public officer in the State of Nevada is subject, as herein provided, to recall from office by the qualified electors of the State, or of the county, district, or municipality, from which he was elected. For this purpose not less than twenty-five per cent (25%) of the qualified electors who vote in the State or in the county, district, or municipality electing said officer, at the preceding election, for Justice of the Supreme Court, shall file their petition, in the manner herein provided, demanding his recall by the people; they shall set forth in said petition, in not exceeding two hundred (200) words, the reasons why said recall is demanded. If he shall offer his resignation, it shall be accepted and take effect on the day it is offered, and the vacancy thereby caused shall be filled in the manner provided by law. If he shall not resign within five (5) days after the petition is filed, a special election shall be ordered to be held within twenty (20) days after the issuance of the call therefor, in the State, or county, district, or municipality electing said officer, to determine whether the people will recall said officer. On the ballot at said election shall be printed verbatim as set forth in the recall petition, the reasons for demanding the recall of said officer, and in not more than two hundred (200) words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said election shall be finally declared. Other candidates for the office may be nominated to be voted for at said special election. The candidate who shall receive the highest number of votes at said special election shall be deemed elected for the remainder of the term, whether it be the person against whom the recall petition was filed, or another. The recall petition shall be filed with the officer with whom the petition for nomination to such office shall be filed, and the same officer shall order the special election when it is required. No such petition shall be circulated or filed against any officer until he has actually held his office six (6) months, save and except that it may be filed against a Senator or Assemblyman in the Legislature at any time after ten (10) days from the beginning of the first session after his election. After one such petition and special election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless such further petitioners shall pay into the public treasury from which the expenses of said special election have been paid, the whole amount paid out of said public treasury as expenses for the preceding special election. Such additional legislation as may aid the operation of this section shall be provided by law.]

[Proposed and passed at the Twenty-fourth Session of the Legislature, March 22, 1909, Statutes of 1909, p. 345; agreed to and passed at the Twenty-fifth Session, February 2, 1911, Statutes of 1911, p. 448, and is now subject to ratification by the people at the general election to be held in 1912.]

## ARTICLE 3.

## DISTRIBUTION OF POWERS

**Powers of government.**

**258. SECTION 1.** The powers of the Government of the State of Nevada shall be divided into three separate departments—the Legislative, the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

T. C. C. pp. 68, 465.

Each department of the state government—legislative, executive, and judicial—is supreme within its respective sphere. *Gibson v. Mason*, 5 Nev. 284; *State ex rel. White v. Dickerson*, 33 Nev. — (113 P. 106).

Under the constitution of this state, the naming in the act of incorporation of the persons who were to constitute a provisional or initiatory board of trustees was not the exercise of a power intrinsically executive. *Clarke v. Irwin* (5 Nev. 111) affirmed. *State ex rel. Rosenstock v. Swift*, 11 Nev. 128.

The action of a judicial officer in regard to matters which are exclusively executive or administrative in their nature, even when the act of the legislature requiring such duties to be performed is in violation of a constitutional provision, cannot be reviewed by certiorari. *Esmeralda County v. District Court*, 18 Nev. 438 (5 P. 64).

Under the laws of this state, the supreme court is only authorized to review the record and proceedings of inferior court officers or tribunals acting in a judicial capacity and exercising judicial functions. *Esmeralda County v. District Court*, 18 Nev. 438 (5 P. 64).

This article, dividing the state government into three great departments, does not prohibit one department from exercising powers of the nature of those belonging to one of the other departments unless that power is either expressly or impliedly conferred upon the other department by the constitution. This article only refers to the state government as created by the constitution. *Sawyer v. Dooley*, 21 Nev. 390, 396 (32 P. 437).

The contention of the lieutenant and acting governor that the acceptance as directed by the statute of repudiated bonds of a sister state, tendered to this state as a donation, would disturb the harmonious relations existing between the two states, and that for certain legal reasons the bonds cannot be collected, raises a question for the legislature in the first instance and for the judiciary in the second, neither of which is within the functions of the executive or justifies his refusal to accept the bonds. *State ex rel. White v. Dickerson*, 33 Nev.— (113 P. 106, 108).

Cited, *State ex rel. Josephs v. Douglass*, 33 Nev. — (110 P. 180).

The act of March 4, 1871 (Stats. 1871, 129) said to be a clear encroachment of the legislature upon the judicial function. Per *Whitman, J.*, dissenting. In re *Estate of Sticknoth*, 7 Nev. 236.

The exercise of the functions of the board of county commissioners in the discharge of a supplemental assessment under the statutes providing therefor (Stats. 1867, 111) is not obnoxious to this article. *State v. County Commissioners of Ormsby County*, 7 Nev. 392, 396.

Where a statute provided for gift concerts and distribution of prizes among ticket holders by raffle, and especially provided that "nothing in this act contained shall be con-

strued as authorizing a lottery in this state or as allowing the sale of lottery tickets contrary to the provisions of the constitution" (Stats. 187, 110); Held, that the construction of such act was for the courts alone and that the attempted exercise of this power by the legislature was an unconstitutional assumption of the functions of the judiciary. *Ex Parte Blanchard*, 9 Nev. 101, 104.

The act incorporating Carson City (Stats. 1875, 87) is not in conflict with this article, or sections 1 and 8 of article 4, or section 10 of article 15 of the constitution. *State ex rel. Rosenstock v. Swift*, 11 Nev. 128.

In construing the provisions of the act providing for the payment of outstanding indebtedness of Virginia City (Stats. 1864-5, 325); Held, that said act, in so far as it undertakes to definitely fix the amount due to the persons therein named, is an attempt upon the part of the legislature to exercise judicial powers, and is therefore repugnant to this article. *State v. Hampton*, 13 Nev. 439, 442.

Held, that the state prison act (Stats. 1881, 109) in so far as it attempts to commute any portion of the sentence imposed by the courts prior to the time the act took effect, is inoperative and void, because it interferes with the judiciary. *Ex Parte Darling*, 16 Nev. 98, 99, 100 (40 A. R. 495); *Ex Parte Woodburn*, 32 Nev. 136 (104 P. 245).

The acts required by section 6 (Stats. 1883, 99) relating to the annexation of a part of Esmeralda County to Lyon County to be performed by the district judge in the event of a board of county commissioners failing to agree, are not of such a judicial nature and character as to authorize the supreme court to review them upon certiorari. *Esmeralda County v. District Court*, 18 Nev. 438 (5 P. 64).

The act of March 27, 1907 (Stats. 1907, p. 241, c. 125) relates to the incorporation of cities, section 2 providing for a petition for such incorporation by the majority of the qualified voters, and section 3 (p. 242) conferring on the district court authority to determine whether a majority of the qualified electors and taxpayers have made this application sufficiently describing the territory to be embraced in the city or corporate town with a map thereof containing the streets and alleys and the proposed name, and whether it is accompanied with satisfactory proof of the number of inhabitants. Held, that such act is not unconstitutional as delegating legislative powers to the judicial department. *State ex rel. Williams v. District Court*, 30 Nev. 225, 227, 228, 229, 234 (94 P. 70).

The act of March 26, 1907 (Stats. 1907, p. 232 c. 119), sec. 10, providing that on the determination by the bank commissioners that it is unsafe for a bank to continue business, they shall order the bank examiner to take possession of its property until the attorney-general shall begin action to enjoin it from

transacting business and, if, on a hearing, the court finds it solvent, the court may dismiss the action and order the bank restored to the possession of its property, does not confer judicial functions on an executive board. *State ex rel. v. State Bank and Trust Co.*, 31 Nev. 456, 465, 471, 472, 473 (103 P. 407).

Banking act, Stats. 1911, 291, sec. 79, examined, and the provisions of this section held to be a clear invasion of the judicial powers in favor of the executive department and consequently this section is unconstitutional. *State ex rel. Howell v. Wildes*, 33 Nev. — (116 P. 595).

The provision in the act entitled "An act to require the acceptance and collection of grants, devises, bequests, donations and assignments to the State of Nevada," approved February 26, 1901 (Stats. 1901, c. 19), that "whenever

any grant, devise, bequest, donation or gift or assignment of money, bonds, or choses in action shall be made to this state, the governor is directed to receive and accept the same, so that the right and title to the same shall pass to the state," imposes a ministerial duty upon the governor which could have been conferred as well upon any other officer or person, and which in no way conflicts with or pertains to the constitutional powers or prerogatives of the governor. He is nowhere empowered to set aside the law because he may not agree with its policy. He is as much unauthorized to prevent the reception of the bonds as if the legislature had directed the state treasurer instead of the governor to accept them for the state. *State ex rel. White v. Dickerson*, 33 Nev. — (113 P. 105, 106).

## ARTICLE 4.

### LEGISLATIVE DEPARTMENT

#### Legislative authority vested.

259. SECTION 1. The Legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated "The Legislature of the State of Nevada" and the sessions of such Legislature shall be held at the seat of Government of the State.

T. C. C. pp. 74, 466.

The federal government was organized by the concession to it of such certain specified powers as were deemed necessary to secure and promote the general welfare of all the states, the residuum being retained by the people; and these reserved powers are supreme and absolute over life, liberty and property, except as restrained or limited by their own concessions through the federal constitution. *Gibson v. Mason*, 5 Nev. 284.

The state legislature possesses legislative power unlimited except by the federal constitution, and such restrictions as are expressly placed upon it by the state constitution; it is within the sphere of legislation the exponent of the popular will, endowed with all the power in this respect which the people themselves possessed at the time of the adoption of the constitution. *Gibson v. Mason*, 5 Nev. 284, 292, 293, 294, 295, 298; *State ex rel. Perry v. Arrington*, 18 Nev. 416 (4 P. 735).

The people, and through them the legislature, have supreme power in all matters of government where not restricted by constitutional limitations. *Wallace v. Mayor and City Council of the City of Reno*, 27 Nev. 71 (103 A. S. 747, 63 L. R. A. 337, 13 P. 528); *Ex Parte Boyce*, 27 Nev. 299, 352 (65 L. R. A. 47, 75 P. 1).

The power to make the law must necessarily carry with it the right to judge of its expediency and justice. *Gibson v. Mason*, 5 Nev. 284.

The possible abuse of legislative power is no argument against either its existence or

#### To convene, when.

260. SEC: 2. The sessions of the Legislature shall be Biennial, and shall commence on the *third* Monday of January next ensuing the election of Members of the Assembly, unless the Governor of the State shall in the interim convene the Legislature by proclamation.

[Amended by changing *first* Monday to *third* Monday in January. Proposed and passed at the Twelfth Session of the Legislature, February 23, 1885, Statutes of 1885, page 151; agreed to and passed at the Thirteenth Session of the Legislature, March 3, 1887, Statutes of 1887, page 165, and approved and ratified by the people at a special election held February 11, 1889.]

T. C. C. pp. 81, 466.

appropriate exercise. *State ex rel. Clarke v. Irwin*, 5 Nev. 112, 127, 128, 130, 131.

Since the legislature can pass any act not expressly prohibited by the state or the national constitution, an act is presumed to be constitutional until declared otherwise by a court of competent jurisdiction. Questions of the wisdom, policy, or expediency of a law are for the legislature's determination, with which courts cannot interfere. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444, 445).

Courts will presume statutes to be valid and will not consider a question affecting their validity, unless essential to a determination of the case. The legislature, in the absence of special authorization in the constitution, may not abolish a constitutional office, or change, alter, or modify its constitutional powers and functions. *State ex rel. Josephs v. Douglass*, 33 Nev. — (110 P. 177).

The legislature, representing the people of the state, has the sole authority to enact and repeal statutes, and in this regard its power is supreme in all matters of government, where not prohibited by constitutional limitations, state or federal. Questions relating to the wisdom, policy, and expediency of statutes are for the people's representatives in legislature assembled, and not for the governor or the courts to determine. *State ex rel. White v. Dickerson*, 33 Nev. — (113 P. 105, 106).

Under the guise of changing remedies the legislature cannot destroy the right. *State ex rel. Howell v. Wildes*, 33 Nev.— (116 P. 595).

**Assemblymen chosen.**

261. SEC: 3. The members of the Assembly shall be chosen biennially by the qualified electors of their respective districts, on the Tuesday after the first Monday in November, and their term of Office shall be two years from the day next after their election.

T. C. C. pp. 82, 466.

Cited, State ex rel. Perry v. Arrington, 18 Nev. 416 (4 P. 735).

**Senators chosen.**

262. SEC: 4. Senators shall be chosen at the same time and places as members of the Assembly, by the qualified electors of their respective districts, and their term of office shall be four years from the day next after their election.

T. C. C. pp. 82, 467.

Cited, State ex rel. Perry v. Arrington, 18 Nev. 416 (4 P. 735).

**Who eligible.**

263. SEC: 5. Senators and members of the Assembly, shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one third, nor more than one half of that of the members of the Assembly.

T. C. C. pp. 82, 467.

**Powers of each.**

264. SEC: 6. Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers, (except the President of the Senate, determine the rules of its proceedings and may punish its members for disorderly conduct, and with the concurrence of two-thirds of all the members elected, expel a member.

T. C. C. pp. 86, 87, 468.

**May punish for contempt.**

265. SEC: 7. Either House, during the session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

**Members not to be beneficiaries.**

266. SEC: 8. No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

T. C. C. pp. 95, 470.

**Persons not eligible, when.**

267. SEC: 9. No person holding any lucrative Office under the Government of the United States or any other power, shall be eligible to any civil office of profit under this State; Provided, that Post-Masters whose compensation does not exceed Five Hundred dollars per Annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative Office.

T. C. C. pp. 96, 471.

It was held that this was not intended to be confined in its effect to officers connected with the legislative department of the government. State ex rel. Nourse v. Clarke, 3 Nev. 569.

A person holding the office of United States district attorney, on the day of election, is incapable of being chosen to the office of attorney-general of the state. This section is not confined to members of the legislature, but

is applicable to all officers of state. A person holding a civil office under the United States, can resign such office without the consent of the appointing power, or the acceptance by it of such resignation. It is not in the power of the executive to compel any civil officer to remain in office. State ex rel. Nourse v. Clarke, 3 Nev. 566-571.

The office of notary public is a civil office of profit under this state, within the meaning of

this section, and the receiver of public money in a United States land office is ineligible to the office of notary. This section applies to appointive as well as to elective officers. State ex rel. Summerfield v. Clarke, 21 Nev. 333, 335, 338 (37 A. S. 517, 18 L. R. A. 313, 31 P. 545).

Under this section a state senator, by accept-

ing appointment as paymaster in the army, became incapable of legally holding the office of state senator, and such acceptance operated as a resignation of the state office and created a vacancy therein. State ex rel. McMillan v. Sadler, 25 Nev. 132, 173 (83 A. S. 573, 58 P. 284).

#### **Disqualified from office holding.**

**268. SEC: 10.** Any person who shall be convicted of the Embezzlement or defalcation of the public funds of this State or who may be convicted of having given or offered a bribe to procure his election or appointment to Office, or received a bribe to aid in the procurement of Office for any other person, shall be disqualified from holding any Office of profit or trust in this State; and the Legislature shall, as soon as practicable, provide by law for the punishment of such defalcation, bribery, or Embezzlement as a felony.

T. C. C. pp. 97, 136, 406, 471, 502.

Section 37, act of March 12, 1873, p. 197, authorizes a contest of election "when the person whose right to the office is contested was not at the time of his election eligible to such office." Held, under above section, that a complaint to contest the election of a district attorney which alleged that the contestee offered before election to make a bond conditioned

that, if elected, he would return to the county treasury each month a portion of his salary, but does not allege that the contestee had been "convicted" of offering such bribe, does not show that the contestee was disqualified to hold the office, and is fatally defective on demurrer. Egan v. Jones, 21 Nev. 433, 435, 436 (32 P. 929).

#### **Members exempt from civil process during session of legislature.**

**269. SEC: 11.** Members of the Legislature shall be privileged from arrest on civil process during the Session of the Legislature, and for fifteen days next before the commencement of each Session.

T. C. C. pp. 88, 468.

#### **Vacancies, how filled.**

**270. SEC: 12.** When vacancies occur in either House, the Governor shall issue writs of Election to fill such vacancy.

T. C. C. pp. 89, 469.

Cited, State ex rel. Clarke v. Irwin, 5 Nev. 127.

#### **Rules relating to legislative procedure.**

**271. SEC: 13.** A majority of all the members elected to each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner, and under such penalties as each house may prescribe.

T. C. C. pp. 86, 468.

#### **Journal, yeas and nays.**

**272. SEC: 14.** Each House shall keep a journal of its own proceedings which shall be published, and the yeas and nays of the members of either house, on any question shall, at the desire of any three members present, be entered on the journal.

T. C. C. pp. 88, 468.

#### **Meetings public, exception.**

**273. SEC: 15.** The doors of each House shall be kept open during its session, except the Senate while sitting in executive session, and neither shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which they may be holding their sessions.

T. C. C. pp. 89, 469.

#### **Bills originate in either house.**

**274. SEC: 16.** Any bill may originate in either House of the Legislature, and all bills passed by one may be amended in the other.

T. C. C. pp. 90, 469.

**Embrace but one subject.**

275. SEC: 17. Each law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised, or section as amended, shall be re-enacted and published at length.

T. C. C. pp. 101, 472.

Cited and held inapplicable in *Bowers v. Beck*, 2 Nev. 158.

The second section of the amendatory act of 1869, concerning counties, providing for the payment of \$3,000 a year for five years by Churchill County to Humboldt County (Stats. 1869, 88), does not conflict with this section. *Humboldt County v. County Commissioners of Churchill County*, 6 Nev. 30, 35.

It is only necessary to express in the title the principal subject embodied in the law, while the matters properly connected therewith are not required to be mentioned. *Humboldt County v. County Commissioners of Churchill County*, 6 Nev. 31, 35.

The design of this provision is to prevent improper combinations to secure passage of laws containing subjects having no necessary or proper relation and which as independent measures could not be carried; also to prevent the legislature and the public from being misled by the title.

The details of a statute need not be specifically stated in the title; but matters germane to the subject and adapted to the accomplishment of the object in view may properly be included.

The provision in relation to the unlawful killing of stock making it a felony, contained in the statute regulating marks and brands (Stats. 1873, p. 99, sec. 10) bears no proper relation to the subject of the statute as expressed in the title, and is therefore unconstitutional.

Section 143 of the crimes act, making the malicious killing of cattle a misdemeanor, is unaffected by the provision in the act regulating marks and brands, making it a felony (Stats. 1873, p. 99, sec. 10)—the latter provision being unconstitutional. *State v. Silver*, 9 Nev. 227, 231.

This court has recognized and enforced this section as being mandatory (*State v. Silver*, 9 Nev. 230), and we see no valid reason for adopting a different rule in this case. *State ex rel. Chase v. Rogers*, 10 Nev. 253 (21 A. R. 728).

Cited, *State v. California Mining Company*, 13 Nev. 219.

The act supplementary to an act entitled "An act concerning crimes and punishments, approved November 26, 1861," does, in its title, express the subject embraced therein, as required by this section. *State v. Davis*, 14 Nev. 439, 442, 443 (33 A. R. 563).

The "Opium Act" (Stats. 1879, p. 121) embraces but one subject, and its title is not too restrictive to cover the provisions of section 6 of said act. This constitutional provision is mandatory, but should be liberally construed. *State v. Ah Sam*, 15 Nev. 27, 29, 30, 31, 32 (37 A. R. 454).

Held, that the general purpose of this section is accomplished when a law has but one general object which is fairly indicated by its title.

The "act to provide for the taking care of the insane of Nevada," provides for the construction of an asylum; that the money appropriated for that purpose shall be taken

from the state school fund, and in its place there shall be deposited state bonds, bearing interest, etc., and provides for the levy and collection of a tax to meet the payment of said bond: Held, that the act embraces but one subject, the care of the insane, which is fairly expressed in its title.

The different steps by which the result is to be accomplished are not different subjects, but minor parts of the same general subject. *Klein v. Kinkend*, 16 Nev. 194, 201, 204.

Held, that the statute authorizing county commissioners to transfer certain funds (Stats. 1879, p. 45) embraced but one subject—the transfer of surplus moneys from one fund to another—and that it does not violate the provisions of this section. *State ex rel. Board of School Trustees v. County Commissioners of Storey County*, 17 Nev. 96, 101, 102 (28 P. 122).

Section 23 of the salary law (Stats. 1879, p. 133), is not in conflict with this section. *Esser v. Spaulding*, 17 Nev. 290, 308 (30 P. 896).

The act to redistrict the state (Stats. 1885, p. 60), so as to make but one judicial district, is constitutional.

The title of the act, "An act to redistrict the State of Nevada, prescribe the number and salaries of district judges, and fix the places of holding courts, does not contravene this section. *State ex rel. Coffin v. Atherton*, 19 Nev. 332, 344, 345 (10 P. 901).

The "Act to amend an act reducing and regulating the salaries and compensation of certain state officers, justices of the supreme court and attaches of the state government," (Stat. 1885, p. 99) is in violation of the provisions of this section, and is absolutely null and void. *State ex rel. Drury v. Hallock*, 19 Nev. 384, 386, 387, 388, 389, 390 (12 P. 832).

The act entitled "An act fixing the time for the opening and closing of saloons and gaming-houses" (Stats. 1889, p. 71), is not repugnant to this section.

The word "saloon" clearly refers only to places where intoxicating liquors are kept, and is not misleading. *Ex Parte Livingston*, 20 Nev. 282, 284, 289 (4 L. R. A. 732, 21 P. 322).

In construing the provisions of the "act defining the duties of the state controller" which imposes penalties upon other officers for delinquencies in making settlements with the controller: Held, (1) that the title of the act is misleading; (2) that the act contains two subjects—one relating to the duties of the controller and the other to the imposition of penalties against other officers—and that it, in both respects, conflicts with the provisions of this section, and that the act, in so far as it undertakes to impose a penalty upon other officers, is unconstitutional. *State v. Hoadley*, 20 Nev. 317, 318, 319, 320 (22 P. 99). *Hawley, C. J.*, dissenting.

The act of February 23, 1887, entitled "An act relating to and consolidating certain county offices in the State of Nevada," provided that after the first Monday in January, 1889, district attorneys shall be ex officio superintendents of schools in their counties without additional compensation. The act of March 11,

1885, fixing the compensation of officers of Elko county, was amended by the act of March 5, 1887, so far as it fixed the compensation of sheriff, so as to give him a salary of \$4,000 per annum in lieu of fees, and that portion of the act fixing the salary of the district attorney at \$2,000 per annum and the superintendent of schools at \$600 per annum, was reenacted. Held, that the amendatory act was passed for the sole purpose of changing the compensation of the sheriff, and did not repeal the act of February 23, 1887. State ex rel. Love v. County Commissioners, 21 Nev. 19, 22 (23 P. 935).

An act does not embrace more than one subject, because while fixing the salaries and compensation of the officers of a county, it also provides for the consolidation of the offices of superintendent of schools and district attorney, and provides that the latter officer shall, for the salary provided, also discharge the duties formerly appertaining to the superintendent's office.

The act of March 9, 1891 (Stats. 1891, p. 30), embraces but one subject and matter properly connected therewith.

Where a portion of a statute is complete in itself and capable of being executed wholly independent of that which may be rejected, and there is no reason to suppose that the legislature would not have passed the act except as a whole: Held, that the courts will affirm the validity of such independent part, without considering whether the other is or is not unconstitutional. State ex rel. Dunn v. County Commissioners of Humboldt County, 21 Nev. 235, 237, 240 (29 P. 974).

The statutes of 1887, page 81, is entitled "An act to further define and punish embezzlement." Section one defines embezzlement, and section two fixes the penalty for a violation of section one. Held, that as the act is complete within itself, and does not conflict with the other existing statutes relating to embezzlement and its punishment, it does not amend such statutes, and therefore does not violate this section. State v. Trolson, 21 Nev. 419, 428, 432 (32 P. 930).

Where the title states that the subject of an act is to amend one section of a former statute, the act cannot be extended to the amendment of other sections.

Where the sections of an act are so separate and independent that one section can be made to operate in accordance with the intention of the legislature without the aid of the others, and the invalid section could not have constituted any inducement for the first, the courts will sustain that section, although the other sections are unconstitutional. Ex Parte Hewlett, 22 Nev. 333, 334 (40 P. 96).

The act of March 16, 1895 (Stats. 1895, p. 107), to amend an act concerning the purchase and preservation of newspapers, in so far as it attempts to regulate the matter of legal advertising and printing, is in conflict with the provisions of this section.

The purpose of this provision was to prevent the combination in one act of incongruous and distinct subjects, and also imposition upon the members of the legislature and the public, by covering up, under innocent titles, vicious and harmful provisions.

Where, by the title, the subject of an act is restricted to a certain purpose, the purview of the act cannot be extended to other purposes not indicated in the title. The act can be no broader than the subject expressed in the title. State ex rel. Norcross v. Commissioners of Washoe County, 22 Nev. 399.

While this section should be liberally construed, to the end that there may be no unnece-

sary hampering of legislation, this liberal construction should not go to the extent of nullifying the constitution. Where an act clearly embraces two distinct and independent subjects, or the real subject of the act is not expressed in the title, it is the duty of the courts to declare the act void. State ex rel. Norcross v. Commissioners of Washoe County, 22 Nev. 399, 409, 415 (41 P. 145).

The act incorporating the town of Reno (Stats. 1897, p. 50) is not in violation of this section. State ex rel. Fletcher v. Ruhe, 24 Nev. 251, 258 (52 P. 274).

The act of 1897, making the payment of the annual poll tax a condition to the right of voting, is unconstitutional, as its title, "An act to require the payment of poll tax by all legal voters under sixty years of age," does not comply with this section. State ex rel. Wilson v. Stone, 24 Nev. 308, 310 (53 P. 497).

Where a certain section of an act is complete and independent in itself, its validity is not affected on account of the subject of other sections of the act not being expressed in the title. State ex rel. Osburn v. Beck, 25 Nev. 68, 81 (56 P. 1008). Cited, Ex Parte Boyce, 27 Nev. 352, 353 (65 L. R. A. 47, 75 P. 1).

Act of March 12, 1873, p. 209, c. 121, sec. 59-62, is entitled "An act relating to elections," but provides that, in case any officer shall be guilty of malfeasance, he may be removed by summary proceedings on complaint of a private prosecutor, whereupon his successor shall be appointed, and, in case an appeal shall be taken, the officer removed shall not exercise the rights of his office pending the appeal. Held, that since the trial of an officer after his election for malfeasance in office, his removal, and the appointment of his successor, has no proper connection with the subject of elections, such sections were in violation of the provisions of this section. Bell v. First Judicial District Court, 28 Nev. 280, 296 (163 A. S. 854, 1 L. R. A. (N. S.) 843, 81 P. 875).

The title of the act of March 4, 1907 (Stats. 1907, p. 59, c. 32), entitled "An act to provide for the appointment of stenographers on the hearing of preliminary examinations, before committing magistrates, and to regulate the compensation therefor," is not sufficiently broad to include a provision for the subsequent use of the testimony on the trial.

The above act, providing in section 2 that the report of the stenographer shall be admissible in evidence on the trial of the case, as prescribed by Crim. Prac. Act, sec. 151, providing that, by consent of the parties, the testimony may be reduced to writing, and used by either party when the witness is sick, out of the state, dead, or when his personal attendance cannot be had in court, is repugnant to this section. State v. Gibson, 30 Nev. 353, 356, 357, 360 (96 P. 1057).

The act of March 26, 1907 (Stats. 1907, p. 229, c. 119), entitled "An act creating a board of bank commissioners, defining their duties, providing for the appointment of a bank examiner, prescribing his duties, fixing his compensation, providing penalties for the violation of the provisions of this act, and other matters relating thereto," though providing by section 10 for action by the attorney-general against a banking corporation, on the decision by the bank examiner and commissioners that it is unsafe for it to continue business, and that if the court shall find it unsafe, it shall appoint a receiver, does not contravene this section. State ex rel. Sparks v. State Bank and Trust Co., 31 Nev. 456, 465, 472, 473, 474 (103 P. 407).

Act of February 27, 1883, entitled "An act to regulate fees and compensation for official

and other services in the state, and to repeal all other acts in relation thereto," and regulating the fees of officers in the state, including sheriffs and constables, contains but one gen-

eral subject and matter properly connected therewith, and is not in conflict with this section. *Russell v. Esmeralda County*, 32 Nev. 304 (107 P. 890, 891).

### Bills, reading and passage.

**276. SEC: 18.** Every bill shall be read by sections on three several days, in each House, unless in case of emergency, two-thirds of the House where such bill may be pending, shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journals of each House; and a majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses, and by the Secretary of the Senate and Clerk of the Assembly.

T. C. C. p. 90.

Where an act has been passed by the legislature, signed by the proper officers of each house, approved by the governor, and filed in the office of the secretary of state, it constitutes a record which is conclusive evidence of the passage of the act as enrolled. Neither the journals kept by the legislature, nor the bill as originally introduced, nor the amendments attached to it, nor parol evidence, can be received in order to show that an act of the legislature, properly enrolled, authenticated and deposited with the secretary of state, did not become a law. This court, for the purpose of informing itself of the existence or terms of a law, cannot look beyond the enrolled act certified to by those officers who are charged by the constitution with the duty of certifying and with the duty of deciding what laws have been enacted. *State ex rel. George v. Swift*, 10 Nev. 176, 180, 181-185, 187-189, 192, 196, 199, 200 (21 A. R. 721).

Cited, *State ex rel. Chase v. Rogers*, 10 Nev. 250 (21 A. R. 738); *State ex rel. Cardwell v. Glenn*, 18 Nev. 35, 38, 39 (1 P. 186).

An enrolled bill, signed by the proper officers and deposited with the secretary of state, is conclusively presumed to have been regularly enacted; and the courts cannot look to memoranda endorsed on the bill, or to the legislative

journals, to determine whether the bill was read on three several days in each house, as required by this section. *State ex rel. Osburn v. Beck*, 25 Nev. 68, 79 (56 P. 1008); *State ex rel. Sutherland v. Nye*, 23 Nev. 99, 101 (42 P. 866).

Section 35, article 4, provides that, when a bill is received by the governor, within five days of the final adjournment of the legislature, he may prevent it from becoming a law by returning it to the secretary of state, with his objection, within ten days after the adjournment, but that such bill shall be referred to the succeeding legislature, which may pass it over the veto by a two-thirds vote. A bill was passed by both houses of the legislature, and signed by the presiding officers, who transmitted it to the governor, who returned it, with his objections, to the secretary of state after the adjournment of the session. Held, that the failure of the presiding officers of the succeeding legislature to sign the bill, which was passed over the veto, rendered the law invalid, since this section is mandatory, and applies to the passage of bills over the governor's veto. *State ex rel. Coffin v. Howell*, 26 Nev. 93, 99, 101, 102, 105 (64 P. 466), *Fitzgerald, J.*, dissenting.

### Public moneys, how disbursed and accounted for.

**277. SEC: 19.** No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the Legislature.

T. C. C. pp. 97, 471.

The legislature has power to appropriate money as it sees fit except when limited by the constitution. *Ash v. Parkinson*, 5 Nev. 17, 31.

Section 1 of the statutes of 1897 (page 82) provides that the following sums are appropriated "for the purposes hereinafter named, and for the support of the state government for the fiscal years 1897 and 1898. For the salary of the governor, \$8,000." Forty other sums are named for as many purposes, without designating any fund. Section 34 reads: For the salary of one teacher and one assistant teacher at the state orphans' home, \$2,400, payable out of the general school fund." Held, that, though the last clause of section 34 is in conflict with the constitution and void, the remainder of the section is not affected by such fact, and makes a valid appropriation out of the "general fund" in the state treasury. *State ex rel. Keith v. Westerfield*, 23 Nev. 468 (20 P. 119).

It will be observed that it is not required

that the fund out of which the appropriations are to be made shall be named in the appropriation act. Usually, if not always, other acts, or the constitution, show what fund the money appropriated is to be drawn from. *State ex rel. Keith v. Westerfield*, 23 Nev. 473 (49 P. 119).

Since Statutes 1901, p. 60, sec. 38, which makes appropriations for the fiscal years 1901 and 1902 for the current and contingent expenses of the supreme court, etc., appropriates money to pay for the furniture for the supreme court room, the question of the court's power, notwithstanding this section, to order furniture for its court room and require the state to pay therefor, in the absence of an appropriation act, does not arise. *State ex rel. Kitzmeyer v. Davis*, 26 Nev. 373, 380 (68 P. 689).

Statutes 1907 (p. 408, c. 185) created a state industrial and publicity commission, and

provided (sec. 3, p. 409) that the chairman should receive from the state treasury the sum of twenty-five hundred dollars a year in monthly installments, and that the members of the commission should be allowed necessary mileage and traveling expenses on affidavit of the members claiming the same that the mileage and expenses were actually and necessarily incurred in official business. Held, that the act consti-

tuted a sufficient appropriation of the salary of the chairman; but, as it failed to prescribe any maximum expenditure for traveling expenses, the act was void in so far as it authorized payment of such expenses by the state. *State ex rel. Davis v. Eggers*, 29 Nev. 469, 473, 485 (16 L. R. A. (N. S.) 630, 91 P. 519).

#### Legislative powers restricted.

**278. SEC: 20.** The Legislature shall not pass local or special laws in any of the following enumerated cases—That is to say:

Regulating the jurisdiction and duties of Justices of the Peace and of Constables:

For the punishment of crimes and misdemeanors:

Regulating the practice of courts of justice:

Providing for changing the Venue in civil and criminal cases:

Granting divorces:

Changing the names of persons:

Vacating roads, town plots, streets, alleys and public Squares:

Summoning and empanneling grand and petit juries, and providing for their compensation:

Regulating county and township business:

Regulating the election of county and township officers:

For the assessment and collection of taxes for State, County, and Township purposes:

Providing for opening and conducting elections of State, County, or Township officers, and designating the places of voting:

Providing for the sale of real estate belonging to Minors or other person [laboring]<sup>1</sup> under legal disabilities:

<sup>2</sup>[Giving effect to invalid deeds, wills, or other instruments:

Refunding money paid into the State Treasury, or into the treasury of any county:

Releasing the indebtedness, liability or obligation of any corporation, association, or person to the State, or to any county, town or city of this State; But nothing in this section shall be construed to deny or restrict the power of the Legislature, to establish and regulate the compensation and fees of county and township officers; to establish and regulate the rates of freight, passage toll, and charges of railroads, toll roads, ditch, flume and tunnel companies incorporated under the laws of this State or doing business therein.]

T. C. C. pp. 110, 472.

[As amended. Proposed and passed at the Twelfth Session of the Legislature, February 23, 1885, Statutes of 1885, page 152; agreed to and passed at the Thirteenth Session of the Legislature, March 3, 1887, Statutes of 1887, page 166, and approved and ratified by the people at a special election held February 11, 1889.]

Section two of the act of 1869, providing for the transfer of certain records and suits from the county-seat of Lander County to the county-seat of White Pine County (Stats. 1869, 137), though local and special in its nature, does not provide for changing the venue in any case, and is therefore not in conflict with this section.

To change the venue in a case is to direct the trial to be had in a different county from that where the venue is laid; but if a new county be created out of a portion of an old one, an act directing suits relating to property in the new one to be tried in the new county is not an act changing the venue of such suits.

Where the County of White Pine was created out of a portion of the County of Lander, and certain records and suits relating to property in the new county were directed by legislative act to be transferred from the county-seat of Lander County to the county-seat of White Pine County, and to be tried in the district court of the eighth instead of the sixth judicial district: Held, that such act was not an act changing venue within the meaning of the constitutional prohibition of a legislative change of venue. This act is not an act regulating the

practice of courts of justice. *State ex rel. Hooten v. McKinney*, 5 Nev. 194, 198, 201.

The venue is the county from which the jury are to come who are to try the issue. That is, it is the county wherein the action is brought and the jury are to be obtained. *State ex rel. Hooten v. McKinney*, 5 Nev. 199.

This section, so far as it forbids local or special laws "for the assessment and collection of taxes," was intended simply to inhibit local or special laws respecting or regulating the manner or mode of assessing and collecting taxes, and does not prevent the legislature from authorizing or directing county commissioners from levying a special tax by the passage of a local law. *Gibson v. Mason*, 5 Nev. 284, 304, 305.

The word "for" in this section which inhibits local or special laws "for the assessment and collection of taxes," means "with respect to," or "with regard to." *Gibson v. Mason*, 5 Nev. 284, 304.

The act creating the County of White Pine and providing for its organization (Stats. 1869, 108) is not in conflict with sections twenty, twenty-one, or thirty-two, of this article.

<sup>1</sup> In original but not in amendment as adopted.

<sup>2</sup> Added to original section by this amendment.

A "local" act is one operating over a particular locality instead of over the whole territory of the state; a "special" act is one operating upon one or a portion of a class instead of upon all of a class.

The above act as it refers to only one new county and its organization, instead of to all new counties, and to those only of a class or whole, occupying or proposing to occupy such county, is a local and special act.

The word "elected" in its ordinary signification carries with it the idea of a vote, generally popular, but sometimes more restricted, and cannot be held the synonym of any other mode of filling a position.

This act does not regulate the election of county and township officers, and is therefore not repugnant to this section. *State ex rel. Clarke v. Irwin*, 5 Nev. 111, 119, 121.

The legislature has full and complete control of the entire subject of counties and county-seats, save where prohibited by constitutional provisions.

The act of February 17, 1871, fixing the county-seat of Washoe County at Reno (Stats. 1871, 59) is not obnoxious to the constitutional provision against special and local legislation.

As the legislature has no authority to enact a local or special law when a general one can be made applicable, it is competent for the courts, in case of a special or local act properly presented to them, to inquire whether or not a general law could have been made applicable.

It appearing that the constitutional provision against special and local legislation was borrowed from Indiana, and that previous thereto the Indiana courts had decided that a special or local law could not be enacted when a general one could be made applicable, and that a general law could be made applicable to the subject of the removal of county-seats: Held, that the construction of the Indiana courts as to the meaning of the provision was adopted, but not their application of it to the subject of county-seats.

The decision as to whether a special or local law can be passed, or in other words, whether or not a general law can be made applicable, is primarily in the legislature; and its decision, though subject to review by the courts, will be presumptively correct.

Where, notwithstanding the existence of a general statute in relation to the removal of county-seats, the legislature passed a special act in reference to the removal of a particular county-seat: Held, that the presumption was that the general act was not and could not be made applicable. *Hess v. Pegg*, 7 Nev. 23, 27, 30.

The act of February 16, 1871, directing the issuance and payment of county warrants for the relief of James Leffingwell (Stats. 1871, 57) is a special law regulating county business, and therefore in violation of this section.

Under the constitutional provision against the passage of local or special laws regulating county or township business: Held, that a special act, auditing and allowing a preexisting claim against a county, appointing the mode and manner of its payment, directing the drawing of county warrants and fixing the rate of interest they should bear, was unconstitutional.

The policy of the constitution is local management of local affairs, regulated by general laws of uniform application throughout the state. *Williams v. Bidleman*, 7 Nev. 68, 70, 73.

Sections 20 and 21 of this article were intended to prohibit the legislature from passing any local or special law in any of the cases enumerated in section 20 and in all other cases where a general law would be applicable—that is, adapted to the wants of the people, suitable to the just purposes of legislation or to effect the object sought to be accomplished.

These provisions recognize the fact that cases would arise in the ordinary course of legislation requiring local or special laws to be passed—cases where a general law might be applicable to the general subject but not applicable to the particular case.

A general law should always be construed to be "applicable" in the constitutional sense, where the entire people of the state have an interest in the subject, such as regulating interest, the statutes of frauds and limitations, but where only a portion of the people are affected, as in locating a county-seat, it will depend upon the facts and circumstances of each particular case whether such a law would be applicable.

Where a local or special law has been passed in reference to a matter affecting a portion only of the people, it will be presumed to be valid until facts are presented showing beyond any reasonable doubt that a general law is applicable.

The mere fact that a general law has been passed providing for the removal of county-seats is not proof that it is applicable to a particular case; and if a special act be passed for the particular case, the presumption of the applicability of the general law is overcome by the pre-

sumption, in favor of the special act, that the general act was not applicable in that case.

If, when an unconstitutional portion of a statute is stricken out, that which remains is complete in itself and capable of being executed wholly independent of that which was rejected, it must be sustained. *Evans v. Job*, 8 Nev. 322, 333, 334.

The statutes of 1867 and 1869, creating a fund and providing for the redemption in a certain manner of outstanding indebtedness of Esmeralda County (Stats. 1867, 76; 1869, 58), are not in violation of this constitutional provision against "special and local laws regulating county business"; nor do they impair the obligation of contracts.

A statute prescribing the manner in which the payment of the indebtedness of a county shall be conducted is a law regulating county business.

The words "public or general" on the one hand, and "private or special" on the other, as applied to statutes, are convertible terms; so that the word "special" when used is as much the antithesis of "public" as it is of "general."

A statute, to be general, must be operative alike upon all persons similarly situated; but it need not be applicable to all counties in the state.

The above statutes are applicable to all persons sustaining the relation of creditors to Esmeralda County, and are therefore general as contradistinguished from special laws.

As in expounding a constitutional provision such construction should be employed as will prevent any clause, sentence or word from being superfluous, void or insignificant: full and distinct meaning should be given to each of the words "local" and "special" in the constitutional provision against "local and special laws regulating county business."

A statute may be special and not local, or it may be local and not special.

A local law is one relating, belonging or confined to a particular place as distinguished from general, personal or transitory.

The said statutes, as they embrace all persons holding a certain species of property irrespective of locality, and operate as to such property as well without as within Esmeralda County, are not local laws. *Youngs v. Hall*, 9 Nev. 212, 217, 222, 223, 224.

The constitutionality of the act funding the indebtedness of Lincoln County (1873, 54) sustained upon the authority of *Youngs v. Hall* (9 Nev. 212). *Odd Fellows Savings and Commercial Bank v. Quillen*, 11 Nev. 109, 115.

The provision of the act creating the office of city recorder has no reference to the jurisdiction of justices of the peace. The offices are distinct, though under the act of incorporation both offices may be held by the same person. *State ex rel. Rosenstock v. Swift*, 11 Nev. 128, 140.

A law which applies only to an individual or to a number of individuals selected out of the class to which they belong, is a special law. *State v. California M. Co.*, 15 Nev. 234, 248, 249.

Sections 2 and 4 of the "Act to discontinue litigation touching inequitable claims for taxes and penalties" (Stats. 1879, 143) are unconstitutional, being a special law for the "collection of taxes for state, county, and township purposes" in violation of this section.

The "Act prescribing an additional penalty for the non-payment of taxes in certain cases after suit" (Stat. 1873, 169), is constitutional, it being a general law imposing the same burdens upon all persons similarly situated and belonging to the same class. *State v. Con. Virginia M. Co.*, 16 Nev. 432, 438, 443, 444, 445, 447, 448.

Section 2 of the statute of 1883, 123, extending the terms of county assessors beyond the time for which they were elected, is unconstitutional and void. *State ex rel. Perry v. Arrington*, 18 Nev. 412, 418, 419 (4 P. 735).

The act regulating the compensation of county officers (Stat. 1885, 85) is not in violation of this section prohibiting the legislature from passing local or special laws "for the assessment and collection of taxes for state, county and township purposes." It is within the power of the legislature to pass local or special laws regulating the compensation of county officers.

The said statute, in so far as it relates to Washoe County, is constitutional. *State ex rel. Williams v. Fogus*, 19 Nev. 247, 249, 251, 252 (9 P. 123).

The legislature has the power to make a classification of counties, based upon a voting population. The validity of such an act is not dependent upon the number of counties coming within the designated class. If in its operation and effect the act is so framed as to apply in the future to all counties coming within the class mentioned and is based upon real and substantial grounds—not illusory or odious in their character—it is neither local nor special within the meaning of this section.

An act to restrict gaming providing that certain games should not be carried on in any room of the first floor or story of any building, nor a license issued therefor in any county where more than 1,500 votes were cast at the general election last preceding the application, is not in violation of this section, although at the time the application was made there was only one county in the state to which the law could apply. *State ex rel. Patterson v. Donovan*, 20 Nev. 75, 78, 80 (15 P. 783).

The act of the legislature (Stats. 1887, p. 126) regulating the fees and compensation of the officers of Ormsby County is not unconstitutional as being local or special legislation. *The Comstock Mill and Mining Co. v. Allen*, 21 Nev. 325, 330 (31 P. 434).

The act of 1891, page 56, is simply an exercise of the right of the legislature to classify property for the purpose of taxation, and as in authorizing the board to assess property it applies to all railroads in the state, it is a general law, and not in conflict with this section forbidding special laws for the assessment and collection of taxes. *Sawyer v. Dooley*, 21 Nev. 391, 398 (32 P. 437).

A law, though not applicable to all counties in the state, may be of a general nature by reason of the fact that localities and objects upon which it acts are distinguished from others by a peculiar relation to the legislative purpose. *Singleton v. Eureka County*, 22 Nev. 91, 94 (35 P. 833).

The act of the legislature entitled "An act fixing the salary of the justice of the peace in and for Eureka township, Eureka County, State of Nevada" (Statutes, Nevada, 1891, p. 35), by terms of which the justice of the peace in the township named was allowed a salary of \$60 per month in lieu of fees from the county, though a special and local act, is not unconstitutional and is therefore valid.

The former constitutional restriction upon the legislature concerning the subject of compensation of county and township officers was, prior to the year 1891, removed in terms by the amendment of this section by the *exception* to the provision restricting the legislature concerning the passing of special and local laws regulating county and township business (as amended February 11, 1889). *State ex rel. McNamee v. Spinner*, 22 Nev. 213, 217 (37 P. 837).

The act of the legislature of March 15, 1895 (Stats. 1895, p. 73), entitled "An act to incorporate Storey County and to provide for the government thereof," is a local and special act regulating county business, and consequently in conflict with this section. *Schweiss v. First Judicial District Court*, 23 Nev. 226, 230, 232 (34 L. R. A. 602, 45 P. 289).

The act approved March 6, 1897 (Stats. 1897, p. 47) providing for the payment of the indebtedness of Lincoln County, is not in violation of the constitutional provision against "special and local laws regulating county business."

In this case, the court having passed upon the point involved in two other cases, the legislature having

### Laws general and uniform.

**279. SEC: 21.** In all cases enumerated in the preceding section, and in all other cases, where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

T. C. C. pp. 15, 112, 462.

See *State ex rel. Clarke v. Irwin*, 5 Nev. 111, 119, 120, under sec. 20 of this article.

A general law to be "applicable," in the sense in which the word is used in this section, must answer the just purpose of legislation, that is, best subserve the interest of the people of the state, or such class or portion as the particular legislation is intended to affect. *State ex rel. Clarke v. Irwin*, 5 Nev. 111, 119, 120, 121.

The legislative fund, act of 1869 (Stats. 1869, 54), does not violate this section, because no general law could be made applicable to its subject-matter. *State ex rel. Ash v. Parkinson*, 5 Nev. 15, 23.

The statute providing for the admission to probate of the unattested will of Henry Sticknoth (Stats. 1871, 129) was held not objectionable as a special act in case where a general law could be made applicable. In re *Sticknoth*, 7 Nev. 224, 233.

In construing section 6 of the act of 1875, p. 47, which provides that it shall not apply "to those who have practiced medicine or surgery in this state for a period of ten years next preceding the passage of this act": Held, that said provision is not in violation of this section.

Held, that there is some reason for requiring ten years' practice in this state as a qualification for the continued practice of medicine or surgery; but there is no sort of reason for requiring that practice to have extended over

passed a number of acts of the same character, and it having been the recognized law of the state for a number of years, the question must be considered as settled. *Thompson v. Turner*, 24 Nev. 292, 298 (53 P. 178).

This section prohibits the legislature from passing local or special laws for the assessment and collection of taxes. As held by this court in *Ex Parte Robinson*, 12 Nev. 263, 28 Am. Rep. 794, and *Ex Parte Cohn*, 13 Nev. 427, these limitations apply to taxes, and not to licenses, leaving the legislature to regulate the latter with a free hand where they do not encroach and discriminate in relation to taxes as properly and ordinarily understood, and without other restraint except the responsibility of the legislators to their constituents. *Wallace v. Mayor of Reno*, 27 Nev. 71, 77 (103 A. S. 747, 63 L. R. A. 337, 73 P. 528).

Cited, *Ex Parte Boyce*, 27 Nev. 352, 353, 358, 359 (65 L. R. A. 47, 75 P. 1).

The act of March 29, 1907, making it a crime to receive bank deposits knowing the bank to be insolvent, is not unconstitutional, as being a special law for the punishment of offenses. Neither is the law objectionable as class legislation. *Ex Parte Pittman*, 31 Nev. 44, 47 (22 L. R. A. (N. S.) 266, 99 P. 700).

The act of March 26, 1907, authorizing a particular county to issue bonds to build a court-house and a jail, is not unconstitutional under this section, which inhibits local or special laws regulating county business, nor under sections 21 and 25 requiring the county government system to be uniform, and all laws to be general and of uniform operation throughout the state, where general laws can be made applicable. *State ex rel. Henderson Banking Co. v. Lytton*, 31 Nev. 67, 68, 69 (99 P. 853).

The act of March 26, 1907 (Stats. 1907, p. 232, c. 119), section 10, is not open to the objection of being special legislation because providing for appointment of receivers for insolvent banks only; banks being a subject which may be legislated on alone. *State ex rel. Sparks v. State Bank and Trust Co.*, 31 Nev. 456, 465, 471, 472, 473 (103 P. 407).

See *Wolf v. Humboldt County*, 32 Nev. 174 (105 P. 286, 287), under section 21 of this article.

The act of February 27, 1883, regulating the fees of officers in the state, including sheriffs and constables, and providing that the act shall not affect the fees of officers of any county wherein the total vote does not exceed 800, and the same shall apply to all future elections, etc., does not conflict with this or section 21 of this article, since a general law fixing the compensation of officers of counties cannot be enacted, as it would result in making the compensation of officers inadequate in the small counties and exorbitant in the larger counties. *Russell v. Esmeralda County*, 32 Nev. 304 (107 P. 890, 892).

*Nevada Cons. Deb. & Pro.*, pp. 146, 147, 152, cited in *State v. Fogus*, 19 Nev. 251, 252, (9 P. 123), with reference to this section.

the particular ten years immediately preceding the enactment of the law, and to this extent the law is unconstitutional, because in violation of the fourteenth amendment to the federal constitution; but omitting the words "next preceding the passage of this act," leaves a good and perfect statute. (By *Beatty, J.*)

Held, that said section is not in conflict with any of the provisions of the state or federal constitution. (By *Hawley, C. J.*) *Ex Parte Spinney*, 10 Nev. 323, 329, 330, 332, 337.

The act incorporating Carson City (Stats. 1875, 87) is not in violation of the provisions of this section. (*Evans v. Job*, 8 Nev. 323, affirmed). *State ex rel. Rosenstock v. Swift*, 11 Nev. 129, 141.

It is made the duty of the legislature to regulate the election of township and county officers by general laws. *State ex rel. Perry v. Arrington*, 18 Nev. 418, 419 (4 P. 735).

The act of February 23, 1903 (Stats. 1903, p. 33, c. 10), providing an eight-hour day for workmen in mines, smelters, and mills for the reduction of ores, is not void, under section 1 of article 1 of our constitution, nor is the statute in conflict with this section. *Ex Parte Boyce*, 27 Nev. 299, 352, 353, 358, 359 (65 L. R. A. 47, 75 P. 1).

The clause of the act of February 18, 1893 (Stats. 1893, p. 30, c. 31), providing for an attorney's fee in favor of the party recovering damages against one unlawfully

herding or grazing stock on his land is a proper police regulation and is constitutional. *Pyramid Land and Stock Company v. Pierce*, 30 Nev. 237, 256 (95 P. 210).

See *Russell v. Esmeralda County*, 32 Nev. 304, 107 P. 891, under section 20 of this article.

Section 20 prohibits the legislature from passing local or special laws "regulating the jurisdiction and duties of the justices of the peace and of constables, and for the punishment of crimes and misdemeanors, regulating county and township business." Section 21 provides that "in all cases enumerated in the preceding section and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state." Section 25 provides that "the Legislature shall establish a system of county and township government which shall be uniform throughout the state." Act of the Legislature approved March 13, 1903 (Stats. 1903, p. 98, c. 71), provides that the commissioners of H. County could provide that persons charged with or convicted of a misdemeanor in the western townships of said county may be imprisoned in the branch county jail of said county, instead of the county jail. Held, that such act was unconstitutional, as being a special act upon a subject that could be covered by a general act. *Wolf v. Humboldt County*, 32 Nev. 174 (105 P. 286, 287).

Cited, *State ex rel. White v. Dickerson*, 33 Nev.—(113 P. 107).

### Suit may be brought against the State.

**280. SEC: 22.** Provision may be made by general law for bringing suit against the State as to all liabilities originating after the adoption of this Constitution.

T. C. C. pp. 404, 501.

### Enacting clause.

**281. SEC: 23.** The enacting clause of every law shall be as follows: "The people of the State of Nevada, represented in Senate and Assembly, do enact as follows." and no law shall be enacted except by bill.

T. C. C. pp. 74, 90.

This provision is mandatory.

The omission of the words "Senate and" from the enacting clause of an act of the legislature, renders the act unconstitutional and void.

The above provision of the constitution is an imperative mandate of the people in their sovereign capacity,

### Lottery inhibited.

**282. SEC: 24.** No lottery shall be authorized by this State nor shall the sale of lottery tickets be allowed.

T. C. C. pp. 125, 472.

The act of March 3, 1871, to aid the Nevada Benevolent Association in providing means to erect an insane asylum (Stats. 1871, 110) in so far as it authorized a lottery or allowed the sale of lottery tickets in this state, was unconstitutional. *Ex Parte Blanchard*, 9 Nev. 101, 104.

The act to aid the Nevada Benevolent Association in providing means for the care and maintenance of the insane of Nevada (Stats. 1881, 166) provides that it shall

### County government.

**283. SEC: 25.** The Legislature shall establish a system of County and Township Government which shall be uniform throughout the State.

T. C. C. pp. 246, 500.

A law, though not applicable to all counties in the state, may be of a general nature by reason of the fact that localities and objects upon which it acts are distinguishable from others by a peculiar relation to the legislative purpose. *Singleton v. Eureka County*, 22 Nev. 91, 94, 101 (35 P. 833).

The act of the legislature of March 15, 1895 (Stats. 1895, p. 73), entitled "An act to incorporate Storey County and provide for the government thereof," is void because in conflict with this section in many particulars. *Schweiss v. First Judicial District Court*, 23 Nev. 226, 230, 232 (34 L. R. A. 602, 45 P. 289).

See *Wolf v. Humboldt County*, 32 Nev. 174 (105 P. 286, 287), under section 21 of this article.

See *State ex rel. Henderson Banking Co. v. Lytton*, 31 Nev. 67, 68, 69, under section 20 of this article (99 P. 855).

The legislature is required to make a uniform system of county government and to provide for a uniform sys-

See *State ex rel. Henderson Banking Co. v. Lytton*, 31 Nev. 67-69 (99 P. 855) under sec. 20 of this article.

An act of the legislature provided that after May 1, 1911, the county commissioners of Lyon County should remove the offices and archives and other movable property from Dayton to Yerington. The general act of 1877 (Stats. 1877, c. 84), provides for the removal of county-seats by a majority of the voters at an election called on petition of three-fifths of the taxpayers who are electors. Prior to the last general election the courthouse at Dayton was destroyed by fire. Held, that the special act was justified on the ground that an emergency existed, calling for prompt action.

If a special act be passed for a particular case, the presumption of the applicability of the general law is overcome by the presumption in favor of the special act that the general act was not applicable.

The legislature in the first instance is the judge as to whether a law on any subject not enumerated in the constitution can be made general and applicable to the whole state, and the judgment of the legislature as to whether a general law is applicable or special, or local laws are required regarding subjects not so enumerated, is presumed to be correct, but is subject to review by the courts.

In locating a county-seat, it will depend upon the facts and circumstances of each case whether a special law is applicable. *Quilici v. Strossider*, 33 Nev.—(115 P. 177, 178).

to the legislature, requiring that all laws, to be binding upon them, shall upon their face express the authority by which they were enacted, and an act without such authority appearing upon its face is not a law. *State ex rel. Chase v. Rogers*, 10 Nev. 250, 252, 256, 257, 260 (21 A. R. 738).

be lawful for the association to give public entertainments, to sell tickets of admission, to distribute among the ticket-holders personal property, and to regulate the distribution by raffle or other schemes of like character: Held, that the scheme or enterprise in which the association is engaged is a lottery, and that the act is unconstitutional. *State ex rel. Murphy v. Overton*, 16 Nev. 136, 146, 148, 149.

tem of public schools. In carrying out these provisions, they may abolish any county offices other than those specially created by the constitution. *State v. Tilford*, 1 Nev. 240, 245.

It was the intention of the legislature to classify the counties by a voting population at the general election, and to give to each county polling four thousand or more votes five commissioners, and all other counties three, for a period of two years, commencing on the first Monday in January after the general election, in pursuance of the provisions of this section. *State ex rel. Copeland v. Woodbury*, 17 Nev. 338, 340, 344 (30 P. 1006).

The act fixing the salaries of county officers in certain counties (Stats. 1883, 73), is illusory, because some of its provisions are applicable only to Washoe County and others only to Esmeralda County, and the basis of the classification as made in section 10 is unconstitutional, because in its practical operation it is applicable only to two counties and can never affect any other county.

In order to observe the uniformity required by this section, the classification of counties must be based upon reasonable and actual differences; the legislation must be appropriate to the classification, and embrace all within the class.

The requirement that the system of county government shall be uniform, is not considered to impart universality to the operation of the law. State ex rel. Attorney-General v. Boyd, 19 Nev. 43, 44, 46 (5 P. 735).

State v. Boyd, 19 Nev. 43, related to the provisions of

the act of 1883 attempting to make the treasurer of Washoe County ex officio assessor, and it was decided that the act, in so far as it established a difference in the government of Washoe County from that of the other counties in the state, violates the uniformity contemplated by this section. State ex rel. Williams v. Fogus, 19 Nev. 247, 254 (9 P. 123).

Cited, ex rel. Dunn v. Board of Commissioners of Humboldt County, 21 Nev. 239.

### County government.

**284. SEC: 26.** The Legislature shall provide by law, for the election of a Board of County Commissioners in each County, and such County Commissioners shall jointly and individually perform such duties as may be prescribed by law.

T. C. C. p. 248, 500.

The board of county commissioners is not a court as courts are defined in the constitution. And such bodies may lawfully meet and transact business on the first day of January. Brumfield v. Board of County Commissioners of Douglas County, 2 Nev. 65, 67.

There are certain county offices designated in the constitution. These offices cannot be abolished without a constitutional change, nor the incumbents removed prior to January, 1867. Other county offices can be created or abolished at the will of the legislature. State v. Tilford, 1 Nev. 240, 244.

The constitutional provision relating to county commissioners seems to have been adopted from California; and it may be lawfully presumed to have been taken

with the judicial interpretation attached to it in that state. State ex rel. Mason v. Board of County Commissioners of Ormsby County, 7 Nev. 392, 397.

This section does not prevent the legislature, after the board has been once created, from increasing or decreasing the number of commissioners that shall constitute the board. State ex rel. Copeland v. Woodbury, 17 Nev. 337, 341 (30 P. 1006).

Cited, State ex rel. Perry v. Arrington, 18 Nev. 416, 419 (4 P. 735).

The words "election," in this section, and "election by the people," in section thirty-two, of this article, contemplate the same mode of election and imply a popular vote. State ex rel. Clarke v. Irwin, 5 Nev. 111, 121, 125.

### Who may be excused from juries.

**285. SEC: 27.** Laws shall be made to exclude from serving on juries, all persons not qualified electors of this State, and all persons who shall have been convicted of bribery, perjury, forgery [forgery], larceny or other high crimes, unless restored to civil rights; and laws shall be passed regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

T. C. C. p. 406.

### Salaries fixed by law not increased or diminished.

**286. SEC: 28.** No money shall be drawn from the State Treasury as salary or compensation to any Officer or Employee of the Legislature, or either branch thereof, except in cases where such Salary or compensation has been fixed by a law in force prior to the election or appointment of such Officer or Employee; and the Salary or Compensation so fixed, shall neither be increased nor diminished so as to apply to any Officer or Employee of the Legislature, or either branch thereof at such Session; Provided, that this restriction shall not apply to the first session of the Legislature.

T. C. C. p. 97.

Cited, State ex rel. Ash v. Parkinson, 5 Nev. 31, 32.

It is said that the salaries and compensation exempted by the constitution must be those that have been settled by preexisting law. Had such been the intention, apt words would have been employed. For instance: This section provides (reciting same). The language used shows that its framers intended that no question should

arise touching the meaning that should be attached to it, and it is probable that if any restriction or qualification had been intended to apply to this section, it would have been fairly expressed, and not left to implication or conjecture. State ex rel. Cutting v. LaGrave, 23 Nev. 390 (48 P. 370).

### Legislative session limited.

**287. SEC: 29.** The first regular Session of the Legislature under this Constitution, may extend to Ninety days, but no subsequent regular Session shall exceed Sixty days, nor any Special Session, convened by the Governor, exceed twenty days.

T. C. C. p. 81.

### Homestead exempt from forced sale.

**288. SEC: 30.** A homestead, as provided by law, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife when that relation exists; but no property shall be exempt from sale for taxes or for the payment of obligations con-

tracted for the purchase of said premises, or for the erection of improvements thereon; Provided, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife; and laws shall be enacted providing for the recording of such homestead within the County in which the same shall be situated.

T. C. C. pp. 389, 502.

See Homesteads, Husband and Wife and Estates of Deceased Persons, *post*.

The constitution and the law have given the wife certain rights; the failure of the legislature to point out the particular manner in which she shall assert them is immaterial. She may come into a court of equity according to the established forms and usages of that court, and obtain any equitable relief to which she is entitled. *Goldman v. Clark*, 1 Nev. 607, 610.

It is clearly the intention of the constitution to protect a debtor's homestead from forced sale. It is equally clear the legislature intended to effectuate that intention. This being the policy of the law, creditors will not be allowed to defeat its object unless the statute clearly gives that right, or clearly points out the contingency upon the transpiring of which the debtor will lose his exemption.

Property which possesses the characteristics of a homestead may be selected and recorded as such at any time before actual sale under execution. The levy of an attachment will not prevent such selection. *Hawthorne v. Smith*, 3 Nev. 182, 186, 187, 188 (93 A. D. 397).

The act of March 6, 1865 (Statutes of 1864-5, 224), to exempt the homestead and other property from forced sale in certain cases, in so far as it provides that no valid mortgage, for the purpose of securing a loan or indebtedness, can be made by husband and wife upon their homestead, is unconstitutional.

The proviso of this section expressly prohibits the legislature from exempting the homestead from forced sale upon a lien created by husband and wife for a loan or indebtedness. *Dunker v. Chedic*, 4 Nev. 378, 381, 382, 383.

There can be no homestead right acquired in property as against the purchase money unless the lien therefor, whether created by mortgage or existing by way of vendor's lien, has been relieved in some lawful way.

In a foreclosure suit on a mortgage given by a husband to secure the purchase money of land, and made contemporaneously with the deed of the land to him, the wife,

being admitted to defend, set up a homestead right: Held, that neither husband nor wife could acquire any homestead right as against the mortgage debt. *Hopper v. Parkinson*, 5 Nev. 233, 237.

In construing the homestead law of 1865: Held, that a town lot upon which is erected a dwelling-house, two other buildings used as stores, and a stone house for storing goods, the buildings being separate from each other, can be claimed and held as a homestead; that the law exempts from execution a tract of land in which the homestead is located, to the extent of five thousand dollars in value, without limiting the other uses to which the land is put, as long as it is used and claimed as a homestead. *Smith v. Stewart*, 13 Nev. 65.

In construing the homestead law of this state: Held, that when a declaration of homestead is filed, the property is held by the husband and wife as joint tenants, and that upon the death of either the homestead property vests absolutely in the survivor. (*Beatty, J.*, dissenting.)

When no declaration has been filed upon the homestead property, no joint tenancy is created; in such case if it was common property, one-half vested in the wife upon the death of the husband, and the other half vested in the minor children of said deceased and his wife. *Smith v. Shrieves*, 13 Nev. 303, 329.

A homestead, in fact, in the absence of a recorded declaration that it has been selected as such, can be mortgaged by the husband alone without the consent of his wife. *Child v. Singleton*, 15 Nev. 461, 463.

A homestead duly filed upon while husband and wife were residing thereon, remains a homestead in his hands after her death, and as such is exempt from levy and sale for his debts where he continues to reside upon it, although he has no children or other dependent relatives residing with him. *Roberts v. Greer*, 22 Nev. 318, 329 (58 A. S. 755, 40 P. 6).

### Separate property of wife.

289. SEC: 31. All property, both real and personal, of the wife owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed, more clearly defining the rights of the wife in relation, as well to her separate property, as to that held in common with her husband. Laws shall also be passed providing for the registration of the Wives separate property.

T. C. C. pp. 405, 502.

### Power of Legislature over county officers.

290. SEC: 32: The Legislature shall have power to increase, diminish, consolidate, or abolish the following county officers: County Clerks, County Recorders, Auditors, Sheriffs, District Attorneys, County Surveyors, Public Administrators and Superintendents of Schools. The Legislature shall provide for their election by the people, and fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of Record and of the Boards of County Commissioners in and for their respective counties.

[As amended. Proposed and passed at the Thirteenth Session of the Legislature, March 3, 1887, Statutes of 1887, page 161; agreed to and passed at the Fourteenth Session of the Legislature, January 17, 1889, Statutes of 1889, page 151, and approved and ratified by the people at a special election held February 11, 1889.]

T. C. C. pp. 210, 483, 490.

[SEC: 32. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders who shall be ex-officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators and other necessary officers, and fix by law their duties and compensation. County Clerks shall be ex-officio Clerks of the Courts of Record, and of the Boards of County Commissioners in and for their respective Counties.]

Original section as above.

Cited, *Vesey v. Hermann*, 1 Nev. 36, 37, 38, 39.

Cited, *State v. Tilford*, 1 Nev. 244.

The county recorders who, under this section, become ex officio auditors, are those only who are elected under a legislative enactment passed after the adoption of the constitution. The fact that a recorder is elected after the adoption of the constitution, but not under a law passed after its adoption, will not entitle him to the position of auditor. *Brown v. Davis*, 1 Nev. 409, 413, 415.

Cited, *State v. Selge*, 2 Nev. 324.

"Election by the people," see citation under section 26 of this article, from *State ex rel. Clarke v. Irwin*, 5 Nev. 111, 119, 120.

The constitutional provision requiring county and township officers to be elected by the people, does not apply in cases of emergency or special occasion, such as the creation of a new office or a vacancy. *State ex rel. Clarke v. Irwin*, 5 Nev. 111, 112, 119, 121.

Cited, *Esser v. Spaulding*, 17 Nev. 309 (30 P. 896).

County assessors are necessary officers within the meaning of this section, and must be elected by the people. The legislature has no power to extend the terms of such officers beyond the time for which they were elected, except temporarily in cases of emergency.

Section 2 of the Statutes of 1883, 123, extending the terms of county assessors beyond the time for which they were elected, is unconstitutional and void. *State ex rel. Perry v. Arrington*, 18 Nev. 412 (4 P. 735).

This section, as it formerly stood, requiring the legislature to provide for the election of certain state and county officers, "and other necessary officers," referred by the words quoted to officers *ejusdem generis* with those enumerated, and not to other classes of officers. *State ex rel. Summerfield v. Clarke*, 21 Nev. 334, 338 (37 A. S. 517, 18 L. R. A. 313, 31 P. 545).

Cited, *Lobenstein v. Storey County*, 22 Nev. 382 (40 P. 1016).

### Compensation, expenses.

291. SEC: 33. The members of the Legislature shall receive for their services, a compensation to be fixed by law and paid out of the Public treasury, but no increase of such compensation shall take effect during the term for which the members of either house shall have been elected. Provided, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, news papers and Stationery, not exceeding the sum of Sixty dollars, for any general or Special Session, to each member: and Furthermore Provided, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their Actual Attendance as such presiding Officers receive an additional allowance of two dollars per diem.

T. C. C. pp. 101, 471.

The law making the lieutenant-governor ex officio warden of the state prison, and allowing him a salary for such services, does not conflict with this section. The lieutenant-governor in office at the time of the passage of the law may, therefore, draw the salary allowed to him as warden. *Crosman v. Nightingill*, 1 Nev. 323, 325, 326.

The legislative fund act of 1869 (Stats. 1869, 54) in so far as it provides for interest on warrants drawn for the pay of legislators, is not repugnant to this section, for the reason that the interest, if any accrues, is to be paid

### Elections of U. S. Senators.

292. SEC: 34. In all elections for United States Senators, such elections shall be held in joint convention of both Houses of the Legislature. It shall be the duty of the Legislature which convenes next preceding the expiration of the term of such Senator, to elect his successor. If a vacancy in such Senatorial representation from any cause occur, it shall be the duty of the Legislature then in Session, or at the succeeding Session thereof, to supply such vacancy. If the Legislature shall at any time as herein provided, fail to unite in a joint convention within twenty days after the commencement of the Session of the Legislature, for the Election [of] such Senator, it shall be the duty of the Governor, by proclamation to convene the two Houses of the Legislature in joint convention, within not less than five days, nor exceeding ten days, from the publication of his proclamation, and the joint convention when so assembled shall proceed to elect the Senator as herein provided.

This section prior to amendment of 1889, provided that the legislature should provide for election of a clerk of supreme court and certain county officers. Provision for the election of such clerk was made. This section, as amended in 1889, requires that the legislature shall provide for the election of certain county officers, omitting mention of the clerk. Sections 8 and 12 of article 15 of the constitution provide that the clerk shall have his office at the seat of government, and that opinions of the supreme court must be filed therein before its judgments become operative: Held, that the office of clerk of the supreme court was not abolished by its omission from the amendment of 1889 and the failure of the legislature to reestablish it, but continued as a constitutional office under the provision made pursuant to the original constitution; and hence Statutes 1893, page 32, providing that the secretary of state shall be ex officio clerk of the supreme court, was effective. *State ex rel. Howell v. La Grave*, 23 Nev. 374, 383, 384, 385 (48 P. 674).

This section provides, as amended in 1889, that the legislature shall have power to increase, diminish, consolidate or abolish certain county officers: Held, that by expressly designating certain offices which might be consolidated, the constitution intended to exclude all other offices, and hence the act of February 20, 1893 (Stats. 1893, p. 32, c. 35), providing that the secretary of state shall be ex officio clerk of the supreme court and ex officio state librarian, while sufficient to confer color of authority on the secretary of state acting ex officio clerk of the supreme court, it is without force as an amendment or repeal, by implication, of the statute (Comp. Laws, sections 1782, 1790, and 1793) providing for the election of a clerk of the supreme court in the manner other state officers are elected. *State ex rel. Josephs v. Douglass*, 33 Nev. —(110 P. 177, 178, 181).

not as compensation for services but as damages for delay. *State ex rel. Ash v. Parkinson*, 5 Nev. 16, 28.

The legislature passed an act in favor of relator, for payment of his services as president pro tem. of the senate, in addition to his regular pay as senator. Held, that this was in effect an attempt to increase his compensation as a senator, and hence, unconstitutional. *State ex rel. King v. Hallock*, 16 Nev. 152, 153.

Cited, *State ex rel. Howell v. LaGrave*, 23 Nev. 383 (48 P. 674).

**Governor's veto powers.**

**293. SEC: 35.** Every bill which may have passed the Legislature, shall, before it becomes a law be presented to the Governor. If he approve it, he shall sign it, but if not, he shall return it with his objections, to the House in which it originated, which House shall cause such objections to be entered upon its Journal, and proceed to reconsider it; If after such reconsideration it again pass both Houses, by Yeas and Nays, by a vote of two thirds of the members elected to each House, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him (Sunday excepted) exclusive of the day on which he received it, the same shall be a law, in like manner as if he had signed it, unless the Legislature by its final adjournment prevent such return, in which case it shall be a law, unless the Governor within ten days next after the adjournment (Sundays excepted) shall file such bill with his objections thereto, in the Office of the Secretary of State, who shall lay the same before the Legislature at its next Session, in like manner as if it had been returned by the Governor, and if the same shall receive the vote of two thirds of the members elected to each branch of the Legislature, upon a vote taken by Yeas and Nays to be entered upon the Journals of each House, it shall become a law.

T. C. C. pp. 91, 469.

Without the express approval of the governor, an act of the legislature can only become a law in two cases. First: When it is passed over his objections by a two-thirds' vote of each house. Second: When he fails to return a bill with his objections within the time prescribed by the constitution.

When the governor in due time sends back a bill which has been submitted to him, stating that he cannot act on it because of some supposed informality in its passage, this is in effect an objection to the bill, and it can only become a law by further action of the legislative branch, although the governor may have been mistaken as to the supposed defect in the bill. *Birdsall v. Carrick*, 3 Nev. 154, 156, 157.

Cited, *Jones v. Theall*, 3 Nev. 235.

Cited, *State ex rel. Osburn v. Beck*, 25 Nev. 79 (56 P. 1008).

A bill was passed by both houses of the legislature, and signed by the presiding officers, who transmitted it to the governor, who returned it, with his objections, to the secretary of state after the adjournment of the session: Held, that the failure of the presiding officers of the succeeding legislature to sign the bill, which was passed over the veto, rendered the law invalid, since section 18 is mandatory, and applies to the passage of bills over the governor's veto. (*Fitzgerald, J., dissenting.*) *State ex rel. Coffin v. Howell*, 26 Nev. 93, 99, 100, 101, 102, 103, 104, 105 (64 P. 466).

An enrolled bill, signed by the proper officers, approved by the governor, and filed with the secretary of state, is conclusive evidence of the passage of the act as enrolled. (See citations under section 18 of this article.)

**ARTICLE 5.****EXECUTIVE DEPARTMENT.****Executive power vested.**

**294. SECTION 1.** The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada.

T. C. C. pp. 139, 475.

The act incorporating Carson City (Stats. 1875, 87) is not in conflict with this section. Naming, in the act of incorporation, the persons who were to constitute the provisional or initiatory board of trustees was not the exercise of a power intrinsically executive. *Clarke v. Irwin*, 5 Nev. 111, affirmed; *State ex rel. Rosenstock v. Swift*, 11 Nev. 128, 135.

Cited, *State ex rel. Perry v. Arrington*, 18 Nev. 416 (4 P. 735).

The governor may recommend the passage of laws, and may veto bills passed by the senate and assembly; but

when an act not in conflict with the constitution passes both houses of the legislature, and is approved by him or passes over his veto, it becomes binding, and no person is above a law so enacted. As he cannot prevent its passage over his veto, he is powerless to set aside a statute after it has become a law.

Neither the legislature nor the courts can compel the governor to perform acts which would be in conflict with the powers and prerogatives conferred upon him by the constitution. As to these he is absolute. *State ex rel. White v. Dickerson*, 33 Nev. — (113 P. 105, 106).

**Governor elected.**

**295. SEC. 2:** The Governor shall be elected by the qualified electors at the time and places of voting for members of the Legislature, and shall hold his office for four years from the time of his installation, and until his Successor shall be qualified.

T. C. C. pp. 140, 475.

**Who eligible to office of Governor.**

**296. SEC: 3.** No person shall be eligible to the Office of Governor, who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty five years; and who, except at the first election under this

Constitution, shall not have been a citizen resident of this State for two years next preceding the election.

T. C. C. pp. 140, 476.

This section requires that a party, to be eligible to the office of governor, shall possess certain qualifications as to age and length of residence beyond those provided for a mere elector. *State ex rel. Nourse v. Clarke*, 3 Nev. 569.

#### Canvass of returns.

297. SEC: 4. The returns of every election for Governor, and other State Officers voted for at the general election, shall be sealed up and transmitted to the Seat of Government directed to the Secretary of State, and on the third Monday of December succeeding such election, the Chief Justice of the Supreme Court, and the Associate Justices or a majority thereof, shall meet at the office of the Secretary of State, and open and canvass the election returns for Governor, and all other State Officers, and forthwith declare the result and publish the names of the persons elected. The persons having the highest number of votes for the respective offices shall be declared elected, but in case any two or more have an equal, and the highest number of votes for the same Office, the Legislature shall by joint vote of both Houses, elect one of said persons to fill said Office.

T. C. C. pp. 140, 476.

#### Military authority of Governor.

298. SEC: 5. The Governor shall be Commander in Chief of the military forces of this State except when they shall be called into the service of the United States.

T. C. C. pp. 141, 476.

#### Duties of Governor.

299. SEC: 6. He shall transact all executive business with the Officers of the Government Civil and Military; and may require information in writing, from the Officers of the Executive Department, upon any subject relating to the duties of their respective Offices.

T. C. C. pp. 141, 476.

#### Idem.

300. SEC: 7. He shall see that the laws are faithfully executed.

T. C. C. pp. 141, 477.

The provision in the act entitled "An act to require the acceptance and collection of grants, devises, bequests, donations, and assignments to the state of Nevada," approved February 26, 1901 (Stats. 1901, c. 19), that "whenever any grant, devise, bequest, donation or gift or assignment of money, bonds, or choses in action shall be made to this state, the governor is directed to receive and accept the same, so that the right and title to the same shall pass to the state," imposes a ministerial duty upon the governor which could have been conferred as well upon any other officer or person, and which in no

way conflicts with or pertains to the constitutional powers or prerogatives of the governor, excepting that this section makes it his duty to enforce this and other statutes. He is nowhere empowered to set aside the law because he may not agree with its policy. He is as much unauthorized to prevent the reception of the bonds as if the legislature had directed the state treasurer instead of the governor to accept them for the state. *State ex rel. White v. Dickerson*, 33 Nev. — (113 P. 105, 106, 111, 114).

#### May fill vacancies.

301. SEC: 8. When any Office shall, from any cause become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of the person elected to such Office.

T. C. C. pp. 141, 477.

Where a new office is created, and no person appointed to fill it, there is a vacancy.

There is no technical or peculiar meaning in the word "vacant" as used in this section; it means empty, unoccupied, without an incumbent; and it applies to new offices never filled, as well as to old ones vacated by death, resignation or otherwise.

Though the constitution provides in some instances

what shall operate a vacancy in office, such as absence of judicial officers, etc., this does not prohibit the legislature from enumerating other causes. *State ex rel. Clarke v. Irwin*, 5 Nev. 112.

The act incorporating Carson City (Stats. 1875, 87) is not in conflict with this section.

See *State ex rel. Rosenstock v. Swift*, 11 Nev. 123, 135, under section 1 of this article.

#### May convene Legislature.

302. SEC: 9. The Governor may on extraordinary occasions, convene the Legislature by proclamation and shall state to both houses when organized,

the purpose for which they have been convened, and the Legislature shall transact no legislative business, except that for which they were especially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session.

T. C. C. pp. 145, 477.

The legislature of this state, when convened in special session, can only legislate over those subjects for which they were specially convened, and such others as may be called to their attention during the session by the governor.

The secretary of state may transmit to the legislature

in extra session the bills vetoed by the governor after the expiration of the regular session; but unless the governor call attention to these vetoed bills and require action thereon, the legislature is powerless to act until the next regular session. *Jones v. Theall*, 3 Nev. 233, 235, 236, 237, 238.

#### Message to Legislature.

**303. SEC: 10.** He shall communicate by Message to the Legislature, at every regular Session, the condition of the State and recommend such measures as he may deem expedient.

T. C. C. pp. 145, 477.

#### May adjourn Legislature.

**304. SEC: 11.** In case of a disagreement between the two Houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; Provided, it be not beyond the time fixed for the meeting of the next Legislature.

T. C. C. pp. 145, 477.

#### Certain persons ineligible.

**305. SEC: 12.** No person shall, while holding any office under the United States Government, hold the office of Governor, except as herein expressly provided.

T. C. C. pp. 146, 478.

The mere fact that this section repeats a prohibition against the governor of the state holding that office whilst he holds one under the general government is not entitled to much weight. The different articles of the constitution were drawn under the superintendence of distinct committees. The attention of each committee

was called particularly to the article immediately under its supervision. The draft of the whole instrument, from necessity, was not in the hands of one person or one committee. Hence, there is a liability to unnecessary repetitions. *State ex rel. Nourse v. Clarke*, 3 Nev. 568.

#### Duties of Governor as to fines and forfeitures.

**306. SEC: 13.** The Governor shall have the power to suspend the collection of fines and forfeitures and grant reprieves for a period not exceeding sixty days dating from the time of conviction, for all offenses, except in cases of impeachment. Upon conviction for treason he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. And if the Legislature shall fail or refuse to make final disposition of such case, the sentence shall be enforced at such time and place as the Governor by his order may direct. The Governor shall communicate to the Legislature, at the beginning of every Session, every case of fine or forfeiture remitted, or reprieve, pardon, or commutation granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, and the date of the remission, commutation, pardon or reprieve.

T. C. C. pp. 221, 478.

In view of constitution, article 5, section 14, providing that the governor, justices of the supreme court, and attorney-general or a majority of them, of whom the governor shall be one, may remit fines and forfeitures, commute punishments, and grant pardons, this section

authorizes the governor to suspend the collection of fines for only sixty days, and not indefinitely. Otherwise there would be a conflict between the two sections. *Ex parte Shelor*, 33 Nev. — (111 P. 292, 293, 294 295).

#### Personnel of the Board of Pardons.

**307. SEC: 14.** The Governor, Justices of the Supreme Court and Attorney-General, or a major part of them, of whom the Governor shall be one, may upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments and grant pardons after convictions, in all cases, except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons.

The governor of the Territory of Nevada had the right to pardon absolutely or conditionally, but no right to commute one punishment for another. He could not issue an order to confine a man in the penitentiary who had been sentenced to be hung.

The governor of the State of Nevada could not pardon

### Seal of State.

**308. SEC: 15.** There shall be a Seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of Nevada."

T. C. C. pp. 146, 478.

### Grants in name of State.

**309. SEC: 16.** All grants and commissions shall be in the name and by the authority of the State of Nevada, sealed with the Great Seal of the State, signed by the Governor and countersigned by the Secretary of State.

T. C. C. pp. 146, 478.

### Lieutenant-Governor.

**310. SEC: 17.** A Lieutenant Governor shall be elected at the same time and places, and in the same manner as the Governor, and his term of Office, and his Eligibility, shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If during a Vacancy of the Office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the Office, or be absent from the State, the President *pro-tempore* of the Senate shall act as Governor until the vacancy be filled or the disability cease.

T. C. C. pp. 146, 479.

This section requires the same qualifications to make a party eligible to the office of lieutenant-governor as are required for governor. State ex rel. Nourse v. Clarke, 3 Nev. 569.

Cited, State ex rel. Perry v. Arrington, 18 Nev. 416 (4 P. 735).

This section contemplates that upon the governor's death his office is to remain vacant. State ex rel. Sadler v. La Grave, 23 Nev. 223 (35 L. R. A. 233, 45 P. 243).

Under the provisions of these sections, if a vacancy occurs in the office of governor, the powers and duties

### Lieutenant-Governor to succeed Governor.

**311. SEC: 18.** In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of the said Office, resignation or absence from the State, the powers and duties of the Office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature be out of the State, in time of War, and at the head of any military force thereof, he shall continue Commander in Chief of the military forces of the State.

T. C. C. pp. 147, 479.

See State ex rel. Hardin v. Sadler, 23 Nev. 356, 357, under section 17 of this article (47 P. 450).

Under this section, the lieutenant governor, upon the

### State officers, terms of office.

**312. SEC: 19.** A Secretary of State, a Treasurer, a Controller, a Surveyor-General, and an Attorney-General shall be elected at the same time and places and in the same manner as the Governor. The term of Office of each shall be the same as is prescribed for the Governor. Any elector shall be eligible to either of said offices.

T. C. C. pp. 148, 480, 481.

The last sentence in this section seems as plainly to dispense with any qualification for the office of attorney-general other than those pertaining to any elector, as section 9 of article 4 imposes the disqualification arising from holding a federal office. In language, there is a complete contradiction between the two sections. Usually, where there is one section in a statute or constitution general in its terms and another section special and limited, but in direct conflict with the general provisions, the special one should be construed as an exception to the general rule. An examination of this section,

without the concurrence of at least two other members of the board in whom the pardoning power is vested by the constitution. Ex Parte Janes, 1 Nev. 319, 322.

See Ex Parte Shelor, 33 Nev. — (111 P. 291, 292, 293), under section 13 of this article.

of the office devolve upon the lieutenant-governor, but there is no vacancy created in the office of lieutenant-governor thereby. The officer remains lieutenant-governor, but invested with the powers and duties of governor.

If a vacancy exists in both the offices of governor and lieutenant-governor, the president *pro tempore* of the senate becomes acting governor until the vacancy be filled or disability cease. State ex rel. Hardin v. Sadler, 23 Nev. 356, 357 (47 P. 450).

death of the governor, becomes acting governor and entitled to receive the salary attached to that office. State ex rel. Sadler v. LaGrave, 23 Nev. 216, 218 (35 L. R. A. 233, 45 P. 243).

in connection with other portions of article 5, leads to the conclusion that it was not intended to make an exception to the general rule laid down in section 9 of the preceding article. State ex rel. Nourse v. Clarke, 3 Nev. 567, 568, 569.

It is the right and duty of the state controller to audit all claims under the provisions of the act of March 3, 1869 (Stats. 1869, 158).

The official name of "state controller," as used in the constitution, implies recognized duties appurtenant thereto, and means a supervising officer of revenue—

among whose duties is the final auditing and settling of all claims against the state.

That said act neither takes anything away from the constitutional powers of the board of examiners, nor adds anything to those of the controller, and is not unconstitutional.

Where a member of a board of state printing commissioners had a claim for his services passed upon and allowed by the board of examiners, but omitted to have it audited by the controller; and the latter for that reason refused to issue his warrant upon the treasury for the amount so allowed: Held, that it was necessary to show a presentation of the claim for allowance to the controller, and that without such showing the controller would not be compelled by mandamus to issue his war-

rant. State ex rel. Lewis v. Doron, 5 Nev. 399, 407, 408, 409, 410, 413.

Where a sum has been appropriated by the state legislature providing for the payment to the lieutenant-governor of a salary *in solido* as ex officio adjutant-general and ex officio state librarian, and another is appointed, the state controller is justified in refusing to audit a compensation allowed such substituted official by the board of examiners, as the appropriation has become inoperative. State ex rel. Gallup v. Hallock, 19 Nev. 371, 374 (12 P. 48).

See, also, State ex rel. County of Lyon v. Hallock, 20 Nev. 326, 328, under section 21 of this article. (22 P. 123.)

See Nevada Const. Deb. and Pro., p. 161, cited in State ex rel. Lewis v. Doron, 5 Nev. 400, with reference to this section.

### Duties of Secretary of State.

**313. SEC: 20.** The Secretary of State shall keep a true record of the Official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature.

T. C. C. pp. 149, 480.

### Personnel of Board of State Prison Commissioners and Board of Examiners.

**314. SEC: 21.** The Governor, Secretary of State and Attorney-General shall constitute a Board of State Prison Commissioners, which board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a Board of Examiners, with power to examine all claims against the State (except salaries or compensation of officers fixed by law), and perform such other duties as may be prescribed by law, and no claim against the State (except salaries or compensation of officers fixed by law) shall be passed upon by the Legislature without having been considered and acted upon by said "Board of Examiners."

T. C. C. pp. 239, 240, 241.

The constitutional power of the controller to examine "claims against the state" must be exercised subject to such examination by the examiners.

The examining powers of the board of examiners and of the controller are, with reference to the legislature, only advisory.

So far as the examination of claims against the state is concerned, the board of examiners assist the controller, acting concurrently; but they do not deprive him of his constitutional power, or any part of it. Each moves in a designated sphere, all tending to the desired result; the protection of the revenues of the state. State ex rel. Lewis v. Doron, 5 Nev. 399, 407-410, 413.

The legislative act of 1869 (Stats. 1869, p. 54) is not repugnant to this constitutional provision, nor do the claims therein provided for require action by such boards.

The institution of the board of examiners was not intended as a check on legislative extravagance, but to secure, as a prerequisite to legislative action, an examination of such claims as require such action upon them as claims—not creative action but adoptive or rejective action.

"A claim against the state," is a demand by some one other than the state against it for money or property; but when a claim originates with the state or in its behalf, and contemporaneously with its origin, means and manner of payment are provided, as in case of a bond, it does not then constitute a claim proper against the state but a liquidated and legalized demand against the treasury.

Incidental expenses of the legislature to accrue cannot be held to constitute "claims against the state," nor do they require action by the board of examiners as such.

This constitutional provision has been treated by contemporaneous legislation as inapplicable to legislative expenses.

There is a reasonable doubt as to whether the incidental expenses of the legislature already accrued, constitutionally require examination by the board of examiners; and on the question of the constitutionality of a statute providing for the payment of such expenses without such examination, it cannot on the ground of not providing for such examination be pronounced unconstitutional. State ex rel. Ash v. Parkinson, 5 Nev. 16, 17, 30, 32, 33, 34.

See citation from State ex rel. Lewis v. Doron, 5 Nev. 400, 407, 408, 410, 411, 413, 414, under section 19 of this article.

By this section, the board of state prison commissioners are to have only such supervision over matters connected with the prison as may be provided by law. It is to the statutes, therefore, that we must look for a definition of their powers. State ex rel. Fox v. Hobart, 13 Nev. 420.

This section does not *direct* or *permit* the legislature, under the pretense of regulating the discipline of the prison, to wipe out and destroy the previous sentences, or any portion thereof, imposed upon the prisoners by the courts. The legislature can pass only such acts as are authorized by the constitution. It can not infringe upon any of its provisions. Ex Parte Darling, 16 Nev. 100 (40 A. R. 495).

In construing the provisions of section 8 of the act providing for a special election (Stats. 1889, p. 14), and the act to provide for the payment of such election by the state (Stats. 1889, p. 21), the provisions of this section, and the statute in relation thereto (Gen. Stats. 1885-6): Held, that it was the duty of the state board of examiners to audit the claims of the respective counties against the state on account of the special election, and that it was not within the power of the legislature to confer this authority elsewhere: Held, that *mandamus* would not lie against the state controller to compel him to issue a warrant in

any greater amount than audited and allowed by the board of examiners. State ex rel. County of Lyon v. Hallock, 20 Nev. 326, 328 (22 P. 123).

"An act to provide relief for H. C. Cutting" (Stats. 1897, p. 21) appropriated a sum of money to said Cutting for services rendered to the state as ex officio curator of the state museum. It was contended that, as the claim for services was not presented to the board of examiners prior to the passage of the enactment by

the legislature, it was in violation of this section: Held, that the act appropriates the sum of money for services rendered as ex officio curator of the state museum and is, therefore, compensation of an officer fixed by law and is expressly exempted by the terms of the constitution. State ex rel. Cutting v. La Grave, 23 Nev. 387, 389 (48 P. 370).

Cited, State ex rel. Perry v. Arrington, 18 Nev. 416 (4 P. 735).

**Officers to perform prescribed duties.**

**315. SEC. 22:** The Secretary of State, State Treasurer, State Controller, Surveyor-General, Attorney-General, and Superintendent of Public Instruction, shall perform such other duties as may be prescribed by law.

**ARTICLE 6.**

**JUDICIAL DEPARTMENT**

**Judicial power vested.**

**316. SECTION 1.** The Judicial power of this State shall be vested in a Supreme Court, District Courts, and in Justices of the Peace. The Legislature may also establish Courts, for municipal purposes only, in incorporated cities and towns.

T. C. C. pp. 152, 481, 486.

We see no constitutional objection to members of the executive branch being charged with the duty of assessing property, or of acting upon the board of equalization, for neither of these functions has been, expressly or impliedly, placed by the constitution upon either of the other departments; for certainly, although in equalizing valuations a board may act in a judicial capacity, the constitution nowhere contemplates that the judicial department, as organized by this article, shall discharge that duty. Sawyer v. Dooley, 21 Nev. 396 (32 P. 437).

This section restricts section 9 of this article, by which the jurisdiction of municipal courts cannot be extended beyond municipal purposes. Meagher v. County of Storey, 5 Nev. 244, 249.

The words "municipal purposes only," restrict the jurisdiction to be exercised by municipal courts to such matters as relate to the affairs of the incorporated cities or towns, where alone they are authorized to be established.

The authority sought to be conferred on city and town recorders by section 38 of an act concerning courts of justice (Stats. 1864-5, 116) to "exercise the duties of committing magistrates," etc., is completely judicial in its character, and said section, in so far as it authorizes city and town recorders "to possess the powers and exercise the duties of committing magistrates," etc., is unconstitutional and void. Meagher v. County of Storey, 5 Nev. 244, 249.

Cited, State ex rel. Coffin v. Atherton, 19 Nev. 336, 343 (10 P. 901).

This section vests the judicial power in a supreme court, district courts, and justices' courts. Section 6 gives the district courts original jurisdiction in all criminal cases not otherwise provided for by law, and gives them appellate jurisdiction in cases arising in justices' courts, etc. Section 8 authorizes the creation of justices' courts by the legislature, and provides that such courts shall have such criminal jurisdiction as may be prescribed by law.

The act of January 26, 1865 (Stats. 1864-65, p. 110, c. 194) gives justices' courts jurisdiction of all misdemeanors punishable by fine not exceeding \$500 or imprisonment not exceeding six months, or both. Relator was indicted in the district court for a misdemeanor, punishable by a fine not exceeding \$200, or imprisonment not exceeding three months, or both, and brings prohibition to prevent the district court from taking original jurisdiction of the offense, claiming that it has only appellate jurisdiction. Held, that under section 6, giving the district court jurisdiction in all criminal cases not otherwise provided for by law, where the legislature gave justices' courts jurisdiction of the class mentioned, the district court was deprived of original jurisdiction in such cases, and had only appellate jurisdiction, so that it could not try such a case by indictment. Moore v. Orr, 30 Nev. 458, 460 (98 P. 398).

**Supreme Court, how constituted.**

**317. SEC: 2.** The Supreme Court shall consist of a Chief Justice and two Associate Justices, a majority of whom shall constitute a quorum; Provided, that the Legislature by a majority of all the members elected to each branch thereof, may provide for the election of two additional Associate Justices, and if so increased three shall constitute a quorum. The concurrence of a Majority of the whole court shall be necessary to render a decision.

T. C. C. pp. 155, 482, 486.

**Justices, election, term, Chief Justice.**

**318. SEC: 3.** The Justices of the Supreme Court, shall be elected by the qualified electors of the State at the general election, and shall hold office for the term of Six Years from, and including, the first Monday of January next succeeding their election; Provided, that there shall be elected, at the first election under this Constitution, Three Justices of the Supreme Court who shall hold Office from, and including the first Monday of December A. D. Eighteen hundred and sixty four, and continue in office thereafter, Two,

Four and Six Years respectively, from and including the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall determine by lot, the term of Office each shall fill, and the Justice drawing the shortest term, shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the Senior Justice in Commission shall be Chief Justice; and in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot, who shall be Chief Justice.

T. C. C. pp. 160, 482, 483, 486.

Cited, State ex rel. Perry v. Arrington, 18 Nev. 416 (4 P. 735).

### Jurisdiction of Supreme Court.

**319. SEC: 4.** The Supreme Court shall have appellate jurisdiction in all cases in Equity; also in all cases at law in which is involved the title, or right of possession to, or the possession of, real estate or Mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the Value of the property in controversy, exceeds Three Hundred Dollars; also in all other civil cases not included in the General subdivisions of law and Equity, and also on questions of law alone in all criminal cases in which the offence charged amounts to felony. The Court shall also have power to issue writs of Mandamus, Certiorari, prohibition, Quo Warranto, and Habeas Corpus and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of Habeas Corpus to any part of the State, upon petition by, or on behalf of any person held in actual custody, and may make such writs returnable, before himself or the Supreme Court, or before any District Court in the State or before any Judge of said Courts.

T. C. C. pp. 161-168, 482, 487.

The constitution gives this court the trial of cases on appeal, and the legislature could not, if it would, deprive the court of the power of examining such portions of the record as are necessary to determine all appeals.

The legislature never intended to deprive this court of the power to examine bills of exception and other parts of the record which are not mentioned in section 284 of the Practice Act.

We must look to the record to see if there is any foundation for a judgment appealed from. As the filing of a cost bill is the only thing that gives jurisdiction to enter up a judgment for costs, we must look to the record to see if any such bill has been filed, and if an examination of the cost bill shows error in the judgment for costs, that error must be corrected.

Section 284 of the Practice Act directs that certain papers shall be brought up on appeal; it does not in express terms prohibit other papers from being brought up. Howard v. Richards, 2 Nev. 129.

The phrase "appellate jurisdiction" was intended to be used in a broad and comprehensive sense. It was intended to confer jurisdiction upon the district courts to hear cases on appeal either in the strictest sense, which would require a trial *de novo*, or review them as all cases are reviewed at common law. We think the language of section eight of this article clearly confers on the legislature the power to regulate the manner of appeals to the district court. It might require in one class of cases that upon appeal the trial should be *de novo*, and in other cases a simple review of the proceedings of the court below. Cavanaugh v. Wright, 2 Nev. 168.

The jurisdiction of this court on appeal is limited "in all criminal cases, in which the offense charged amounts to felony, to questions of law alone." State v. Millain, 3 Nev. 467.

The language of this section conferring jurisdiction upon the supreme court in cases of money demands is identical with that respecting the district courts and whenever the district court has jurisdiction in the first instance, the supreme court has jurisdiction to review its action on appeal. Klein v. Allenbach, 6 Nev. 159, 161, 162.

Is it within the jurisdiction of the supreme court under this section to review the evidence in a criminal case and decide that it does not sustain the verdict? State v. Van Winkle, 6 Nev. 340 and 349.

Where a suit to foreclose a lien is brought in a justice court and appealed to the district court: Held, that an appeal lies from the district court to the supreme court. Dickson v. Corbett, 10 Nev. 439, 440.

An order of a justice's court imposing costs against a garnishee that had refused to make a statement, is not a "tax, impost, assessment, or municipal fine," within the meaning of those words as used in this section. Wearne v. Haynes, 13 Nev. 103-105.

The jurisdiction of the supreme court in a criminal case is limited to questions of law alone. No judgment of conviction will ever be reversed upon the ground that the verdict is contrary to the evidence if there is any substantial evidence to support it. State v. Mills, 12 Nev. 403, 404, 406.

The trial of a party charged with violation of a town ordinance is a criminal case. The charge does not amount to a felony, and this court has no jurisdiction in such a case. Town of Gold Hill v. Brisacher, 14 Nev. 52, 53.

Defendant was indicted for the crime of an assault with intent to kill, and was tried and found "guilty of an assault." The judgment imposed a fine of \$500 and taxed the costs against defendant. From this judgment an appeal was taken. Held, that this court had no jurisdiction. Appeal dismissed. State v. McCormick, 14 Nev. 347, affirmed (Belknap dissenting). State v. Quinn, 16 Nev. 89, 90.

A contempt of the character alleged in this proceeding is a specific, substantive and distinct criminal offense, and under the constitution and laws of this state, judgment of conviction, if within the jurisdiction of the inferior court, is final and conclusive. Phillips v. Welch, 12 Nev. 159, 178.

In construing this section: Held, that the right of appeal in criminal cases is restrained to cases where the punishment adjudged is a felony. State v. McCormick, 14 Nev. 3, 47349.

The court granted a decree of divorce, with alimony of \$150 per month, in favor of the plaintiff, and decreed the property in controversy to be the separate property of defendant. An appeal was taken by the plaintiff from the portion of the decree "respecting the property rights of the respective parties." Held, that the supreme court had jurisdiction on appeal to make an allowance of counsel fees to appellant so as to enable her to properly present her case by counsel in the supreme court.

The exercise of such authority is based upon the presumption that jurisdiction in divorce cases carries with it by implication the incidental power to make such allowances. The power is indispensable to the proper exercise of jurisdiction in guarding the rights of wives. *Lake v. Lake*, 17 Nev. 230, 238 (30 P. 878).

The court, under the Practice Act, has jurisdiction only in cases commenced in and tried by a court. The legislature may enjoin upon a judge the performance of judicial functions, in matters outside of actions or proceedings in court; but, in such cases, there is nothing in the statutes authorizing an appeal from his orders.

No appeal lies to the supreme court from an order of the district judge requiring the county assessor of Esmeralda County to file in the district court a statement of taxes, as required by section 6 of the act of March 1, 1883 (Stats. 1883, 100). The proceedings required by the statute were in no sense court proceedings, as such, and the fact that the order was made by the court instead of the judge, does not change its character. *Lyon County v. Esmeralda County*, 18 Nev. 166, 169 (1 P. 839).

Substantial compliance with statutes regulating criminal appeals is essential to the supreme court's jurisdiction of an appeal.

Under the constitution, providing that the supreme court shall have appellate jurisdiction on questions of law alone in criminal cases, and that the right of trial by jury shall remain inviolate, the supreme court will not determine questions of fact on which a verdict is based.

The statutory appeal from a judgment of conviction and from an order denying a new trial clothes the supreme court with power to review every question affecting the rights of accused, provided substantial compliance is had with the statutes.

An "appeal" is a statutory right, and is the continuation of the original suit; while a "writ of error" is an independent action, in the nature of a new and original suit.

Whether one convicted of crime is entitled to have the judgment reviewed on writ of error cannot be determined on a petition for a rehearing after the dismissal of his appeal, but only on appropriate proceedings for the writ, when all parties interested can be heard. *State v. Preston*, 30 Nev. 301, 308-310 (95 P. 918).

#### CERTIORARI.

Certiorari lies to annul a justice court judgment, void because in excess of the jurisdiction of a justice court, since there is no right of appeal.

The court, on appeal from an order dismissing a writ of certiorari to annul a justice court's judgment, void because beyond the justice court's jurisdiction, cannot on the offer of respondent remit a part of the judgment and limit it to a sum within the jurisdiction of a justice court. *Pitchett v. Henley*, 31 Nev. 327 (102 P. 865).

In certiorari cases the judgment roll is preserved in the court granting the writ, as in a court of original jurisdiction in an ordinary action, and a copy only of the judgment is sent to the inferior tribunal.

If proceedings of an inferior court are annulled on certiorari there is no further positive or affirmative action to be taken by the inferior tribunal. *Leonard v. Peacock*, 8 Nev. 157.

Proceedings upon certiorari for the review of the action of an inferior tribunal are of an appellate nature, though not pursued in the ordinary and technical form of appeal.

Where the supreme court on certiorari annuls the proceedings of a district court, under which the relator had been turned out of possession of certain property: Held, that in addition to annulling the proceedings of the court below, the supreme court could properly issue a writ of restitution to restore relator to possession, such writ being necessary and proper to the complete exercise of its appellate jurisdiction. *Peacock v. Leonard*, 8 Nev. 247, 251.

Certiorari does not lie where there is an appeal. *Leonard v. Peacock*, 8 Nev. 157, 161.

As a justice of the peace has no jurisdiction of an action of forcible entry, a district court has no jurisdiction thereof on appeal; and its proceedings and a judgment to the contrary will be annulled on certiorari. *Peacock v. Leonard*, 8 Nev. 84, 88.

See *Andrews v. Cooke*, 28 Nev. 265, 269, under section 4 of this article (81 P. 303).

The inquiry on a writ of certiorari will not be extended further than to determine whether the inferior tribunal has jurisdiction to make the orders complained of; and, if the record discloses that it has complete jurisdiction, any error in an order will not be considered.

Where the court has jurisdiction of divorce action, and has discretion to make such an allowance to the wife as the circumstances warrant pendente lite, the supreme court will not annul such an order by writ of certiorari.

*Kapp. v. District Court of Seventh Judicial District*, 32 Nev. 264 (103 P. 235).

See *National Mines Co. v. District Court*, 33 Nev. — (116)P. —.)

#### MANDAMUS.

If the district court refuses to try a cause on the ground that it has no jurisdiction, and it appears that the court has jurisdiction, the writ of mandamus will be issued to compel the court to hear and decide the cause upon the merits. *Floral Springs Water Company v. Rives*, 14 Nev. 431.

The writ of mandamus will not be issued to compel a district judge to try an action for malicious injury to real estate, transferred from a justice court, because the district court has no jurisdiction of the offense. *State ex rel. Murphy v. Rising*, 10 Nev. 97.

The writ of mandamus will not be issued in any case where petitioner has a plain, speedy and adequate remedy at law. *Mayberry v. Bowker*, 14 Nev. 336, 340, from opinion of *Beatty, C. J.*, dissenting, on p. 340.

#### QUO WARRANTO.

Where the attorney-general refuses to bring an action under the provisions of section 3342, General Statutes, authorizing such officer to proceed against any person he has reason to believe unlawfully holds a public office, a person claiming election to a state office may, by leave of court, bring quo warranto on his own relation, where he has no other remedy.

Quo warranto is the only remedy a person, who may be duly elected to a state office, has to oust one unlawfully holding the same, and have himself instituted. *State ex rel. McMillan v. Sadler*, 25 Nev. 131, 165 (83 A. S. 573, 58 P. 284).

As the supreme court is authorized to finally construe the laws, and is empowered by the constitution and statute to issue writs of mandamus "to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station," and as the lieutenant and acting governor is in no way excepted from these provisions or empowered to abrogate the statute, a writ of mandamus will issue directing him to comply with the requirement of the act of the legislature and accept the bonds, the same as a writ would issue requiring any other officer or person to perform in compliance with the statute, a ministerial act, where no discretion is imposed and no constitutional provision is infringed.

The constitution authorizes the issuance of writs of mandamus regardless of the value involved. Value need not be proven in advance by the petitioner in order to entitle him to a writ of mandate.

Doubtful questions relating to the legality or validity of, or right of recovery upon bonds, or to their repudiation, or the statute of limitations, and which may be properly tried and adjudicated in an action between the holder and the obligor, need not be determined in the absence of the obligor in a proceeding for a writ of mandate requiring their acceptance by the chief executive preliminary to the bringing of a suit for the recovery of a judgment upon them against the obligor. It is not the duty of the chief executive, nor of the courts upon application for writ of mandate to determine these questions in advance and possibly adversely to the acceptance of the bonds by the state and to their validity so as to set aside the statute and will of the legislature, prevent a suit, and deprive the proper tribunal, the Supreme Court of the United States, from passing upon the objections made to the legality of the bonds.

If the court has any jurisdiction to refuse the writ of mandate relating to a matter concerning the public interest, where a party is clearly entitled to it, it ought not to exercise that discretion by refusing the writ when such refusal would abrogate the plain language of the statute. *State ex rel. White v. Dickerson*, 33 Nev. — (113 P. 106, 109, 111, 115, 117).

#### PROHIBITION.

The order of prohibition may issue from this court in a proper case to arrest the progress of a trial. But such order should not issue where there is other and adequate remedy.

The office of such writ is not to correct errors, but to prevent courts transcending the boundaries of their jurisdiction.

Upon a writ of prohibition we cannot review an interlocutory order made in the court below. That can only be reviewed on appeal from the final judgment. *Low v. Crown Point Mining Co.*, 2 Nev. 75, 77.

If the district court did not have power to proceed originally by indictment in a criminal case, prohibition is the proper remedy to prevent it from taking jurisdiction. *Moore v. Orr*, 30 Nev. 458 (90 P. 398).

A writ of prohibition will not issue to prevent an inferior court from trying an action once properly before it, but claimed to have been afterwards dismissed, as the question of dismissal was a proper one for the inferior court to decide; nor will the writ issue upon the claim that the action has been transferred to the circuit court of the United States, as that question is also a proper one for the inferior court to decide, subject to appeal, and for the further reason that the decision of this court would not be final should the United States court decide otherwise and remand the action to the state court for trial, and in either event error in the inferior court is only reviewable on appeal or by petition to the United States court. *Walcott v. Wells*, 21 Nev. 47 (37 A. S. 478, 9 L. R. A. 59, 24 P. 367).

A writ of prohibition cannot ordinarily be used to correct errors by inferior tribunals, and will not issue either in civil or criminal proceedings, where there is an adequate remedy by appeal or writ of certiorari.

Where an action was brought to recover possession of certain mining ground on an agreement containing a provision for plaintiff's taking possession of and working the mines, and the court had original jurisdiction to hear and determine the issues, if it erred in ordering judgment

for plaintiff for possession and for an accounting, or for damages for defendant's refusal to deliver possession under the agreement, its decision was reviewable by appeal only, and not on a writ of prohibition.

Where defendants, in an action to recover a mining claim, contended that a provision of the decree in favor of plaintiff and directing an accounting was not within the issues, whether the court had jurisdiction to decree such an accounting was reviewable by appeal, and not by a writ of prohibition. *Silver Peak Mines et al. v. Second Judicial District Court*, 33 Nev. — (110 P. 503).

While the great function of the writ of prohibition is to restrain courts and judicial tribunals from exceeding their jurisdiction, nevertheless, the writ has not been restricted exclusively to such class of cases, but it has run to other officers exercising or attempting to exercise judicial or quasi-judicial functions beyond their powers, where no other adequate remedy existed. *State ex rel. Schloss v. Stevens*, 33 Nev. — (116 P. 105).

The power conferred upon the supreme court to issue writs of mandamus, quo warranto, and other writs is an original jurisdiction, and not merely auxiliary to its appellate jurisdiction. *Curtis v. McCullough*, 3 Nev. 202, 214, 215, 216.

### Judicial districts.

**320. SEC: 5.** The State is hereby divided into Nine Judicial Districts of which the County of Storey shall constitute the First; The County of Ormsby the Second; the County of Lyon the Third; The County of Washoe the Fourth; The Counties of Nye and Churchill the Fifth; The County of Humboldt the Sixth; The County of Lander the Seventh; the County of Douglas the Eighth; and the County of Esmeralda the Ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes until otherwise provided by law. The Legislature may, however, provide by law for an alteration in the boundaries or divisions of the Districts herein prescribed, and also for increasing or diminishing the number of the Judicial Districts and Judges therein. But no such change shall take effect, except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first general election under this Constitution there shall be elected in each of the respective Districts (except as in this Section hereafter otherwise provided) one District Judge, who shall hold Office from and including the first Monday of December A. D. Eighteen hundred and Sixty four and until the first Monday of January in the Year Eighteen hundred and Sixty seven. After the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective Judicial Districts (except in the First District as in this Section hereinafter provided). The District Judges shall be elected by the qualified electors of their respective districts, and shall hold Office for the term of four Years (excepting those Elected at said first election) from and including the first Monday of January, next succeeding their election and qualification; Provided, that the First Judicial District shall be Entitled to, and shall have Three District Judges, who shall possess co-extensive and concurrent jurisdiction, and who shall be elected at the same times, in the same manner, and shall hold office for the like terms as herein prescribed, in relation to the Judges in other Judicial Districts, any one of said Judges may preside on the Empanneling of Grand Juries and the presentment and trial on indictments, under such rules and regulations as may be prescribed by law. T. C. C. pp. 198, 483, 488.

The act of March 12, 1867, constituting Lincoln County, the Ninth Judicial District (Stats. 1867, p. 129), is not in conflict with this section. *State ex rel. Leake v. Blasdel*, 6 Nev. 40, 41.

The said act in so far as it provided that the district judge to be elected in 1868 should hold his office for two years from January 1, 1869, did not violate the provisions of this section. The constitution contemplates that the election of district judges throughout the state

shall all occur at the same time; and it is competent for the legislature to provide that a judge to be elected at another time shall hold until the time of such general election of judges, though it may not give him a full term of four years.

Where a full term of the office of district judge is to be filled, the failure to give notice of election (such as is required when a vacancy is to be filled) will not vitiate an election. *State ex rel. Hubbard v. Gorin*, 6 Nev. 276, 277, 278, 279.

In construing the provisions of this section, held, that the legislature had the power to reduce the number of district judges in the first judicial district.

Cited, State ex rel. Aude v. Kinkead, 14 Nev. 117, 120, 122, 123.

Cited, State ex rel. Perry v. Arrington, 18 Nev. 416 (4 P. 735).

Cited, State ex rel. Coffin v. Atherton, 19 Nev. 337, 338, 340 (10 P. 901).

By Stats. 1865 (p. 60) the State of Nevada was made one judicial district, with but one judicial officer in connection therewith, to wit: The office of district judge, and three district judges, each having equal and coextensive jurisdiction and powers throughout the state to hold district court in any county and to exercise all duties pertaining to the office of district judge. The constitutionality of this statute was affirmed by the supreme court in State ex rel. Coffin v. Atherton, 19 Nev. 332. While this statute was in operation the legislature by statute of 1889, p. 122, increased the number

of district judges to four, and directed the governor to immediately appoint an additional district judge to hold office until the next general election, when four district judges should be elected. Under the latter statute the governor appointed respondent district judge, who, at the time of the commencement of this proceeding, has held such office and exercised the functions thereof for more than a year with the acquiescence and recognition of the state, county officers and the people generally. Held, that irrespective of the question of the constitutionality of the statute of 1889, respondent is a *de facto* district judge and that his official acts are valid so far as the rights of third persons or the public are concerned. (Belknap, J., dissenting.) Walcott v. Wells, 21 Nev. 47, 64 (37 A. S. 478, 9 L. R. A. 59, 24 P. 367).

Cited, State v. Burralli, 27 Nev. 47 (71 P. 532).

Nevada Cons. Deb. & Pro., pages 650, 651, 713, cited in State v. Kinkead, 14 Nev. 121, with reference to this section.

### Jurisdiction of District Courts.

**321. SEC: 6.** The District Courts in the several Judicial Districts of this State shall have original jurisdiction in all cases in Equity; also in all cases at law which involve the title or the right of possession to, or the possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand (exclusive of interest) or the value of the property in controversy exceeds Three Hundred Dollars, also in all cases relating to the estates of deceased persons, and the persons and Estates of Minors and insane persons, and of the action of forcible entry and unlawful detainer; and also in all criminal cases not otherwise provided for by law; They shall also have final appellate jurisdiction in cases arising in Justices Courts, and such other inferior tribunals as may be established by law. The District Courts, and the Judges thereof shall have power to issue writs of Mandamus, Injunction, Quo-Warranto, Certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction; And also shall have power to issue writs of Habeas Corpus on petition by, or on behalf of any person held in actual custody in their respective districts.

T. C. C. pp. 179, 483, 488.

Though the constitution of the state confers the jurisdiction of cases of forcible entry and unlawful detainer on the district courts, the courts of justices of the peace continue their jurisdiction of such cases until the organization of the district courts under the state authority.

The purpose of this section was not to suspend the operation of the laws of the territory. The former judiciary system was intended to be, and was continued in existence until the new one should be in a condition to exercise its functions. Armstrong v. Paul, 1 Nev. 134, 137, 138, 139.

The appellate jurisdiction of the district court on appeal from a justices' court is final, and no appeal lies from its action as such appellate court.

Cited, Paul v. Beegan, 1 Nev. 329, 331; Leonard v. Peacock, 8 Nev. 157, 161.

The constitution confers jurisdiction on the district court to hear and determine actions of forcible entry and detainer without any special legislative enactment on the subject.

The forcible entry act, so far as it defines forfeitures, is in force. That part of it which directs what court shall assume jurisdiction is suspended and altered by the constitution. Hoopes v. Meyer, 1 Nev. 433, 440, 441.

Where a district court, acting under this section, dismissed an appeal from a justices'

court, the action having been in the exercise of jurisdiction, it could not be reviewed on certiorari. Andrews v. Cooke, 28 Nev. 265, 269 (81 P. 303).

This section vests in the district court jurisdiction in all cases relating to the persons and estates of minors; and its judgment cannot be successfully resisted until reversed or modified by some proceeding impeaching it. It is conclusive, not only against the guardian himself, but also against the sureties upon his official bond. Whatever binds and concludes the guardian equally binds and concludes his sureties.

In guardianship matters where the judgment of the district court is collaterally attacked, the jurisdiction of the court is conclusively presumed and evidence to the contrary is not admissible. Deegan v. Deegan, 22 Nev. 185, 197 (58 A. S. 742, 37 P. 360).

Cited, State ex rel. Coffin v. Atherton, 19 Nev. 337 (10 P. 901).

The expression "all cases at law," used in this section has no application whatever to criminal cases. State ex rel. Murphy v. Rising, 10 Nev. 97, 100, 101, 103.

The district court has jurisdiction of an action brought to recover money paid under protest for an illegal tax, although the amount in controversy is less than three hundred dol-

lars. *Robinson v. Longley*, 18 Nev. 71, 73 (1 P. 377).

Under the constitution and statutes of this state an equitable defense to an action cannot be plead in the justices' court. *Duffy v. Moran*, 12 Nev. 94, 96.

Cited, *Wearne v. Haynes*, 13 Nev. 105.

Cited, *Paul v. Beegan*, 1 Nev. 329.

A justice of the peace has jurisdiction of an action against a county for a sum less than \$300. *Floral Springs Water Co. v. Rives*, 14 Nev. 431.

Cited, *Cavanaugh v. Wright*, 2 Nev. 167, 168.

A suit for the recovery of money may be brought in a district court by simply claiming \$300 or upwards, although less may be actually due; but if less than \$300 is recovered, the plaintiff is not entitled to costs.

The test of the jurisdiction of the district courts in cases of money demands is the amount claimed in the complaint—the demand in controversy being the sum sought to be recovered by plaintiff, and not that for which he actually recovers judgment.

The language of the constitution conferring jurisdiction upon the supreme court in cases of money demands is identical with that of this section, respecting the district courts, and whenever the district court has jurisdiction in

the first instance, the supreme court has jurisdiction to review its action on appeal. *Klein v. Allenbach*, 6 Nev. 159, 162.

An action for "wrongfully, unlawfully, and forcibly breaking and entering into real estate and unlawfully and forcibly ousting the possessor and ever since said forcible ouster unlawfully and forcibly holding possession thereof," is an action of forcible entry and unlawful detainer within the meaning of this section and is not within the jurisdiction of a justice of the peace.

As a justice of the peace has no jurisdiction of an action of forcible entry, a district court has no jurisdiction thereof on appeal; and its proceedings and judgment to the contrary will be annulled on certiorari. *Peacock v. Leonard*, 8 Nev. 84, 88.

See citation *Moore v. Orr*, 30 Nev. 458 (98 P. 398), under section 1 of this article.

The constitution gives to district courts final appellate jurisdiction over cases arising in justices courts. The district court may dismiss an appeal, or it may proceed and try it *de novo*. But it cannot refuse to do one thing or the other. *Bancroft v. Pike*, 33 Nev. — (110 P. 2).

*Nev. Cons. Deb. & Pro.*, pp. 718, 720, cited in *Moore v. Orr*, 30 Nev. 469, with reference to this section (98 P. 398).

#### Terms of court.

**322. SEC: 7.** The times of holding the Supreme Court and District Courts shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of Government; and the terms of the District Courts shall be held at the County seats of their respective counties; Provided, that in case any county shall be hereafter divided into two or more districts, the Legislature may, by law, designate the places of holding Courts in any such Districts.

*T. C. C.* pp. 484, 491.

Prior to Stats. 1895, p. 60, sec. 5, the terms of the district courts had been differently fixed. That section provided that they should always be open for the transaction of business; and section 9 provides that courts shall be held in every county at least once in every six months. Section 9 was repealed by Stats. 1895, p. 56, which, however, retained the proviso that court should be held in each county at least once in every six months; Held, that there are no terms of the district court; the courts being always open and sessions had at the convenience of the judges and as the business may require. *State v. Jackman*, 31 Nev. 511, 516, 517 (104 P. 13).

The proviso to this section does not prove, it has no tendency to prove, that the convention intended to deprive the legislature of the power to assign more than one judge to a district. That was a provision for the benefit of

counties of large area, with populations gathered about different centers. It could have no application to a small county with its whole population at the county-seat. *State ex rel. Aude v. Kinkad*, 14 Nev. 117, 122.

The provision in section 9 of the act to redistrict the state (Stats. 1885, p. 60), that the court shall be held in each county at least once in every six months is in compliance with this section. *State ex rel. Coffin v. Atherton*, 19 Nev. 332, 347 (10 P. 901).

Under this section (Stats. 1903, p. 198, c. 104), directing that the sittings of the district court shall be held at a certain town whenever the people of that portion of the county lying nearer or more conveniently situated to that town than to the county-seat shall be accommodated thereby, is void. *Ex parte Wonacott*, 27 Nev. 102, 105 (73 P. 661).

#### Justices of the Peace—Jurisdiction limited—Regulating appeals—What are Courts of Record.

**323. SEC: 8.** The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix by law, their powers, duties and responsibilities, Provided, that such Justices Courts shall not have jurisdiction of the following cases, viz: First, of cases in which the matter in dispute is a money demand, or personal property; and the amount of the demand (exclusive of interest) or the value of the property exceeds Three Hundred Dollars; Second, of cases wherein the title to real estate, or mining claims, or questions of boundaries to land, is or may be involved; or of cases that in any manner shall conflict with the jurisdiction of the Several Courts of Record in this State; and Provided further, that

Justices Courts shall have such criminal jurisdiction as may be prescribed by law; and the Legislature may confer upon said courts, jurisdiction concurrent with the District Courts, of actions to enforce mechanics liens, wherein the amount (exclusive of interest) does not exceed Three hundred dollars; and also of Actions for the possession of lands and tenements where the relation of Landlord and Tenant exists, or when such possession has been unlawfully or fraudulently obtained or with-held. The Legislature shall also prescribe by law, the manner, and determine the cases in which appeals may be taken from Justices and other Courts. The Supreme Court, the District Courts, and such other Courts, as the Legislature shall designate, shall be Courts of Record.

T. C. C. pp. 204, 209, 485, 490.

Courts of justices of the peace being the mere creatures of statute, have no jurisdiction except that which is expressly granted to them by law.

This provision does not extend the jurisdiction of justices of the peace, but only restricts the power of the legislature, and justices courts could not by virtue of the constitution alone, and without an act of the legislature, take jurisdiction of cases where the demand was \$300.

The constitution merely confers power upon the legislature, and does not in this respect define the jurisdiction of those courts. Paul v. Began, 1 Nev. 327, 329, 330.

Under the provisions of this section the legislature may prescribe the mode of proceeding on appeal from a justice's court to the district court. That mode may be by trial *de novo*, or a mere review of the justice's proceedings, as the legislature choose to direct. Cavanaugh v. Wright, 2 Nev. 166, 167.

Under this section the legislature alone can determine the number of justices of the peace for each township, and the office must be filled by popular election; so that the act of March 5, 1867 (Stats. 1867, p. 87) providing for the appointment of additional justices of the peace by the county commissioners in certain cases is unconstitutional.

Although the power may exist in the legislature to provide otherwise than by election for the filling of the office of justice of the peace in case of emergency or special occasion, such as a vacancy, or the creation of a new office, it cannot delegate the power to determine the number of justices for the townships, nor can it provide that the office is to be filled under general laws otherwise than by popular election. State ex rel. Bull v. Snodgrass, 4 Nev. 524-526.

Our statute does not provide for or create any such offense as an "unlawful" as distinguished from a "forcible entry," within the meaning of the term "unlawful" as employed in this section. Peacock v. Leonard, 8 Nev. 84, 88.

Justices of the peace have jurisdiction to try an action for malicious injury to real estate in cases where the defendant claims an adverse title to the property. State ex rel. Murphy v. Rising, 10 Nev. 97, 100-103.

#### Possible municipal courts.

**324. SEC: 9.** Provision shall be made by law prescribing the powers, duties and responsibilities of any Municipal Court that may be established in pursuance of Section One, of this Article; and also fixing by law the jurisdiction of said Court, so as not to conflict with that of the several courts of Record.

T. C. C. p. 209.

The power which may be conferred upon municipal courts is restricted by section one of this article, by which the jurisdiction of courts cannot be extended

Where a suit to foreclose a mechanic's lien is brought in a justice court and appealed to the district court: Held, that an appeal lies from the district court to the supreme court. Dixon v. Corbett, 10 Nev. 439, 444.

Under the constitution and statutes of this state, an equitable defense to an action cannot be plead in a justice's court. Duffy v. Moran, 12 Nev. 94.

Cited, Floral Springs Water Co. v. Rives, 14 Nev. 434.

In an action in the justice's court for trespass on plaintiff's land defendant testified that, so far as he knew, the title to the land was in plaintiff. There was a failure to prove that plaintiff had the patent right to a particular eighty acres of land, but it was not shown that she did not have a prior possession thereto, nor did it appear whether the trespass was committed on all the lands claimed by plaintiff, or only on lands other than the eighty acres. Held, not to show that the right to real property was necessarily involved within this section. State ex rel. Launiza v. Justice Court, 29 Nev. 191, 197, 201 (87 P. 1).

See Moore v. Orr, 30 Nev. 458, 461 (98 P. 398).

Under this section, and Comp. Laws, 3835, authorizing actions in justice's courts against a tenant unlawfully holding over, etc., a justice court has jurisdiction to render judgment for plaintiff for the restitution of real estate, for rent due, and for damages for deprivation of the premises, where defendant in his answer admits the execution of the lease and the payment of rent under it, as such admission establishes the relation of landlord and tenant.

Under this section, a judgment in a justice court for \$396 treble damages for a tenant wrongfully withholding possession of the premises, and for \$100 rent due, is void because beyond the jurisdiction of the court. Fitchett v. Henley, 31 Nev. 326, 327, 332, 335 (102 P. 865).

See Moore v. Orr, 30 Nev. 458, 460 (98 P. 398).

It may be that the district court would have power to remand in cases where a justice of the peace had erroneously certified a case to the district court upon the mistaken theory that a question involving the title to real estate, or the legality of a tax, impost, assessment, toll, or municipal fine was involved. Bancroft v. Pike, 33 Nev. — (110 P. 2).

beyond municipal purposes. Meagher v. County of Storey, 5 Nev. 244, 249.

#### Judicial officers not to receive fees or perquisites, exception.

**325. SEC: 10.** No Judicial Officer, except Justices of the Peace and City Recorders, shall receive to his own use any fees or perquisites of Office.

T. C. C. C. pp. 484, 491.

The prohibition contained in this section, against the judges receiving to their own use, "any fees or perquisites of office," does not apply to "the necessary expenses actually paid by them for traveling by public conveyance, in going to and from the place of holding court." State ex rel. Coffin v. Atherton, 19 Nev. 333, 346 (10 P. 901).

The compensation allowed the trustee under Stats. 1869, 68, sec. 7, is not a fee or perquisite of the office of

district judge, and hence does not come within the prohibition of this section.

While the respondent became townsite trustee by virtue of his office as district judge, and while as such trustee certain of his duties were judicial or discretionary in character and others ministerial, his trusteeship was at all times separate and distinct from his office as district judge. State ex rel. Jennet v. Stevens, 33 Nev. — (116 P. 601).

**Eligibility to office limited.**

**§26. SEC: 11.** The Justices of the Supreme Court and the District Judges shall be ineligible to any Office, other than a Judicial Office, during the term for which they shall have been elected; and all elections or appointments of any such Judges by the people, Legislature or otherwise, during said period, to any Office other than Judicial, shall be void.

T. C. C. pp. 214, 485, 492.

The trusteeship of a federal townsite as provided in Stats. 1869, 68, is not an office within the meaning of this section. *State ex rel. Jennet v. Stevens*, 33 Nev. — (116 P. 601).

**Judges not to charge as to matters of fact.**

**§27. SEC: 12.** Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

T. C. C. pp. 214, 485, 492.

It is error for the judge to give his opinion to the jury as to the weight or sufficiency of testimony. In a trial for murder a judge should not give it as his opinion to the jury that they should find the prisoner guilty of murder in the first degree, or acquit. The grade of the offense is a question of fact which should be left entirely to the jury.

When a killing has been shown, the presumption arises that murder has been committed. But there is no presumption that it is murder in the first degree in a case of this kind. If the defendant claims that it is only manslaughter, the proof devolves on him to show the circumstances, thus reducing the grade of offense. If the prosecution claims that it is murder in the first degree, it devolved upon the state to show the aggravating facts.

An instruction in the following language is erroneous: "The testimony in this case tends to show the property of the deceased, or some portion of the same, in the possession of the defendant at the time subsequent to the alleged murder, and at quite a recent date." This instruction assumes that the property found was, or had been the property of deceased. The expression "tends to prove" only applies to the tendency of the evidence to show when the property was found, but does not apply to question of ownership. *State v. Millain*, 3 Nev. 409, 447, 468, 472, 475, 476, 481.

See dissenting opinion of Lewis, J., p. 468.

This provision was intended to prevent judges from charging that facts testified to are or are not established; but was not intended to prevent, and does not prevent, them from charging what would be the legal effect of any fact if found to be established. *State v. Anderson*, 4 Nev. 266.

A charge in a criminal case that "it is the duty of the jury to candidly consider whether in the eye of sound reason these sufficient facts and circumstances detailed in the evidence, pointing beyond reasonable doubt to the existence of the acts and intent as charged in the indictment; and if you so conclude in your minds you must, as jurors upon your oath, so declare," amounts to a charge that the facts detailed in the evidence are sufficient to establish the offense, and that the evidence points to the existence of the acts and intent beyond a reasonable doubt, and is error sufficient for reversal.

Any ambiguity in the charge in a criminal case which may have a tendency to mislead the jury should entitle the accused to a new trial; for every person charged with a public offense has the right to have the evidence weighed by the jury uninfluenced by the opinion of the judge respecting it—in all respects to have a fair and impartial trial, free from every prejudicial irregularity, and from everything which may so involve the case as to render it difficult or impossible for the jury to arrive at an intelligent conclusion. *State v. McGinnis*, 5 Nev. 337, 339.

Where, in charging the jury in a criminal case the court used the expression "the guilt of the defendant rests upon what is known as circumstantial evidence"; Held, that there was a direct assumption of the guilt of defendant and therefore manifest error.

The assumption by a judge in his charge in a criminal case, that any material fact upon which there is any conflict of evidence is proved, is error.

The provisions of this section, whether it be wise and wholesome or not, must be fully enforced both in letter and spirit.

Where in a criminal case, the court in charging the jury said, "the guilt of the defendant rests upon circumstantial evidence"; Held, that although evidently what was intended to be said was that the charge of guilt rested on circumstantial evidence, yet the words expressed a totally different meaning and constituted fatal error. *State v. Duffy*, 6 Nev. 138, 139, 140.

On a murder trial the judge instructed the jury that under the law and evidence it would not be justified in finding a verdict for any higher grade of offense than manslaughter; Held, on appeal by defendant, not necessarily a charge that the state had made out a case of manslaughter.

Where a jury in a murder case was charged that it would not be justified under the law and evidence, in finding a verdict for any higher grade of offense than manslaughter; Held, that though the instruction (which was authorized by section 376 of the Criminal Practice Act) might be repugnant to this section, yet it was not to defendant's prejudice, and he could not complain. *State v. Little*, 6 Nev. 281, 282.

Where the court in a criminal case instructed the jury that "circumstantial evidence is more satisfactory than the testimony of a single individual, who swears he has seen a fact committed"; Held, error. *State v. Van Winkle*, 6 Nev. 340, 349.

Where, in a murder case, the judge, after giving the statutory definition of the crime, used the following language: "Such is the law which you as jurors are called upon to vindicate," etc. Held, that, though the instruction might have been only meant to enjoin the jury to assert and maintain the law, it would have been better to have told the jury so, and still better to have omitted that portion of the charge altogether.

A judge in a criminal case has no right to intimate an opinion upon the facts, either directly or by innuendo; and the effect of such an opinion, expressed or indicated, cannot be obviated by announcing the jury's independence of him in all matters of fact.

A defendant in a criminal case has the right to the deliberate, independent, voluntary and unbiased judgment of the jury upon the truth of his theory or hypothesis of the case, without having the force of his position weakened by an instruction or intimation that even if they convict him they will not greatly err. *State v. Ah Tong*, 7 Nev. 148, 152.

In a murder case where it appeared that defendant had kicked deceased in the face, but the prosecution contended that the killing was by a kick upon the breast, and offered testimony to show bruises there; and the judge, in overruling objections to such testimony, remarked, in the hearing of the jury, "that there was as much testimony that defendant had kicked deceased upon the chest as upon the face"; Held, error, as charging in respect to matter of fact.

The opinion of a judge in respect to a matter of fact in a criminal case can be as effectively conveyed to the jury by expressing it in their hearing while ruling upon an objection to evidence, as by embodying it in an instruction to them; and he has no more right to volunteer such an opinion in one case than in the other.

Where a judge, in the course of a murder trial, in overruling an objection to testimony tending to show that defendant had kicked deceased fatally in the breast, remarked, "that there was as much testimony that defendant had kicked deceased upon the chest as upon the face," and afterward took occasion to state to the jury that in making the remark he was simply ruling upon an objection to testimony, and addressing himself more directly to counsel, and that he did not wish to be understood as saying how much or how little testimony there was upon any particular point, and that the whole matter was for them to pass upon; Held, that the error of the remark, if curable at all, was not cured by the caution—there being no retraction of his opinion, but merely a disclaimer of opinion as to the absolute weight of such testimony.

If a judge, in the course of a criminal trial expresses in the hearing of the jury his opinion as to a matter of fact, the injury to defendant demands redress as imperatively in the case of a mere inadvertence on his part as in case

of a wilful evasion of the law. *State v. Harkin*, 7 Nev. 377, 383.

The district judge, upon the trial of a criminal case, has the right to state to the jury, upon their request, the testimony of any witness. *State v. Smith*, 10 Nev. 106, 114.

An instruction of the court, assuming as a fact that A. was a creditor of B., where this was a fact in issue in the case, was clearly erroneous.

The evidence being clear that A. was a creditor, and it appearing that if that question had been submitted to the jury as a special issue and they had found otherwise it would have been the duty of the court to set aside the verdict: Held, that under such circumstances, the inadvertent assumption of the fact by the court was not such an error as justified a reversal of the case. *Gaudette v. Travis*, 11 Nev. 149, 161.

The court, in referring to the testimony of the defendants, as witnesses in their own behalf, told the jury that they could not believe them both, because they were wholly inconsistent, as to the principal fact in the case: Held, that this was not an infringement upon the constitutional prohibition against charging juries as to matters of fact. *State v. McLane*, 15 Nev. 345, 366.

On trial of defendant for grand larceny, the court instructed the jury that if satisfied, beyond a reasonable doubt, "that defendant killed, or had the calf killed, by the witnesses, and that she then cut out the brand and cut off the ears of the calf, and burned up the ears and part of the hide so cut out, this would be a circumstance to be considered by you, indicating that the defendant was not the owner of the calf, and of her knowledge that she was not the owner," etc. Held, that the word "indicating," as used in the instruction, would be understood by the jury as tending to show a certain result, and that

#### Style of process.

**328. SEC: 13.** The style of all process shall be "The State of Nevada"; and all prosecutions shall be conducted in the name and by the authority of the same.

T. C. C. pp. 217, 492.

A writ issued against and served on a party which does not run in the name of "the State of Nevada," or purport to be by the authority of the "State of Nevada," confers no jurisdiction on the court over the party named in the writ. But if a party on whom such a defective writ has been served comes into court, and petitions for time within which to answer such writ, he thereby acknowledges the authority and jurisdiction of the court, and waives all defects in the form of the writ. *State ex*

#### One form of action.

**329. SEC: 14.** There shall be but one form of civil action, and law and equity may be administered in the same action.

#### Compensation of judicial officers.

**330. SEC: 15.** The Justices of the Supreme Court and District Judges shall each receive quarterly for their services, a compensation to be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected, unless in case a Vacancy occurs, in which case the successor of the former incumbent shall receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each years revenue a sufficient amount of Money, to pay such compensation; Provided, that District Judges shall be paid out of the County Treasuries of the Counties comprising their respective Districts.

T. C. C. pp. 211, 485, 491.

In the payment of a debt, legal tender notes are in contemplation of law equal to coin; an act of the legislature, therefore, making the salary of a state officer payable in legal tender notes after it had previously made it payable in coin, is not rendered unconstitutional by this section.

This provision only prohibits the legislature from increasing or decreasing the number of dollars in lawful money at which the salary

of the language of the instruction is not in violation of this constitutional provision. *State v. Loveless*, 17 Nev. 424, 426 (30 P. 1080).

In a prosecution for murder where the defendant relies upon a justification, and evidence tending to establish such defense is given, it is error for the judge, in refusing to give certain instructions concerning the law of self-defense, to remark to counsel, in the presence of the jury, that he did not give the instructions for the reason that he does not "remember of any testimony given in this case tending to show that the deceased ever made an assault upon the defendant, or that there was any attempted assault made by deceased at the time of the killing; but the jurors are the exclusive judges of the facts in the case." (*Hawley, C. J., dissenting*).

Instructions (a) may be refused when the legal propositions they contain are substantially embodied in the charge given by the court. (b) Must not assume facts not admitted. (c) Should not be argumentative. (d) The court having charged the jury to carefully consider all the facts, circumstances and evidence, the refusal of instructions singling out, and laying stress upon, particular points in the testimony, was not error. *State v. Burall*, 27 Nev. 41, 53, 54 (71 P. 532).

Cited, *Murphy v. Southern Pacific Company*, 31 Nev. 130.

The judge presiding at the trial should not express any opinion upon the facts (*State v. Tickel*, 13 Nev. 502, and the authorities there cited), or compel the defendant to do any act which would clearly convey to the jury an intimation that the defendant was guilty of the offense charged, or to exhibit himself in such a manner as to prejudice his case before the jury. *State v. Petty*, 32 Nev. 384 (108 P. 936).

rel. *Curtis v. McCullough*, 3 Nev. 202, 210.

A summons is not a process within the meaning of this section; hence, a summons that runs in the name of "The People of the State of Nevada" is not void. *Brooks v. Nev. Nickel Syndicate Limited*, 24 Nev. 311, 332 (53 P. 597).

Cited, *Bell v. District Court*, 28 Nev. 296 (163 A. S. 854, 1 L. R. A. (N. S.) 843, 81 P. 875).

of an officer is fixed, at the time of his election. *State ex rel. Beatty v. Rhoades*, 3 Nev. 240, 251.

The provision allowing mileage in the former law was intended as a part of the compensation of commissioners for their services. The language of the salary act that the salaries fixed "shall be in full for all services," excludes the idea that the legislature intended to allow the former provision upon that subject to

stand. State ex rel. Scott v. Trusdale, 16 Nev. 357, 360.

It is not in contravention of this section, to provide that the judges' salaries shall be paid quarterly out of the county treasuries into the

state treasury, and by the state treasurer paid to the judges in monthly installments. State ex rel. Coffin v. Atherton, 19 Nev. 333, 346 (10 P. 901).

**Costs advanced.**

**331. SEC: 16.** The Legislature at its first Session, and from time to time thereafter shall provide by law, that upon the institution of each civil action, and other proceedings, and also upon the perfecting of an appeal in any Civil Action or proceeding, in the several Courts of Record in this State, a special Court fee, or tax shall be advanced to the Clerks of said Courts, respectively by the party or parties bringing such action or proceeding, or taking such appeal and the money so paid in shall be accounted for by such Clerks, and applied towards the payment of the compensation of the Judges of said Courts, as shall be directed by law.

**Leave of absence of judicial officers limited.**

**332. SEC: 17.** The Legislature shall have no power to grant leave of absence to a Judicial Officer, and any such Officer who shall absent himself from the State for more than Ninety consecutive days, shall be deemed to have vacated his Office.

T. C. C. p. 202.

**No officer superseded until election of successors.**

**333. SEC: 18.** No Judicial Officer shall be superceded nor shall the Organization of the several Courts of the Territory of Nevada be changed until the election and qualification of the several Officers provided for in this article.

T. C. C. pp. 475, 492.

It will be seen upon examination of this section, that no judicial officer was superseded, nor the organization of any court of the territory changed, until the several

officers provided for in that article should be elected and qualified. Armstrong v. Paul, 1 Nev. 138.

## ARTICLE 7.

### IMPEACHMENT AND REMOVAL FROM OFFICE

**Powers of impeachment conferred.**

**334. SECTION 1.** The Assembly shall have the sole power of impeaching. The concurrence of a majority of all the members elected, shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon Oath or Affirmation to do justice according to Law and Evidence. The Chief Justice of the Supreme Court, shall preside over the Senate while sitting to try the Governor or Lieutenant Governor upon impeachment. No person shall be convicted without the concurrence of two thirds of the Senators elected.

T. C. C. pp. 93, 470.

**Officers liable to impeachment, judgment in.**

**335. SEC: 2.** The Governor and other State and Judicial Officers, except Justices of the Peace shall be liable to impeachment for Misdemeanor or Malfeasance in Office; but judgment in such case shall not extend further than removal from Office and disqualification to hold any Office of honor, profit, or trust under this State. The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.

T. C. C. pp. 94, 470.

**Judicial officers, how impeached.**

**336. SEC: 3.** For any reasonable cause to be entered on the journals of each House, which may, or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court and Judges of

the District Courts shall be removed from Office on the vote of two thirds of the Members elected to each branch of the Legislature, and the Justice or Judge complained of, shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person or by counsel in his defense, Provided, that no Member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

T. C. C. p. 203.

This section, providing for the removal from office of judges in a certain manner by the legislature, is exclusive and prohibitory upon the legislature of other means

for such removal. State ex rel. O'Neale v. McClinton, 5 Nev. 329, 333.

Cited, Bell v. District Court, 28 Nev. 298 (163 A. S. 854, 1 L. R. A. (N. S.) 843, 81 P. 875).

#### Other officers, removal from office.

**337. SEC: 4.** Provision shall be made by law for the removal from Office of any Civil Officer other than those in this Article previously specified, for Malfeasance, or Nonfeasance in the performance of his duties.

T. C. C. p. 470.

## ARTICLE 8.

### MUNICIPAL AND OTHER CORPORATIONS

#### Special act prohibited, exception.

**338. SECTION 1.** The Legislature shall pass no Special Act in any matter relating to corporate powers except for municipal purposes; but corporations may be formed under general laws; and all such laws may from time to time, be altered or repealed. T. C. C. pp. 254, 320, 330, 473.

This section clearly recognizes the authority of the legislature to create municipal corporations by special enactment. This interpretation is not inconsistent with the provisions of section 8 of this article. City of Virginia v. Chollar-Potosi G. & S. M. Co., 2 Nev. 86 (affirmed); State ex rel. Rosenstock v. Swift, 11 Nev. 129, 142.

The said act of 1897 (p. 50) incorporating the city of Reno, having been passed pursuant to this section, section 34 of said act, granting to the city the right within a certain limit to borrow money for procuring water and erecting water works, is not in violation of article 8, section 8. State ex rel. Fletcher v. Ruhe, 24 Nev. 251, 261 (52 P. 274).

This section, by much stronger implication, seems to reserve to the legislature the power to pass special laws in regard to municipal corporations; that is, to create them; or, at least, to confer special and additional powers after they are in existence.

The city of Virginia was a municipal corporation when the constitution was adopted, and has never ceased to be a corporation. The law amending the charter is, therefore, unconstitutional.

The expression "in any manner relating to corporate powers," is a rather ambiguous phrase, but we think the framers of the constitution meant by that language to prohibit the *formation of corporations by special acts*. The subsequent language "but incorporations may be formed under general laws," shows that was the meaning intended to be conveyed. Then, to use more appropriate language, the section would read in this way: "the legislature shall pass general laws for the formation of corporations; but no corporations (except corporations for municipal purposes) shall be created by special act."

The act of February 9, 1865 (Stats. 1864-5, 144) attempts to give a right to Birdsall and his associates to exercise corporate powers not provided for in a general law. It is an attempt upon the part of the legislature to grant a special privilege to one corporation that could not be enjoyed by any other and is in violation of this section. State of Nevada ex rel. Keith v. Dayton Road Co., 10 Nev. 155, 161.

Cited, State ex rel. Williams v. District Court, 30 Nev. 225, 227 (94 P. 70).

#### Property of corporations taxed.

**339. SEC: 2.** All real property, and possessory rights to the same, as well as personal property in this State, belonging to corporations now existing or hereafter created shall be subject to taxation, the same as property of individuals: Provided, that the property of corporations formed for Municipal, Charitable, Religious, or Educational purposes may be exempted by law.

As the act of 1891, p. 56, provides that all railroads, however owned, are to be assessed by the state board, and all other property by the county assessors, it is not

in conflict with this section. It makes no improper discrimination between the corporations and individuals. Sawyer v. Dooley, 21 Nev. 391, 397 (32 P. 437).

#### Dues, corporators not liable.

**340. SEC: 3.** Dues from corporations shall be secured by such means as may be prescribed by law; Provided, that corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporation. T. C. C. pp. 323, 474.

**Subject to existing laws.**

**341. SEC: 4.** Corporations created by, or under the laws of the Territory of Nevada shall be subject to the provisions of such laws, until the Legislature shall pass laws regulating the same, in pursuance of the provisions of this Constitution.

**To sue and be sued.**

**342. SEC: 5.** Corporations may sue and be sued in all courts, in like manner as individuals.

T. C. C. p. 330.

**Certain paper money interdicted.**

**343. SEC: 6:** No bank-notes or paper of any kind shall ever be permitted to circulate as money in this State, except the Federal currency, and the Notes of banks authorized under the laws of Congress.

T. C. C. p. 474.

**Right of way.**

**344. SEC: 7.** No right of way shall be appropriated to the use of any corporation until full compensation be first made or secured therefor.

T. C. C. p. 36.

**Credit of cities and towns limited.**

**345. SEC: 8.** The Legislature shall provide for the Organization of Cities and Towns by general laws; and restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, except for procuring supplies of water.

T. C. C. p. 475.

This section is inoperative until acted upon by the legislature.

Such section, if standing alone, and not qualified by any other sections of the constitution, might raise a strong implied prohibition against the legislature passing any special laws on the same subject. *City of Virginia v. Chollar-Potosi G. & S. M. Co.*, 2 Nev. 86, 89, 90.

Cited, *State ex rel. Rosenstock v. Swift*, 11 Nev. 142-145.

See *State ex rel. Fletcher v. Ruhe*, 24 Nev. 251, 262, under section 1 of this article (52 P. 274).

Cited, *State ex rel. Williams v. District Court*, 30 Nev. 225, 227, 228, 234 (94 P. 70).

**State forbidden to speculate.**

**346. SEC: 9.** The State shall not donate or loan money, or its credit, subscribe to, or be, interested in the Stock of any company, association, or corporation, except corporations formed for Educational or Charitable purposes.

T. C. C. pp. 129, 334, 501.

The legislature has power to appropriate money as it sees fit except when limited by the constitution. *State ex rel. Ash v. Parkinson*, 5 Nev. 17, 31.

**Limitation of county indebtedness.**

**347. SEC: 10.** No county, city, town, or other Municipal corporation shall become a stockholder in any joint Stock Company, Corporation, or association whatever, or loan its credit in aid of any such Company, Corporation or Association, except, railroad corporations, companies, or associations.

T. C. C. p. 129.

In the very section preceding this, the state is prohibited not only from becoming a stockholder in any company or association, but also from donating money to them. Now, if it were the purpose to make the same prohibition respecting counties and towns, why were they not, like the state, expressly forbidden to donate? The failure to make the prohibition in express terms, under such circumstances, warrants the conclusion that it was not the intention to do so. Counties and towns, therefore, are not prohibited by this section from donating money to such railroad companies, if to any kind of company or association. *Gibson v. Mason*, 5 Nev. 284, 301.

The act authorizing the issuance of the bonds of Ormsby County to the Virginia and Truckee Railroad Company (Stats. 1869, p. 43) is not unconstitutional.

This section, though it does not confer any right upon such organizations, does not prevent the legislature from authorizing a county to aid a railroad, either by loaning its credit, donation, or otherwise.

To allow a county to loan its credit to a railroad company is virtually allowing a donation, because the right to loan its credit must involve the right to pay any liabilities which may be incurred by that means. *Gibson v. Mason*, 5 Nev. 284, 299, 301.

## ARTICLE 9.

## FINANCE AND STATE DEBT

**Fiscal year.**

348. SECTION 1. The fiscal year shall commence on the first day of January in each Year.

T. C. C. pp. 404, 501.

**Annual tax.**

349. SEC: 2. The Legislature shall provide by law, for an annual tax sufficient to defray the estimated expenses of the State for each fiscal year; and whenever the expenses of any Year shall exceed the income, the Legislature shall provide for levying a tax sufficient with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing Years or two Years.

The levy of state taxes by the board of county commissioners, though provided for in the revenue laws, is an idle ceremony, for the reason that the levy is made by the legislature. Cited, *State v. Manhattan Silver Mining Co.*, 4 Nev. 318, 330, 333.

See *Klein v. Kinkead*, 16 Nev. 194, 204-206, under section 3 of the article.

The constitution of this state declares that all property shall be taxed, except mines and other property for certain enumerated pur-

poses. The legislature cannot exempt any taxable property not enumerated. Money at interest, secured by mortgage, is taxable.

Held, upon a full review of the authorities, that the taxing of money at interest secured by mortgage, when the property mortgaged is taxed is not double taxation, and is not in violation of the constitution of this state. *State v. Carson City Savings Bank*, 17 Nev. 146 (30 P. 703).

**State may contract debts, limitation, exception.**

350. SEC: 3. For the purpose of enabling the State to transact its business upon a cash basis from its organization, the State may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of Three Hundred Thousand Dollars; except for the purpose of defraying extraordinary expenses as hereinafter mentioned; Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and every such law shall provide for levying an annual tax sufficient to pay the interest Semi-Annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum beforementioned, shall be void and of no effect. Except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of War, or if hostilities be threatened, provide for the public defense.

T. C. C. pp. 385, 493.

This section discussed and commented on. It does not qualify the 24th section of the 17th article.

Tax levied under the law in question is illegal and void, but the bonds authorized to be issued are legal and valid debts against the state if negotiated. *State ex rel. Nightingill v. Board of Commissioners of Storey County*, 1 Nev. 264, 267-271.

The legislative fund act of 1869 was not in violation of the constitutional provision against contracting a public debt exceeding three thousand dollars, though then there was a public debt to that amount, for the reason that the act did not create a debt within the meaning of the constitution.

Where language is employed in the constitution similar to the language in the constitution of other states; which had previously received judicial interpretation, the legal presumption arises that the language is used with reference to such interpretation.

If, as is now decided, warrants issued under the legislative fund act of 1869, create no debt against the state within the meaning of this section, the addition of an interest clause to such warrants cannot make them unconstitutional.

Interest constitutes no part of the original demand; it is simply a statutory allowance for delay.

With the question of the policy or expediency of a statute the judicial department has nothing to do; in that regard the legislature is supreme.

That a power may be abused is no argument against either its existence or its exercise. *State ex rel. Ash v. Parkinson*, 5 Nev. 15, 16, 23, 24, 27, 28.

In construing sections 2 and 3 of this article: Held, that the object in authorizing a bonded indebtedness was to enable the state to maintain its business upon a cash basis, and

that the legislature has the power to direct the issuance of bonds at any time, so long as it does not conflict with the limitation as to the amount.

In construing the various statutes relative

### Not assume debts.

**351. SEC. 4:** The State shall never assume the debts of any county, town, city or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection or to provide for the public defense.

## ARTICLE 10.

### TAXATION.

[SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, excepting Mines and Mining claims, the proceeds of which alone shall be taxed, and also excepting such property as may be exempted by law for Municipal, Educational, Literary, Scientific, religious or charitable purposes.]

Original section as above.

## ARTICLE 10.

### TAXATION

#### Taxation to be uniform.

**352. SECTION 1.** The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and, when patented, each patented mine shall be assessed at not less than five hundred dollars (\$500) except when one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds; and, also excepting such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

[As amended. Proposed and passed by the Twenty-first Session of the Nevada Legislature, March 16, 1903, Statutes of 1903, page 240; passed and agreed to by the Twenty-second Session of the Nevada Legislature, March 3, 1905, Statutes of 1905, page 277, and approved and ratified by the people at the general election of 1906.]

T. C. C. pp. 346, 360, 501.

The constitution requires that all ad valorem taxes shall be as nearly equal as may be. We cannot see that the mode of assessing the products of mines violates that principle of equality. Mayor of the City of Virginia v. Chollar-Potosi Gold and Silver Mining Company, 2 Nev. 86.

The products of mines are personal property, and as such subject to taxation for municipal purposes.

All property within the municipality is subject to one annual taxation, and it makes no difference that it is removed beyond the corporate limits before the amount of tax is specified or the mode of collecting established.

The municipal authorities of the city of Virginia may add a penalty for refusing to give the assessor proper information to enable him properly to assess the products of a mine. Mayor of the City of Virginia v. Chollar-Potosi G. & S. M. Co., 2 Nev. 86, 92, 93.

This provision requires that all ad valorem taxes shall be at a uniform rate of percentage. One species of property cannot be taxed at a higher rate than another.

The products of mines being subjected by constitutional provision to taxation, in lieu of the body of the mine, the entire annual product must be subject to taxation at the same rate or percentage as other property.

The first section of the revenue law levies a state tax of one dollar and twenty-five cents, and authorizes a county tax not exceeding one

to the territorial indebtedness: Held, that the act in question does not contemplate an indebtedness in excess of that authorized by the constitution. Klein v. Kinkead, 16 Nev. 194, 204-206.

dollar and fifty cents on each hundred dollars' worth of taxable property in the state. This is clearly in accordance with the constitution.

Section 99 imposes on the products of the mines an annual ad valorem tax of one per cent for state and county purposes—say, one-half per cent for each. Whether this be held as a substitute for the tax levied in the first section, or as an addition thereto, it is equally void and unconstitutional. Products of the mines can neither be taxed more nor less than other taxable property.

The legislature may direct the manner of assessing property, so as to obtain a fair valuation. This court could only declare such a law unconstitutional where it was manifestly intended to evade the provisions of the constitution rather than to effect a fair valuation.

That portion of section 99 declaring that three-fourths of the value shall be subject to taxation, is manifestly unconstitutional. The value once being ascertained, the whole is liable to taxation.

If section 99 was the only section providing for the taxation of the products of the mines, the whole law would fall with that section; but as section 1 provides for the taxation of all taxable property (of course including products of mines) the law is complete, leaving out section 99.

The tax collector and other revenue officers should have disregarded the unconstitutional portions of this act, and proceeded to collect

the tax equally from all property under those provisions which are constitutional. Any taxpayer, by a proper proceeding in court, could have compelled such a proceeding. One taxpayer cannot be allowed to escape payment because the collector has improperly failed to collect from another from whom taxes are due. *State v. Eastabrook*, 3 Nev. 173, 177-181.

This article means that the entire annual proceeds of mines are subject to taxation, and not the mere proceeds on hand when the assessor happens to visit the mines.

All ad valorem taxes, whether on the proceeds of mines or other property, must be equal.

The provisions of the revenue law of 1865, (Stats. 1865, p. 271) for quarterly assessments on the proceeds of mines and quarterly payment of taxes do not impose more than a regular pro rata of taxation on the proceeds of mines, nor require the same property to be paid for more than once.

The quarterly payment of taxes on the proceeds of mines, provided for by the revenue laws, are so arranged that the annual proceeds of mines do not pay a larger pro rata, even as to interest account, than if one annual tax for the annual proceeds were imposed, payable at the time other taxes are payable. *State v. Kruttschnitt*, 4 Nev. 178, 200, 202, 203.

Ordinarily the state has the right to tax all property situate within its territorial limits; but it has no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operation of constitutional laws enacted by Congress.

Congress having pointed out a method by which the real estate of national banks within any state may be taxed, and also the method of taxing their stock, the states are excluded from all other methods of taxation on the bank property.

The state may impose a tax upon the real estate and shares of national banks within its limits; but Congress has reserved to itself the exclusive power over the taxation of the banks and bank property of other descriptions.

The notes, bills, bonds, etc., of the national banks are the commodity in which those banks deal in the ordinary course of their business; state taxes upon them are state taxes upon the business of the banks, and such taxes the state cannot impose. *State v. First National Bank of Nevada*, 4 Nev. 348, 350, 351.

So far as the extent of taxation is concerned, or the purposes for which taxes may be levied, provided such purposes are public in their

nature, there is no limit or restriction placed upon the legislative power. *Gibson v. Mason*, 5 Nev. 285, 306.

Principles of valuation and taxation elaborately discussed and explained. *State v. C. P. R. R. Co.*, 10 Nev. 48, 64.

The power to tax all the property and business within the state is an essential attribute of its sovereignty; there is no restraint upon its exercise, when within constitutional limits, except the responsibility of the members of the legislature to their constituents.

In construing this article: Held, that it refers particularly to the levy of ad valorem taxes on all property, real and personal, and does not apply to licenses imposed for conducting any business or profession. *Ex Parte Robinson*, 12 Nev. 263, 268, 269 (28 A. R. 794).

In construing the provisions of the act to regulate and tax foreign insurance companies: Held, that the imposition of the percentage on premiums is a tax upon the business of the insurance companies, and is not repugnant to the provisions of this article. (*Ex Parte Robinson*, 12 Nev. 263, affirmed.) *Ex Parte Cohn*, 13 Nev. 424, 426, 427.

Cited, *State v. Cal. Mining Co.*, 15 Nev. 234, 255.

"Property" defined. *State v. Carson Savings Bank*, 17 Nev. 155, 156 (30 P. 103).

Cited, *State ex rel. Perry v. Arrington*, 18 Nev. 414, 418 (4 P. 735).

Cited, *State ex rel. Williams v. Fogus*, 19 Nev. 249, 250 (9 P. 123).

As all property is to be assessed at its actual cash value, the fact that the act (Stats. 1891, p. 56) provides that different kinds of property shall be assessed by different assessors, does not make it conflict with this article. The cash value may be as well and accurately determined by several men and boards as by one. *Sawyer v. Dooley*, 21 Nev. 391 (32 P. 437).

Cited, *State v. Virginia & Truckee R. R. Co.*, 23 Nev. 292 (35 L. R. A. 759, 46 P. 723).

Cited, *Wallace v. The Mayor*, 27 Nev. 77 (103 A. S. 747, 63 L. R. A. 337, 73 P. 528).

There is nothing in the constitution of Nevada which indicates that it was intended to confer upon county assessors the sole right to assess property, or upon county commissioners the sole right to equalize its valuation. *Sawyer v. Dooley*, 21 Nev. 390 (32 P. 437).

*Nevada Cons. Deb. & Pro.*, on question of exemption of mines from taxation, referred to in *State v. Eastabrook*, 3 Nev. 178.

## ARTICLE 11.

### EDUCATION

#### Education encouraged.

**353. SECTION 1.** The Legislature shall encourage by all suitable means, the promotion of intellectual, literary, scientific, Mining, Mechanical, agricultural and moral improvements, and also provide for the election by the people at the General Election, of a Superintendent of Public Instruction, whose term of Office shall be two years from the first Monday of January, A. D. Eighteen hundred and sixty five, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

T. C. C. pp. 225, 495.

#### Public schools fostered.

**354. SEC: 2.** The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every Year, and any school dis-

tract, neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

T. C. C. pp. 228, 495.

Cited, State ex rel. Stoutmeyer v. Duffy, 7 Nev. 356, in dissenting opinion by Garber, J. (8 A. R. 713).

Cited, State ex rel. Cutting v. Westerfield, 24 Nev. 34 (49 P. 554).

The legislature is required to make a uniform system of county government and to provide for a uniform system of public schools. In carrying out these provisions, they may abolish any county offices other than those specially created by the constitution. State v. Tilford, 1 Nev. 240, 245.

Section 50 of the school law (Stats. 1867, p. 95) in so far as it excludes negroes from the public schools, is unconstitutional. State ex rel. Stoutmeyer v. Duffy, 7 Nev. 347, 348, 350, 353, 356, 361 (8 A. R. 713).

Cited, State ex rel. Nevada Orphan Asylum v. Hallock, 16 Nev. 379.

After setting forth the purport of sections 2 to 6 of this article: Held, that the wards of the state at the orphans' home are not included in the general school system of the state, and that no part of the general school fund can be appropriated to pay teachers at the state orphans' home, and that section 34 of the Statutes of 1897 (p. 82), in so far as it attempts such appropriation, is void.

A law passed by the legislature, constitutional in part, but unconstitutional as to some of its provisions, will be sustained so far as it is constitutional, unless the whole scope and object of the law is defeated by rejecting the objectionable features. State ex rel. Keith v. Westerfield, 23 Nev. 468, 470, 472 (49 P. 119).

### Lands and funds dedicated to support of education.

**355. SEC. 3.** All lands, including the sixteenth and thirty-sixth sections in any township donated for the benefit of public schools in the Act of the Thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government, the thirty thousand acres of public lands granted by an Act of Congress, approved July second, A. D. eighteen hundred and sixty-two, for each Senator and Representative in Congress, and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this State, and also the five hundred thousand acres of land granted to the new States under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. eighteen hundred and forty-one; *provided*, that Congress make provision for or authorize such diversion to be made for the purpose herein contained; all estates that may escheat to the State; all of such per centum as may be granted by Congress on the sale of lands; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes, and all proceeds derived from any or all of said sources shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties<sup>1</sup> [as the Legislature may provide by law]<sup>2</sup>; and the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this State,<sup>3</sup> [or the bonds of other States of the Union]; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portions of said interest as may be necessary may be appropriated for the support of the State University.

[As amended. Proposed and passed at the Twelfth Session of the Legislature, February 25, 1885, Statutes of 1885, page 160; agreed to and passed at the Thirteenth Session of the Legislature, March 3, 1887, Statutes of 1887, page 168, and approved and ratified by the people at a special election held February 11, 1889.]

T. C. C. pp. 226, 496.

The constitution does not in terms vest in the school fund the title to escheats; it enjoins the application of certain resources to a speci-

fied purpose coupled with a prohibition against their diversion to other uses; but it does not prevent the legislature from determining what

<sup>1</sup> The words, in original, "in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties" were omitted in enactment of amendment.

<sup>2</sup> Not in original.

<sup>3</sup> Not in original.

estates shall escheat, or from asserting or waiving a claim to derelict goods. In re Sticknoth, 7 Nev. 223, 229.

The act of February 13, 1867, is not in violation of this section of the constitution; there is nothing in the act which attempts to make any disposition of the sixteenth and thirty-sixth sections for any other than educational purposes. (Beatty, J., dissenting.) Haydenfeldt v. Daney G. & S. M. Co., 10 Nev. 290, 291. (Affirmed, 93 U. S. 634.)

In construing this section: Held, that its object was to prevent the legislature from passing any law that would appropriate the proceeds received by the State from the sale of the sixteenth and thirty-sixth sections to any other than educational purposes.

Under this section, the legislature is commanded to invest certain moneys received for educational purposes in United States bonds or the bonds of this state: Held, that the issuance of the bonds provided for in the act in question is not an evasion of the investment directed by the constitution. Klein v. Kinkead, 16 Nev. 195.

The provisions of this section providing that all fines collected under the penal laws of the state shall be pledged to educational purposes, has no application to fines recoverable for violations of city ordinances, but applies to fines recoverable under the general laws of the state. State ex rel. Rosenstock v. Swift, 11 Nev. 129, 141.

See State ex rel. Keith v. Westerfield, 23 Nev. 468, 470, 472, under section 2 of this article (49 P. 119).

This section prohibits the legislature from using the funds arising from the sale of the public lands, which were granted for educational purposes, for any other branch of state expenditure except that immediately connected with the educational system; but it does not prohibit the use of a part of the trust estate for the purpose of making the rest available. State ex rel. Greenbaum v. Rhoades, 4 Nev. 312, 314, 316, 317.

The state, through the legislature, may waive the right to insist upon a technical informality in the execution of a will as against the just and equitable claims of the legatee; in other words, it may waive its right to an escheat by ordering that an unattested will

may be admitted to probate; and there is nothing in this section to prevent it.

The statute providing for the admission to probate of the unattested will of Henry Sticknoth, deceased (Stats. 1871, p. 129): Held, not to transfer to another fund, besides the school fund, the proceeds of an escheated estate. In re Sticknoth, 7 Nev. 223, 229.

An appropriation of money for the payment of the salary of the superintendent of public instruction out of the general school fund, is not in violation of this section providing that the interest received from the investment of the state school fund "shall from time to time, be apportioned among the several counties as the legislature may provide by law"; there being no such restriction on the disposition of that portion of the fund derived from taxation, as provided for by section 6 of this article, and the superintendent being immediately connected with the common schools. State ex rel. Cutting v. Westerfield, 24 Nev. 29, 35 (49 P. 554).

Cited, State ex rel. Keith v. Westerfield, 23 Nev. 471 (49 P. 119).

Cited, State ex rel. Stoutmeyer v. Duffy, 7 Nev. 346 (89 P. 713).

In the apportionment of the school fund as required by this section, the wards of the state at the orphans' home should not be counted as a part of the children of Ormsby County, as their education is provided for by the state at the orphans' home, and they have not the right to attend the public schools. State ex rel. Wright v. Dovey, 19 Nev. 396, 397 (12 P. 910).

The provisions of this section, providing that all fines collected under the penal laws of the state shall be pledged to educational purposes, has no application to fines recoverable for violations of city ordinances, but applies to fines recoverable under the general laws of the state. State ex rel. Rosenstock v. Swift, 11 Nev. 129, 141.

This section provides that all fines collected under the general law of the state, and all proceeds derived from such sources shall be devoted to educational purposes only: Held, that Stats. 1901, p. 121, enacted for the protection of wild game, and directing that a portion of the fines collected thereunder for violation thereof shall be paid to the informer, is unconstitutional. Ex Parte McMahon, 26 Nev. 243, 245, 246 (66 P. 294).

[SENATE JOINT AND CONCURRENT RESOLUTION NO. 1, RELATIVE TO AMENDING SECTION 3 OF ARTICLE 11 OF THE CONSTITUTION OF THE STATE OF NEVADA.]

Approved March 3, 1909

*Resolved by the Senate, the Assembly concurring,* That section 3 of article 11 of the Constitution of the State of Nevada be amended to read as follows:

SECTION 3. All lands, including the sixteenth and thirty-sixth sections in any township donated for the benefit of public schools in the Act of Thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government, the thirty thousand acres of public lands granted by an Act of Congress, approved July 2, A. D. 1862, for each Senator and Representative in Congress, and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this State, and also the five hundred thousand acres of land granted to the new States under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841, provided that Congress make provision for or authorize such diversion to be made for the purpose herein contained; all estates that may escheat to the State; all of such per centum as may be granted by Congress on the sale of lands; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes, and all proceeds derived from any or all of said sources, shall be and the same hereby are solemnly pledged for educational purposes, and shall not be transferred to any other funds for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties as the Legislature may provide by law; and the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all pro-

ceeds derived from the above-mentioned sources in United States bonds or the bonds of this State, or the bonds of other States of the Union, or the bonds of any county in the State of Nevada; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary may be appropriated for the support of the State University.]

[Proposed and passed at the Twenty-fourth Session of the Legislature, March 3, 1909, Statutes of 1909, page 340; agreed to and passed at the Twenty-fifth Session, February 14, 1911, Statutes of 1911, page 453, and is now subject to ratification of the people at the general election to be held in 1912.]

#### State University.

**356. SEC: 4.** The Legislature shall provide for the establishment of a State University which shall embrace departments for Agriculture, Mechanic Arts and Mining to be controlled by a Board of Regents whose duties shall be prescribed by Law.

T. C. C. p. 233.

See State ex rel. Keith v. Westerfield, 23 Nev. 468, 470, 472, under section 2 of this article (49 P. 119).

#### Normal School.

**357. SEC: 5.** The Legislature shall have power to establish Normal schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary, and all professors in said University, or Teachers in said schools of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article Fifteen of this Constitution. No Professor or Teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this Section shall be entitled to receive any portion of the public moneys set apart for school purposes.

T. C. C. p. 233.

See State ex rel. Keith v. Westerfield, 23 Nev. 468, 470, 472, under section 2 of this article (49 P. 119).

#### Educational special tax.

**358. SEC: 6.** The Legislature shall provide a special tax,<sup>1</sup> which shall not exceed two mills on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools.<sup>2</sup>

[As amended. Proposed and passed at the Twelfth Session of the Legislature, February 25, 1885, Statutes of 1885, page 161; agreed to and passed at the Thirteenth Session, March 3, 1887, Statutes of 1887, page 169, and approved and ratified by the people at a special election held February 11, 1889.]

See State ex rel. Keith v. Westerfield, 23 Nev. 468, 470, 472, under section 2 of this article (49 P. 119).

#### Board of Regents constituted.

**359. SEC: 7.** The Governor, Secretary of State, and Superintendent of Public Instruction, shall for the first Four Years, and until their successors are elected and qualified, constitute a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may provided by law, But the Legislature shall at its regular session next preceding the expiration of the term of Office of said Board of Regents provide for the election of a new Board of Regents and define their duties.

Prior to 1891 the board of regents of the state university consisted of three members, elected by the people, as provided for by the act of February 7, 1887. The act of March 19, 1891, provided that "the board of regents of the state university shall consist of three elective members, as now provided by law, and of the governor and attorney-general, who shall be ex officio members of said board." Respondent, as attorney-

general, claimed by virtue of said act to be a regent of the state university: Held, that respondent is not entitled to discharge the duties of regent because he has not been elected to that position in the manner provided by the constitution and the act of 1887. State ex rel. Mack v. Torreyson, 21 Nev. 517, 518, 521, 524, 526, 527 (34 P. 879).

#### Irreducible school fund.

**360. SEC: 8.** The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said Mining department in such manner as to make it most effective and useful, Provided, that all the proceeds of the public lands

<sup>1</sup>"Of one-half of one mill on the dollar" in original.

<sup>2</sup>"Provided, that at the end of ten years they may reduce said tax to one-quarter of one mill on each dollar of taxable property." In original. Omitted in this amendment.

donated by Act of Congress approved July Second A. D. Eighteen hundred and sixty Two, for a college for the benefit of Agriculture, the Mechanic Arts, and including Military tactics shall be invested by the said Board of Regents in a Separate fund to be appropriated exclusively for the benefit of the first named departments to the University as set forth in Section Four above; and the Legislature shall provide that if through neglect or any other contingency, any portion of the fund so set apart, shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund so that the principal of said fund shall remain forever undiminished.

#### Sectarian instruction prohibited.

**361. SEC. 9.** No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this Constitution.

T. C. C. pp. 128, 233.

Cited. State ex rel. Nevada Orphan Asylum v. Hallock, 16 Nev. 379.

#### No funds used for sectarian purposes.

**362. SEC. 10.** No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes.

[Section 10 was added to Article XI by amendment. Proposed and passed at the Eighth Session of the Legislature, February 27, 1877, Statutes of 1877, page 221; agreed to and passed at the Ninth Session of the Legislature, January 27, 1879, Statutes of 1879, page 149, and approved and ratified by the people at the general election of 1880.]

T. C. C. pp. 128, 233.

For the purpose of ascertaining the meaning of the words "sectarian purposes" as used in the constitution, the court examined the history of the state, in relation to appropriations, as shown by the statutes and legislative journals; Held, that the words were used in the popular sense; that a religious sect is a body or number of persons, united in tenets, but constituting a distinct party by holding doctrines different from those of other sects, or people, and that every sect of that character is sectarian within the meaning of that word as used in the constitution.

Upon a review of the testimony: Held, that the Nevada Orphan Asylum of Virginia City is a sectarian institution, and as such is prohibited by the constitution from drawing any

money from the state treasury to be used for sectarian purposes.

Held, that if the money claimed, under the act "for the relief of the several orphan asylums of this state" (Stats. 1881, p. 122), should be given to the Nevada Orphan Asylum, it would be used for the relief and support of a sectarian institution, and in part, at least, for sectarian purposes, and that it is impossible to separate this use of the money from that which might be used for other purposes that are not forbidden. State ex rel. Nevada Orphan Asylum v. Hallock, 16 Nev. 377, 379, 385.

Cited, and information given as to publication of this amendment. State ex rel. Torreyson v. Grey, 21 Nev. 386 (19 L. R. A. 134, 32 P. 190).

## ARTICLE 12.

### MILITIA

#### State militia.

**363. SECTION 1.** The Legislature shall provide by law for organizing and disciplining the Militia of this State, for the effectual encouragement of Volunteer Corps, and the safe keeping of the public Arms.

T. C. C. pp. 223, 493.

The act of March 6, 1893, sec. 41 (Stats. 1893, p. 96) provided that the expense of maintaining an armory for militia companies should be paid out of the general fund of the several counties on presentation of the auditor's certificate to the treasurer that such expenses had been allowed by the board of county commissioners. The act of March 18, 1895, sec. 12 (Stats. 1895, p. 109), expressly repeals this section of the act of 1893, and provides (sec. 11) that all claims for such expenses shall be

audited by the board of military auditors, and paid out of the general fund in the state treasury upon warrant drawn therefor by the state controller. Held, that the repealing act of 1895 is not in violation of this section, and is valid, though it makes no appropriation for the payment of these expenses out of the state treasury, as provided for in section 11 of the said act of 1895. State ex rel. Sutherland v. Nye, 23 Nev. 99, 100 (42 P. 866).

#### Suppress insurrection or repel invasion.

**364. SEC. 2.** The Governor shall have power to call out the Militia to execute the laws of the State or to suppress insurrection or repel invasion.

T. C. C. pp. 223, 493.

## ARTICLE 13.

## PUBLIC INSTITUTIONS

**Sanitary and benevolent institutions fostered.**

365. SECTION 1. Institutions for the benefit of the Insane, Blind and Deaf and Dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

**State Prison.**

366. SEC: 2. A State Prison shall be established and maintained in such manner as may be prescribed by law, and provision may be made by law for the establishment and maintenance of a House of Refuge for Juvenile Offenders.

**Relating to the indigent.**

367. SEC: 3. The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age and infirmity or misfortunes, may have claim upon the sympathy and aid of Society.

The act entitled "An act to establish and maintain a state asylum for the indigent poor and maimed of this state" (Stats. 1879, p. 142) is in plain conflict with this section. State ex rel. Keyser v. Hallock, 14 Nev. 202, 206, 207, 208 (33 A. R. 559).

## ARTICLE 14.

## BOUNDARY.

**Description.**

368. SECTION 1. The boundary of the State of Nevada shall be as follows: Commencing at a point formed by the intersection of the thirty eighth degree of Longitude West from Washington with the Thirty Seventh degree of North latitude; Thence due West along said thirty seventh degree of North latitude to the Eastern boundary line of the State of California; thence in a North Westerly direction along the said Eastern boundary line of the State of California to the forty third degree of Longitude West from Washington; Thence North along said forty third degree of West Longitude, and said Eastern boundary line of the State of California to the forty second degree of North Latitude; Thence due East along the said forty second degree of North Latitude to a point formed by its intersection with the aforesaid thirty eighth degree of Longitude west from Washington; Thence due South down said thirty eighth degree of West Longitude to the place of beginning. And whensoever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the Easterly border of the foregoing defined limits, not exceeding in extent one degree of Longitude, the same shall thereupon be embraced within, and become a part of this State. And furthermore provided, that all such territory lying West of and adjoining the boundary line herein prescribed, which the State of California, may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this State.

T. C. C. pp. 415, 503.

See "Act to define and establish a portion of the western boundary of the State of Nevada," *post*.

## ARTICLE 15.

## MISCELLANEOUS PROVISIONS

**Seat of Government.**

369. SECTION 1. The seat of Government shall be at Carson City, but no appropriation for the erection or purchase of Capitol buildings shall be made during the next three years.

T. C. C. pp. 400, 499.

**Official oath.**

370. SEC. 2. Members of the Legislature, and all Officers, Executive, Judicial and Ministerial, shall before they enter upon the duties of their respective Offices take and subscribe to the following Oath or affirmation: "I.....do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State, Convention or Legislature to the contrary notwithstanding; and further that I do this, with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever. And I do further Solemnly Swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned directly or indirectly in or about any such duel, during my continuance in office, And further that I will well and faithfully perform all the duties of the office of.....on which I am about to enter (if an Oath) So help me God, (if an affirmation) under the pains and penalties of Perjury."

T. C. C. pp. 402, 499.

The oath required by the constitution is an oath an officer is required to take when he is about to enter office, as distinguished from the primary election oath, which is one of fealty to a party, as a candidate for office, and is not regulated or imposed by the constitution. *Riter v. Douglass*, 32 Nev. 400 (109 P. 457).

The direct primary law of March 23, 1909 (Stats. 1909, c. 198) is not invalid because it requires of candidates an oath of fealty to their party which differs from the oath required by this section, since this section applies only to persons about to enter office. *Riter v. Douglass*, 32 Nev. 400 (109 P. 445).

[ASSEMBLY JOINT AND CONCURRENT RESOLUTION, RELATIVE TO AMENDING SECTION TWO OF ARTICLE FIFTEEN OF THE CONSTITUTION OF THE STATE OF NEVADA PERTAINING TO THE OFFICIAL OATH.]

Approved March 18, 1911.

*Resolved by the Assembly, the Senate concurring*, That section two of article fifteen of the constitution of the State of Nevada be amended so as to read as follows:

SECTION 2. Members of the Legislature, and all officers, executive, judicial and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath:

I, ....., do solemnly swear (or affirm) that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of ....., on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.]

[Proposed and passed at the Twenty-fifth session of the Legislature. Stats. 1911, p. 458].

**Who eligible to office.**

371. SEC. 3. No person shall be eligible to any office, who is not a qualified elector under this Constitution. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide by law for giving force and effect to the foregoing provisions of this section; *provided*, that females over the age of twenty-one years, who have resided in this State one year, and in the county or district

six months next preceding any election to fill either of said offices, shall be eligible to the offices of Superintendent of Public Schools and School Trustee.

[As amended. Proposed and passed at the Thirteenth Session of the Legislature, March 3, 1887, Statutes of 1887, page 162; agreed to and passed at the Fourteenth Session of the Legislature, January 17, 1889, Statutes of 1889, page 151, and approved and ratified by the people at a special election held February 11, 1889.]  
T. C. C. pp. 401, 499.

[SEC: 3. No person shall be eligible to any Office who is not a qualified elector under this Constitution. No person who while a citizen of this State has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent, or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as Second or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any Office of honor, profit, or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide by law for giving force and effect to this Section.]

T. C. C. pp. 401, 499.  
Original as above.

[ASSEMBLY CONCURRENT RESOLUTION NO. 3, RELATIVE TO AMENDING SECTION 3, ARTICLE 15 OF THE CONSTITUTION OF THE STATE OF NEVADA.

Passed March 12, 1909.

*Resolved by the Assembly and the Senate, conjointly,* That section three, article fifteen, of the Constitution of the State of Nevada be amended so as to read as follows:

SECTION 3. No person shall be eligible to any office who is not a qualified elector under this Constitution. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as second, or knowingly conveyed a challenge or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide by law for giving force and effect to the foregoing provisions of this section; *provided*, that females over the age of twenty-one years, who have resided in this State one year, and in the county or district six months, next preceding any election to fill either of said offices, or the making of such appointment, shall be eligible to the office of Superintendent of Public Instruction, Deputy Superintendent of Public Instruction, School Trustee, and Notary Public.]

[Proposed and passed at the Twenty-fourth Session of the Legislature, March 12, 1909, Stats. 1909, p. 349; agreed to and passed at the Twenty-fifth Session, February 21, 1911, Stats. 1911, p. 454, and is now subject to ratification by the people at the next general election to be held in 1912.]

#### Perpetuities.

372. SEC: 4. No perpetuities shall be allowed except for eleemosynary purposes.

T. C. C. pp. 406, 502.

Where it was claimed that a person assuming to act as probate judge of Carson County, Utah Territory, had granted a perpetuity of franchise in a toll-bridge in Nevada Territory: Held, that even if such claim of monstrous power were admitted, yet the pretended

grant was void, because there was no Carson County, Utah Territory, after the erection of Nevada Territory, and there consequently could not have been any probate judge, even *de facto*, of such county. State ex rel. Boardman v. Lake, 8 Nev. 277, 284.

#### Date of general election.

373. SEC: 5. The General election shall be held on the Tuesday next after the first Monday of November.

T. C. C. 413.

#### Legislature limited.

374. SEC: 6. The aggregate number of members of both branches of the Legislature shall never exceed Seventy five.

#### Offices at county seat.

375. SEC: 7. All county Officers shall hold their Offices at the county seat, of their respective Counties.

Cited, Evans v. Job, 8 Nev. 341, 342.

#### Publication of statutes and reports.

376. SEC: 8. The Legislature shall provide for the speedy publication of all Statute laws of a general nature, and such decisions of the Supreme Court, as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; Provided, that no judgment of the Supreme

Court shall take effect and be operative until the Opinion of the Court in such case shall be filed with the Clerk of said Court.

T. C. C. pp. 211, 484, 491.

Cited, State ex rel. Torreyson v. Grey, 21 Nev. 383 (19 L. R. A. 134, 32 P. 190).

Cited, State ex rel. Howell v. LaGrave, 23 Nev. 374, 384, 386 (48 P. 674).

Cited, State ex rel. Josephs v. Douglass, 33 Nev. — (110 P. 177).

#### Salaries may be increased or diminished.

**377. SEC: 9.** The Legislature may, at any time, provide by law for increasing or diminishing the salaries or compensation of any of the Officers, whose salaries or compensation is fixed in this Constitution; Provided, no such change of Salary or Compensation shall apply to any Officer during the term for which he may have been elected.

T. C. C. p. 284.

The law making the lieutenant-governor of the State of Nevada ex officio warden of the state prison, and allowing him a salary for such services, does not conflict with this section. The lieutenant-governor in office at the time of the passage of the law may, therefore, draw the salary allowed to him as warden. *Crosman v. Nightingill*, 1 Nev. 325, 326.

In the payment of a debt, legal tender notes are in contemplation of law equal to coin; an act of the legislature, therefore, making the salary of a state officer payable in legal tender notes after it had previously made it payable in coin, is not rendered unconstitutional by this section. This provision only prohibits the legislature from increasing or decreasing the number of dollars in lawful money at which the salary of an officer is fixed, at the time of his election. *State ex rel. Beatty v. Rhodes*, 3 Nev. 240, 249, 250.

Cited, State ex rel. Gallup v. Hallock, 19 Nev. 373 (12 P. 488).

Petitioner's term of office as secretary of state and ex officio clerk of the supreme court began January, 1895, hence the act of 1891 (Stats. 1891, p. 104), fixing the salary of the secretary of state, the act of 1883 (Stats. 1883, p. 78), fixing the compensation allowed the clerk of the supreme court as reporter of decisions, and the act of 1893 (Stats. 1893, p. 32), making the secretary of state ex officio clerk of the supreme court, were all passed prior to the term for which he was elected. Therefore, this section is not applicable to such state of facts. *State ex rel. Howell v. La Grave*, 23 Nev. 373, 382, 383 (48 P. 674).

Cited, State ex rel. Josephs v. Douglass, 33 Nev. — (110 P. 178).

#### Other officers, how appointed or chosen.

**378. SEC: 10.** All Officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law.

T. C. C. pp. 403, 408, 500.

The act incorporating Carson City (Stats. 1875, 87) is not in conflict with article 3, or section 1 or 8 of article 5,

or this section. *State ex rel. Rosenstock v. Swift*, 11 Nev. 135, 138.

Cited, *State ex rel. Perry v. Arrington*, 18 Nev. 419, 420.

#### Tenure of office limited.

**379. SEC: 11.** The tenure of any Office not herein provided for, may be declared by law, or when not so declared, such office shall be held during the pleasure of the Authority making the appointment; but the Legislature shall not create any office the tenure of which shall be longer than four Years, except as herein otherwise provided in this Constitution.

T. C. C. pp. 408, 500.

Section 2 of the act of 1885 (Stats. 1885, p. 111) providing for the election and term of office of school trustees for five years is in conflict with this section, and is void.

The unconstitutional provision is so inseparably connected with the other provisions as to render all of the provisions of the act, in relation to the election of school trustees, void. *State ex rel. Davenport v. Harris*, 19 Nev. 222, 224 (S P. 462).

Held, under this section, that where the term of office of the chief of police is not specified by law or city charter, an incumbent may be removed at will without his resignation, and the acceptance by the mayor and council of an incumbent's resignation constitutes a removal, though the resignation was executed many months before for a special purpose, and had no force as such, and was not to be presented. *Leeper v. Jamison*, 32 Nev. 327 (108 P. 1, 2).

#### Office at Capital.

**380. SEC: 12.** The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court shall keep their respective Offices at the seat of Government.

Cited, State ex rel. Howell v. La Grave, 23 Nev. 374, 384, 386 (48 P. 674).

The office of clerk of the supreme court is a constitutional office. *State ex rel. Josephs v. Douglass*, 33 Nev. — (110 P. 177, 178).

Nevada Cons. Deb. & Pro., pp. 613, 614, cited in *State ex rel. Lewis v. Doron*, 5 Nev. 409, with reference to this section.

#### Census.

**381. SEC: 13.** The enumeration of the inhabitants of this State shall be

taken under the direction of the Legislature, if deemed necessary, in A. D. Eighteen hundred and Sixty five, A. D. Eighteen hundred and Sixty seven, A. D. Eighteen hundred and Seventy five, and every ten Years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in A. D. Eighteen hundred and Seventy, and every subsequent ten years, shall serve as the basis of representation in both houses of the Legislature.

T. C. C. p. 472.

The constitution of this state contains no restrictive or mandatory provisions as to the time when, or how often, the legislature may make the representative

apportionment. The legislature, therefore, may make such apportionments as often as it so wills. State ex rel. Winnie v. Stoddard, 25 Nev. 456 (51 L. R. A. 229, 62 P. 237).

#### Plurality a choice.

**382. SEC: 14.** A plurality of votes given at an Election by the people, shall constitute a choice, where not otherwise provided by this Constitution.

T. C. C. pp. 407, 503.

## ARTICLE 16.

### AMENDMENTS

#### Constitution amended, how.

**383. SECTION 1.** Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a Majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the Yeas and Nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature 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 Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe, 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 Legislature voting thereon, such amendment or amendments shall become a part of the Constitution.

T. C. C. pp. 393, 496.

An amendment was proposed to the constitution of Nevada, authorizing the investment of moneys pledged to educational purposes in the bonds of any of the states of the United States, but no entry of the same was made upon the journal of either house of the legislature: Held, that this omission was fatal to the adoption of the amendment. State ex rel. Stevenson v. Tufly, 19 Nev. 391 (3 A. S. 895, 12 P. 835).

Statutes 1887, p. 122, provides for the publication of proposed amendments in one daily newspaper of general circulation, for ninety days next preceding the general election at which the amendments are to be voted on, and that as many copies of such paper shall be sent, without extra compensation, to the clerk of each county as there are registered voters therein, and by the clerk mailed to the voters. Held, that this act is a reasonable requirement, sanctioned by the constitution, and that amendments voted on without compliance with such requirements are inoperative. (Hawley, J.,

dissenting.) State ex rel. Galusha v. Davies, 20 Nev. 220, 221, 224-226 (19 P. 894).

The words "voting thereon" do not refer to the words "members of the legislature" in this section as their antecedent, and consequently do not limit the right to vote at a special election upon the question of the ratification of proposed amendments to electors who were qualified to vote for members of the legislature who voted upon the proposed amendments. All electors of the state are entitled to vote upon the submission of a proposed amendment. State ex rel. Boyle v. State Board of Examiners, 21 Nev. 67, 69 (9 L. R. A. 385, 24 P. 614).

This section is complied with by the publication of the proposed amendments in the statutes issued and distributed sixteen to eighteen months prior to the election, especially where this mode of publication has been sanctioned by the legislature and followed. State ex rel. Torreyson v. Grey, 21 Nev. 378, 380, 383, 384 (19 L. R. A. 134, 32 P. 190).

#### Revision of constitution—Convention—Majority of electors.

**384. SEC: 2.** If at any time the Legislature by a vote of two thirds of the Members elected to each house, shall determine that it is necessary to cause a revision of this entire Constitution, they shall recommend to the electors at the next election for Members of the Legislature, to Vote for or against a convention, and if it shall appear that a majority of the electors

voting at such Election, shall have voted in favor of calling a Convention, the Legislature shall, at its next session provide by law for calling a Convention to be holden within six months after the passage of such law, and such Convention shall consist of a number of Members not less than that of both branches of the Legislature. In determining what is a majority of the electors voting at such election, reference shall be had to the highest number of votes cast at such election for the candidates for any Office or on any Question.

T. C. C. p. 394.

## ARTICLE 17.

### SCHEDULE

#### Acts of Territory made valid.

**385. SECTION 1.** That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, judgments, claims and contracts, as well of individuals, as of bodies corporate, including counties, towns and cities, shall continue as if no change had taken place; and all process which may issue under the Authority of the Territory of Nevada, previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

T. C. C. pp. 416, 504.

The right of appeal must be governed by the laws in force at the time the appeal is taken. A case commenced in the territorial courts and appealed to the supreme court of the territory, but decided by the supreme court of the State of Nevada, cannot be taken to the Supreme

Court of the United States, merely because the organic act of the territory allowed it at the time the action was commenced. Such an inchoate right of appeal is not a vested right. *Hamilton v. Kneeland*, 1 Nev. 67.

#### Acts of Territory made valid.

**386. SEC: 2.** All laws of the Territory of Nevada in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitations or be altered or repealed by the Legislature.

T. C. C. p. 504.

Cited, *Armstrong v. Paul*, 1 Nev. 139.  
Cited, *Vesey v. Paul*, 1 Nev. 37, 38.  
Cited, *Paul v. Beegan, et al.*, 1 Nev. 330.  
Cited, *Brown v. Davis*, 1 Nev. 413.  
Cited, *Goldman et al. v. Clark et al.*, 1 Nev. 609.

law of England (Stats. 1861, p. 1) was adopted by this section. *Vansickle v. Haines*, 7 Nev. 251, 285.

Cited, *State v. Carson Savings Bank*, 17 Nev. 155, 156 (30 P. 703).

Cited, *State ex rel. Truman v. McKenney*, 18 Nev. 201 (2 P. 171).

Cited, *Bowers v. Beck*, 2 Nev. 158, 159.  
The territorial statute adopting the common

#### Fines, etc., to inure to state.

**387. SEC: 3.** All fines, penalties and forfeitures accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

T. C. C. p. 419.

**Recognizances to remain valid—Bonds may be sued on—Property, records, etc., of territory to vest in state—Criminal prosecutions—Offenses committed against laws of territory—Actions, etc., to be continued.**

**388. SEC: 4.** All recognizances heretofore taken, or which may be taken before the change from a Territorial to a State Government, shall remain valid, and shall pass to, and may be prosecuted in the name of the State, and all bonds, executed to the Governor of the Territory or to any other Officer or Court in his or their Official capacity, or to the people of the United States in the Territory of Nevada, shall pass to the Governor, or other Officer or Court, and his or their successors in Office for the uses therein respectively expressed, And may be sued on, and recovery had accordingly; And all property real, personal or mixed, and all judgments, bonds, specialties, choses in Action, claims and debts of whatsoever description, and all records, and public Archives of the Territory of Nevada, shall issue to and vest in

the State of Nevada, and may be sued for and recovered in the same manner and to the same extent by the State of Nevada, as the same could have been by the Territory of Nevada. All criminal prosecutions and penal Actions, which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All Offences committed against the laws of the Territory of Nevada, before the change from a Territorial to a State Government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the Authority of the State of Nevada, with like effect as though such change had not taken place; And all penalties incurred, shall remain the same as if this Constitution had not been adopted; All actions at law, and suits in Equity, and other legal proceedings, which may be pending in any of the Courts of the Territory of Nevada at the time of the change from a Territorial to a State Government may be continued and transferred to, and determined by, any court of the State, which shall have jurisdiction of the subject matter thereof. All actions at law and suits in Equity, and all other legal proceedings, which may be pending in any of the Courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any Court of the State which shall have jurisdiction of the Subject matter thereof; and all books, papers and records, relating to the same shall be transferred in like manner to such Court.

T. C. C. pp. 419, 504.

Cited, *Hamilton v. Kneeland*, 1 Nev. 56.

The state courts have jurisdiction to hear and determine causes left pending in the late United States territorial courts. *Hastings v. Johnson*, 2 Nev. 195.

The supreme court of the State of Nevada

is the successor to the supreme court of the Territory of Nevada, and has the same control over the records of the late supreme court in all cases where anything remains to be done, that it has over its own records. *Trench v. Strong*, 2 Nev. 362, 365.

#### Salaries of officers.

389. SEC: 5. For the first term of Office succeeding the formation of a State Government, the Salary of the Governor shall be Four Thousand Dollars per annum; The Salary of the Secretary of State shall be Three Thousand, Six hundred Dollars per annum; The Salary of the State Controller shall be Three Thousand, Six hundred Dollars per Annum; The Salary of the State Treasurer shall be Three Thousand, Six hundred Dollars per Annum; The Salary of the Surveyor General shall be One Thousand Dollars per Annum; The Salary of the Attorney General shall be Two Thousand Five hundred Dollars per Annum; The Salary of the Superintendent of Public Instruction shall be Two Thousand Dollars per annum; The salary of each judge of the Supreme Court shall be Seven Thousand Dollars per Annum; The salaries of the foregoing Officers, shall be paid quarterly, out of the State Treasury. The pay of State Senators and Members of Assembly shall be Eight Dollars per day, for each day of actual service, and forty cents per mile for mileage going to, and returning from, the place of meeting. No Officer mentioned in this Section, shall receive any fee or perquisites, to his own use for the performance of any duty connected with his Office, or for the performance of any additional duty imposed upon him by law.

T. C. C. p. 149.

Cited, *Crosman v. Nightingill*, 1 Nev. 325, 326.

Petitioner's several offices being distinct, the annual compensation of \$600, allowed him as reporter of the supreme court decisions, is not

a fee or perquisite, within the provisions of this section. *State ex rel. Howell v. La Grave*, 23 Nev. 373, 382, 383 (48 P. 674).

Cited, *State ex rel. Josephs v. Douglass*, 33 Nev. — (110 P. 177).

#### Apportionment of Senators and Assemblymen.

390. SEC: 6. Until otherwise provided by Law the apportionment of Senators and Assemblymen in the different counties shall be as follows, to wit: Storey County, four Senators and Twelve Assemblymen. Douglas

County, one Senator and Two Assemblymen; Esmeralda County, Two Senators and Four Assemblymen; Humboldt County, Two Senators & Three Assemblymen. Lander County Two Senators and Four Assemblymen. Lyon County, One Senator and Three Assemblymen; Lyon and Churchill Counties, One Senator jointly; Churchill County, One Assemblyman: Nye County, One Senator and one Assemblyman; Ormsby County, Two Senators and Three Assemblymen; Washoe and Roop Counties, Two Senators and Three Assemblymen.

The constitution of this state contains no restrictive or mandatory provisions as to the time when, or how often, the legislature may make the representative apportionment. The legislature, therefore, may make such apportionments as often as it so wills. *State ex rel. Winnie v. Board of County Commissioners of Storey County*, 25 Nev. 452 (51 L. R. A. 229, 62 P. 237).

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#### **Territorial debt assumed by State.**

**391. SEC: 7.** All debts and liabilities of the Territory of Nevada, lawfully incurred and which remain unpaid, at the time of the admission of this State into the Union, shall be assumed by and become the debt of the State of Nevada; Provided, that the assumption of such indebtedness shall not prevent the State from contracting the additional indebtedness as provided in section Three of Article Nine of this Constitution.

Cited, *Klein v. Kinkead*, 16 Nev. 205.

[Section 8 to 26, inclusive, are now only historical.]

#### **Term of State officers**

**392. SEC. 8.** The term of State Officers, except Judicial, elected at the first election under this Constitution shall continue until the Tuesday after the first Monday of January A. D. Eighteen hundred and Sixty Seven, and until the election and qualification of their successors.

#### **Term of Senators.**

**393. SEC: 9.** The Senators to be elected at the first election under this Constitution, shall draw lots, so that, the term of one half of the number as nearly as may be, shall expire on the day succeeding the general election in A. D. Eighteen Hundred and Sixty Six; and the term of the other half shall expire on the day succeeding the General Election in A. D. Eighteen hundred and sixty Eight. Provided, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted, so that in the Counties having two or more Senators, the terms thereof shall be divided as nearly as may be, between the long and short terms.

#### **Term of Senators fixed.**

**394. SEC: 10.** At the General Election in A. D. Eighteen hundred and Sixty Six; And thereafter, the term of Senators shall be for Four Years from the day succeeding such general election, and Members of Assembly for Two Years from the day succeeding such general election, and the terms of Senators shall be allotted by the Legislature in long and short terms as hereinbefore provided: So that one half the number as nearly as may be, shall be elected every Two Years.

#### **Term of Assemblymen.**

**395. SEC: 11.** The term of the members of the Assembly elected at the First General election under this Constitution shall expire on the day succeeding the general election in A. D. Eighteen hundred and Sixty Five; and the terms of those elected at the general election in A. D. Eighteen hundred and Sixty Five, shall expire on the day succeeding the General election in A. D. Eighteen hundred and Sixty Six.

#### **Sessions of Legislature.**

**396. SEC: 12.** The first regular session of the Legislature shall commence on the second Monday of December A. D. Eighteen hundred and Sixty Four,

and the second regular Session of the same shall commence on the first Monday of January, A. D. Eighteen hundred and Sixty Six, and the third regular session of the Legislature shall be the first of the biennial Sessions, and shall commence on the first Monday of January A. D. Eighteen hundred and Sixty Seven; and the regular sessions of the Legislature shall be held thereafter biennially, commencing on the first Monday of January.

[Section 12 superseded by Section 2, Article 4.]

**County officers continued in office—Township officers.**

397. SEC. 13. All County Officers under the laws of the Territory of Nevada at the time when the Constitution shall take effect, whose Offices are not inconsistent with the provisions of this Constitution, shall continue in Office until the first Monday of January A. D. Eighteen Hundred and Sixty Seven, and until their Successors are elected and qualified; And all township Officers shall continue in Office until the expiration of their terms of Office, and until their successors are elected and qualified; Provided, that the Probate Judges of the several Counties respectively, shall continue in Office until the election and qualification of the District Judges of the several Counties or Judicial Districts; And provided further, that the term of Office of the present County Officers of Lander County, shall expire on the first Monday of January A. D. Eighteen hundred and Sixty Five, except the Probate Judge of said County whose term of Office shall expire upon the first Monday of December A. D. Eighteen hundred and Sixty Four, And there shall be an election for County Officers of Lander County at the General Election in November A. D. Eighteen hundred and Sixty Four, and the Officers then elected, shall hold office from the first Monday of January A. D. Eighteen hundred and Sixty five until the first Monday of January A. D. Eighteen hundred and Sixty seven, and until their successors are elected and qualified.

Cited, *Vesey v. Hermann*, 1 Nev. 37, 38, 39. County officers, as used in this section, means officers who may be exercising the functions of their office when the constitution takes effect. It does not include officers elect who may not have qualified or entered on the performance of the duties of their office before the constitution took effect.

When the law provides an officer shall be elected every two years, but does not provide when the incumbent shall go out or the newly elected come into office, the newly elected may qualify and enter on the duties of his office as soon as he receives his certificate of election. The former incumbent will hold until he does qualify. *Cordell v. Frizell*, 1 Nev. 130, 132.

The board of education of Storey County, prior to the 20th of March, 1865, were "county officers," within the meaning of that phrase as used in this section.

There are certain county offices designated in the constitution. These offices cannot be abolished without a constitutional change, nor the incumbents removed prior to January, 1867.

Other county offices can be created or abolished at the will of the legislature. If the

office is abolished does not the officer cease to exist as such?

The legislature is required to make a uniform system of county government and to provide for a uniform system of public schools. In carrying out these provisions, they may abolish any county offices other than those specially created by the constitution.

This section is subject to this modification. It provides for continuance in office of all county officers whose office shall not be legally abolished before the first Monday of January, 1867.

Tilford held the office of superintendent of public instruction ex officio as president of the board of education. The board of which he was president is abolished. His presidency ceases with the existence of the board. His office of superintendent, being a mere ex officio attachment to the other office, expires with his presidency.

Taylor and others claiming to be trustees of school districts, having been appointed by a board having no legal existence, are not officers known to the law. *State v. Tilford*, 1 Nev. 240, 241, 244, 245.

Cited, *State ex rel. Perry v. Arrington*, 18 Nev. 419.

**Territorial officers continued in office until time for qualification of state officers.;**

398. SEC. 14. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada shall each continue to discharge the duties of their respective Offices after the admission of this State into the Union, and until the time designated for the qualification of the above-named Officers to be elected under the State Government, and the Territorial Auditor shall continue to discharge the duties of his said Office until the time appointed for the qualification of the State Controller: *Pro-*

*vided*, that the said Officers shall each receive the salaries, and be subject to the restrictions and conditions provided in this Constitution: *And Provided further*, that none of them shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

Cited, *Ex Parte Janes*, 1 Nev. 320.

The official name of "State Controller" implies recognized duties appurtenant thereto, and means a supervising officer of revenue, among whose duties is the

final auditing and settling of all claims against the state. *State ex rel. Lewis v. Doron*, 5 Nev. 399, 409 (4 P. 735).

#### **Terms of court determined.**

399. SEC: 15. The terms of the Supreme Court shall, until provision be made by law, be held at such times as the Judges of the Said Court or a majority of them may appoint. The first terms of the several District Courts (except as hereinafter mentioned) shall commence on the first Monday of December A. D. Eighteen Hundred and Sixty Four. The first term of the District Court in the Fifth Judicial District, shall commence on the first Monday of December A. D. Eighteen Hundred and Sixty Four in the County of Nye; and shall commence on the first Monday of January A. D. Eighteen Hundred and Sixty Five in the County of Churchill. The terms of the Fourth Judicial District Court, shall until otherwise provided by law be held at the County Seat of Washoe County, and the first term thereof commence on the first Monday of December, A. D. Eighteen Hundred and Sixty Four.

Cited, *Armstrong v. Paul*, 1 Nev. 138.

#### **Salaries of District Judges.**

400. SEC: 16. The Judges of the Several District Courts of this State shall be paid as hereinbefore provided Salaries at the following rates per Annum: First Judicial District (Each Judge) Six Thousand Dollars; Second Judicial District Four Thousand Dollars; Third Judicial District, Five Thousand Dollars; Fourth Judicial District Five Thousand Dollars; Fifth Judicial District Thirty Six Hundred Dollars; Sixth Judicial District Four Thousand Dollars; Seventh Judicial District Six Thousand Dollars; Eighth Judicial District Thirty Six Hundred Dollars; Ninth Judicial District Five Thousand Dollars.

#### **Salary of District Judge may be changed.**

401. SEC: 17. The salary of any Judge in said judicial districts may by law be altered or changed, subject to the provisions contained in this Constitution.

#### **State officers, when to qualify—Expiration of term.**

402. SEC: 18. The Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution shall each qualify and enter upon the duties of their respective Offices on the first Monday of December succeeding their election and shall continue in office until the first Tuesday after the first Monday of January, A. D. Eighteen hundred and Sixty Seven, and until the election and qualification of their successors respectively.

Cited, *State ex rel. Howell v. La Grave*, 23 Nev. 385 (48 P. 674).

#### **Judges, when to qualify.**

403. SEC: 19. The Judges of the Supreme Court and District Judges to be elected at the first election under this Constitution, shall qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

#### **Officers to be commissioned by the Governor—Controller and Treasurer to execute bond.**

404. SEC: 20. All Officers of State and District Judges first elected under this Constitution shall be commissioned by the Governor of this Territory, which Commission shall be countersigned by the Secretary of the

same, and shall qualify before entering upon the discharge of their duties, before any Officer Authorized to Administer Oaths under the Laws of this Territory; And also the State Controller and State Treasurer shall each respectively, before they qualify, and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory of Nevada an Official Bond, made payable to the People of the State of Nevada in the Sum of Thirty Thousand Dollars, to be approved by the Governor of the Territory of Nevada; and shall also execute and deliver to the Secretary of State such other or further Official Bond or Bonds as may be required by law.

**Support of county, town, city and village officers.**

405. SEC: 21. Each County, Town, City, and Incorporated Village shall make provision for the support of its own Officers, subject to such regulations as may be prescribed by law.

T. C. C. p. 501.

For the state to pay any part of the expenses of a county government not connected with the state's tax, or any business of the state, would be in contravention

of this section. State ex rel. Lyon County v. La Grave, 24 Nev. 147 (50 P. 796).

**Vacancy in office filled—Governor shall appoint.**

406. SEC: 22. In case the Office of any Justice of the Supreme Court, District Judge or other State Officer shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

**Cases in Probate Courts to be transferred to District Courts.**

407. SEC: 23. All cases both civil and criminal, which may be pending and undetermined in the Probate Courts of the Several Counties at the time when under the provisions of this Constitution, said Probate Courts are to be abolished, shall be transferred to and determined by the District Courts of such Counties respectively.

**Taxation restricted.**

408. SEC: 24. For the first Three Years after the adoption of this Constitution, the Legislature shall not levy a tax for State purposes, exceeding One per cent per Annum on the taxable property in the State, *Provided*, the Legislature may levy a special tax not exceeding One fourth of One per cent per Annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada, assumed by the State of Nevada, and for that purpose only until all of said indebtedness is paid.

This section prohibits taxation beyond one and one-quarter per cent for state purposes during the first three years of its existence. State ex rel. Nightingill

v. Board of Commissioners of Storey County, 1 Nev. 264, 266, 267, 270, 271.

**Roop and Washoe Counties.**

409. SEC: 25. The County of Roop shall be attached to the County of Washoe for Judicial, Legislative, Revenue and County purposes, until otherwise provided by law.

Under the statutes of this state an attachment must be served by the sheriff of the county where the property is situated, except in cases where one county is attached to another for judicial purposes.

A county is not "attached" to another county for judi-

cial purposes simply because it and another county, or counties, form one judicial district. To be so "attached" both counties must, under the law, be treated as one county in all matters pertaining to the courts. Sadler v. Tatti, 17 Nev. 429, 434 (30 P. 1082).

**Provision for publication of debates, etc.**

410. SEC: 26. At the first regular session of the Legislature to convene under the requirements of this Constitution, provision shall be made by law for paying for the publication of Six hundred copies of the Debates and proceedings of this Convention in Book form, to be disposed of as the Legislature may direct; and the Honl. J. Neely Johnson President of this Convention, shall contract for, and A. J. Marsh, Official reporter of this convention under

the direction of the President, shall supervise the publication of such debates and proceedings. Provision shall be made by law, at such first session of the Legislature for the Compensation of the Official reporter of this Convention, and he shall be paid in coin or its equivalent. He shall receive for his services in reporting the debates and proceedings, Fifteen Dollars per day, during the Session of the Convention, and Seven and one half dollars additional for each Evening Session, and thirty cents per folio, of One hundred words for preparing the same for publication, and for supervising and indexing such publication the sum of Fifteen Dollars per day during the time actually engaged in such service.

T. C. C. p. 413.

## ARTICLE 18

### RIGHT OF SUFFRAGE

**Right of suffrage not to be withheld.**

411. SECTION 1. The rights of suffrage and office-holding shall not be withheld from any male citizen of the United States by reason of his color or previous condition of servitude.

[Article XVIII was proposed and passed at the Eighth Session of the Legislature, January 15, 1877, Statutes of 1877, page 213; agreed to and passed at the Ninth Session of the Legislature, January 27, 1879, Statutes of 1879, page 149, and approved and ratified by the people at the general election of 1880.]

## ARTICLE 19

### INITIATIVE AND REFERENDUM

**Laws to be submitted to people for approval or disapproval on petition of ten per cent of voters.**

412. SECTION 1. Whenever ten per centum or more of the voters of this State, as shown by the number of votes cast at the last preceding general election, shall express their wish that any law or resolution made by the Legislature be submitted to a vote of the people, the officers charged with the duty of announcing and proclaiming elections, and of certifying nominations, or questions to be voted on, shall submit the question of the approval or disapproval of said law or resolution to be voted on at the next ensuing election wherein a state or congressional officer is to be voted for, or wherein any question may be voted on by the electors of the entire State.

**Majority vote to approve or disapprove.**

413. SEC. 2. When a majority of the electors voting at a state election shall by their votes signify approval of a law or resolution, such law or resolution shall stand as the law of the State, and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority shall so signify disapproval the law or resolution so disapproved shall be void and of no effect.

[Article XIX was proposed and passed at the Twentieth Session of the Legislature, March 15, 1901, Statutes of 1901, page 139; agreed to and passed at the Twenty-first Session of the Legislature, March 3, 1903, and approved and ratified by the people at the general election of 1904.]

[SENATE SUBSTITUTE FOR ASSEMBLY JOINT AND CONCURRENT RESOLUTION NO. 7, PROPOSING TO AMEND ARTICLE NINETEEN OF THE CONSTITUTION BY ADDING TO SAID ARTICLE SECTION THREE, RELATING TO THE INITIATIVE AND REFERENDUM AND THE POWERS THEREBY CONFERRED UPON THE QUALIFIED ELECTORS.]

Approved March 22, 1909.

*Resolved by the Senate, the Assembly concurring,* That section three be added to article nineteen of the Constitution of the State of Nevada, said section so added to read as follows:

SECTION 3. The people reserve to themselves the power to propose laws and the power to propose amendments to the Constitution, and to enact or reject the same at the polls, independent of the Legislature, and also reserve the power at their option to approve or

reject at the polls, in the manner herein provided, any Act, item, section or part of any Act or measure passed by the Legislature, and section one of article four of the Constitution shall hereafter be construed accordingly. The first power reserved by the people is the initiative, and not more than ten per cent (10%) of the qualified electors shall be required to propose any measure by initiative petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions, for all but municipal legislation, shall be filed with the Secretary of State not less than thirty (30) days before any regular session of the Legislature; the Secretary of State shall transmit the same to the Legislature as soon as it convenes and organizes. Such initiative measures shall take precedence over all measures of the Legislature except appropriation bills, and shall be enacted or rejected by the Legislature, without change or amendment, within forty (40) days. If any such initiative measure so proposed by petition as aforesaid, shall be enacted by the Legislature and approved by the Governor in the same manner as other laws are enacted, same shall become a law, but shall be subject to referendum petition as provided in sections one and two of this article. If said initiative measure be rejected by the Legislature or if no action be taken thereon within said forty (40) days, the Secretary of State shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote; an initiative measure so approved by the qualified electors shall not be annulled, set aside, or repealed by the Legislature within three (3) years from the date said Act takes effect. In case the Legislature shall reject such initiative measure, said body may, with the approval of the Governor, propose a different measure on the same subject, in which event both measures shall be submitted by the Secretary of State to the qualified electors for approval or rejection at the next ensuing general election. The enacting clause of all bills proposed by the initiative shall be "The People of the State of Nevada enact as follows." The whole number of votes cast for Justice of the Supreme Court at the general election last preceding the filing of any initiative petition shall be the basis on which the number of qualified electors required to sign such petition shall be counted.

The second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections one and two of this article. The initiative and referendum powers in this article provided for are further reserved to the qualified electors of each county and municipality as to all local, special and municipal legislation of every character in or for said respective counties or municipalities. The Legislature may provide by law for the manner of exercising the initiative and referendum powers as to county and municipal legislation, but shall not require a petition of more than ten per cent (10%) of the qualified electors to order the referendum, not [nor] more than fifteen per cent (15%) to propose any municipal measure by initiative.

If the conflicting measures submitted to the people at the next ensuing general election shall both be approved by a majority of the votes severally cast for and against each of said measures, the measure receiving the highest number of affirmative votes shall thereupon become a law as to all conflicting provisions.

The provisions of this section shall be self-executing, but legislation may be especially enacted to facilitate its operation.]

[Proposed and passed at the Twenty-fourth Session of the Legislature, March 22, 1909, Statutes of 1909, page 347; agreed to and passed at the Twenty-fifth Session, February 1, 1911, Statutes 1911, page 446, and is now subject to ratification by the people at the general election to be held in 1912.]

#### **Governor to issue proclamation.**

414. WHEREAS, The enabling Act passed by Congress and approved March Twenty first, A. D. Eighteen Hundred and Sixty four, requires that the Convention charged with the duty of framing a Constitution for a State Government "shall provide by ordinance for submitting said Constitution to the people of the Territory of Nevada, for their ratification or rejection" on a certain day prescribed therein; therefore this Convention organized in pursuance of said enabling Act, do establish the following

### **ORDINANCE**

#### **Election ordinance.**

SECTION 1. The Governor of the Territory of Nevada is hereby authorized to issue his proclamation for the submission of this Constitution to the people of said Territory for their approval or rejection on the day provided for such submission by Act of Congress; and this Constitution shall be submitted to the qualified electors of said Territory, in the several counties thereof, for their approval or rejection, at the time provided by such Act of

Congress; and further, on the first Tuesday after the first Monday of November, A. D. Eighteen hundred and Sixty four, there shall be a general election in the several counties of said Territory for the election of State Officers, Supreme and District Judges, members of the Legislature, Representative in Congress and three Presidential Electors.

**Electors.**

415. SEC: 2. All persons qualified by the laws of said Territory to vote for Representatives to the General Assembly on the said Twenty first day of March, including those in the Army of the United States, both within and beyond the boundaries of said Territory, and also all persons who may by the aforesaid laws, be qualified to vote on the first Wednesday of September A. D. Eighteen hundred and Sixty four, including those in the aforesaid Army of the United States, within and without the boundaries of said Territory may vote for the adoption or rejection of said Constitution, on the day last above named. In voting upon this Constitution each elector shall deposit in the ballot box a ticket whereon shall be clearly written, or printed "Constitution Yes" or "Constitution No," or such other words that shall clearly indicate the intention of the elector.

**Idem.**

416. SEC: 3. All persons qualified by the laws of said Territory to vote on the Tuesday after the first Monday of November A. D. Eighteen hundred and Sixty four, including those in the Army of the United States, within and beyond the boundaries of said Territory, may vote on the day last above named for State Officers, Supreme and District Judges, members of the Legislature, Representative in Congress and three Presidential Electors to the Electoral College.

**Time of election.**

417. SEC: 4. The elections provided in this Ordinance shall be holden at such places as shall be designated by the Boards of Commissioners of the several Counties in said Territory. The Judges, and inspectors of said Elections, shall be appointed by said Commissioners, and the said Elections shall be conducted in conformity with the existing laws of said Territory in relation to holding the General Election.

**Count of ballots and returns.**

418. SEC: 5. The Judges and Inspectors of said Elections shall carefully count each ballot immediately after said elections, and forthwith make duplicate returns thereof to the Clerks of the said County Commissioners of their respective Counties, and said Clerks, within fifteen days after said elections shall transmit an abstract of the votes including the Soldiers vote, as herein provided, given for State Officers, Supreme and District Judges, Representative in Congress and three Presidential electors, enclosed in an envelope, by the most safe and expeditious conveyance to the Governor of said Territory marked "Election Returns."

**Canvass of returns.**

419. SEC: 6. Upon the receipt of said returns, including those of the Soldiers vote, or within Twenty days after the election, if said returns be not sooner received, it shall be the duty of the Board of Canvassers, to consist of the Governor, United States District Attorney and Chief Justice of said Territory or any two of them to canvass, the returns in the presence of all who may wish to be present, and if a Majority of all the votes given upon this Constitution, shall be in its favor, the said Governor shall immediately publish an abstract of the same, and make proclamation of the fact in some newspaper in said Territory and certify the same to the President of the United States, together with a copy of the Constitution and Ordinance. The

said Board of Canvassers, after canvassing the votes of said November elections shall issue certificates of election, to such persons as were elected State Officers, Judges of the Supreme and District Courts, Representative in Congress and three Presidential Electors, when the President of the United States shall issue his proclamation, declaring this State admitted into the Union, on an Equal footing, with the Original States; This Constitution shall thenceforth be ordained and established as the Constitution of the State of Nevada.

The act of Congress enabling the people of Nevada Territory to submit a constitution to a vote, and providing for taking the vote of electors in the United States army within or beyond the territory, does not apply to elections held by the state since the adoption of its constitution,

and there being no act of the legislature authorizing the taking of such vote, a vote so taken cannot be considered. State ex rel. McMillan v. Sadler, 25 Nev. 131, 167 (83 A. S. 573, 58 P. 284).

**Provisions for taking soldiers' vote.**

**420. SEC: 7.** For the purpose of taking the vote of the electors of said Territory who may be in the Army of the United States; the Adjutant General of said Territory, shall on or before the fifth day of August next following, make out a list in alphabetical order and deliver the same to the Governor, of the names of all the electors, residents of said Territory, who shall be in the Army of the United States, stating the number of the Regiment, Battalion, Squadron, or Battery, to which he belongs, and also the County and Township of his residence in said Territory.

**Idem.**

**421. SEC. 8.** The Governor shall classify and arrange the aforesaid returned list, and shall make therefrom separate lists of the electors belonging to each Regiment, Battalion, Squadron, and Battery from said Territory in the service of the United States, and shall, on or before the Fifteenth day of August following, transmit by Mail or otherwise, to the Commanding Officer of each Regiment, Battalion, Squadron and Battery, a list of electors belonging thereto, which said list shall specify the name residence and rank of each elector, and the company to which he belongs, if to any, and also the County and Township to which he belongs, and in which he is entitled to vote.

**Idem.**

**422. SEC: 9.** Between the hours of Nine O'Clock A. M. and Three O'Clock P. M. on each of the election days hereinbefore named, a ballot box or suitable receptacle for votes shall be opened under the immediate Charge and direction of three of the highest Officers in command, for the reception of Votes from the Electors whose names are upon said list, at each place where a Regiment, Battalion, Squadron or Battery of Soldiers from said Territory in the Army of the United States may be on that day; at which time and place, said Electors shall be entitled to Vote for all Officers for which by reason of their residence in the Several Counties in said Territory they are authorized to vote, as fully as they would be entitled to Vote in the Several Counties or Townships in which they reside, and the votes so given by such Electors at such time and place, shall be considered, taken and held to have been given by them in the respective Counties and Townships in which they are resident.

**Idem.**

**423. SEC: 10.** Each ballot deposited for the Adoption or rejection of this Constitution, in the Army of the United States shall have, distinctly written or printed thereon "Constitution Yes," or "Constitution No"; or words of a Similar import, and further, for the election of State Officers, Supreme and District Judges, Members of the Legislature, Representative in Congress and three Presidential Electors, the name and Office of the person voted for shall be plainly written or printed on one piece of paper. The name of each elector

voting as aforesaid shall be checked upon the said list, at the time of voting by one of the said Officers, having charge of the ballot box. The said Officers having charge of the election shall count the votes and compare them with the checked list, immediately after the closing of the ballot box.

**Idem.**

424. SEC: 11. All the ballots cast, together with the said voting list, checked as aforesaid, shall be immediately sealed up, and sent forthwith to the Governor of said Territory at Carson City by mail or otherwise, by the Commanding Officer, who shall make out and certify duplicate returns of Votes given, according to the forms hereinafter prescribed, seal up and immediately transmit the same to the said Governor at Carson City by mail or otherwise, the day following the transmission of the ballots and the voting lists herein named, the said Commanding Officer shall also immediately transmit to the several County Clerks in said Territory an abstract of the votes given at the General election in November, for County Officers, marked "Election Returns."

**Idem.**

425. SEC: 12. The form of return of votes to be made by the Commanding Officer to the Governor and County Clerks of said Territory shall be in substance as follows, Viz:

"Returns of Soldiers votes in the (here insert the regiment, detachment, battalion, squadron or battery)"—(For first election on the Constitution)

I, \_\_\_\_\_, hereby certify, that, on the first Wednesday of September A. D. Eighteen hundred and sixty four the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron or battery) cast the following number of votes for and against the Constitution for the State of Nevada, Viz: For "Constitution" (number of votes written in full and in figures). Against "Constitution" (number of votes written in full and in figures).

(Second election for State and other Officers).

I, \_\_\_\_\_, hereby certify that on the first Tuesday after the first Monday in November A. D. Eighteen hundred and Sixty four, the Electors belonging to the (here insert as above) cast the following number of votes for the several Officers and persons hereinafter named, Viz:

For Governor—(names of persons voted for, number of votes for each person voted for written in full and also in figures, against the name of each person).

For Lieutenant Governor—(names of candidates, number of votes cast for each, written out in figures as above).

Continue as above till the list is completed.

Attest:

I, A. B.

Commanding Officer of the (here insert, regiment detachment, \_\_\_\_\_ battalion, squadron or battery as the case may be).

**Idem.**

426. SEC: 13. The Governor of this Territory is requested to furnish each Commanding Officer within and beyond the boundaries of said Territory, proper and sufficient blanks for said returns.

**Idem.**

427. SEC: 14. The provisions of this Ordinance in regard to the Soldiers vote shall apply to future elections under this Constitution, and be in full force until the Legislature shall provide by law for taking the votes of citizens of said Territory in the Army of the United States.

Done in Convention, at Carson City the Twenty Eighth day of July, in the

year of our Lord One Thousand Eight Hundred and Sixty Four and of the Independence of the United States the Eighty-ninth, and signed by the delegates.

J. NEELY JOHNSON

*President of the Convention and Delegate from Ormsby County.*

WM. M. GILLESPIE, *Secretary.*

Henry B. Brady.....	Delegate from Washoe County
E. F. Dunne.....	Delegate from Humboldt County
J. G. McClinton.....	Delegate from Esmeralda County
G. N. Folsom.....	Delegate from Washoe County
F. H. Kennedy.....	Delegate from Lyon County
W. W. Belden.....	Delegate from Washoe County
F. M. Proctor.....	Delegate from Nye County
Albert T. Hawley.....	Delegate from Douglas County
Geo. L. Gibson.....	Delegate from Ormsby County
F. Tagliabue.....	Delegate from Nye County
Wm. Wetherill.....	Delegate from Esmeralda County
Jno. A. Collins.....	Storey County Delegate
Jas. A. Banks.....	Delegate from Humboldt County
J. S. Crosman.....	Delegate from Lyon County
Saml. A. Chapin.....	Delegate from Storey County
C. M. Brosnan.....	Delegate from Storey County
John H. Kinkead.....	Delegate from Ormsby County
Geo. A. Hudson.....	from Lyon County
Israel Crawford.....	from Ormsby County
A. J. Lockwood.....	from Ormsby County
H. G. Parker.....	from Lyon County
J. H. Warwick.....	from Lander County
C. E. DeLong.....	of Storey
Lloyd Frizell.....	of Storey County
Geo. A. Nourse.....	Delegate from Washoe County
B. S. Mason.....	Delegate from Esmeralda
Almon Hovey.....	Delegate from Storey
Thomas Fitch.....	Delegate from Storey County
J. W. Haines.....	Delegate from Douglas County

## GENERAL RULES OF CONSTRUCTION

In the examination of constitutional questions, the debates of the constitutional convention may be consulted, as throwing light upon the subject; but they are not authoritative nor of any binding effect, it having been the text only that was adopted. State ex rel. Lewis v. Doron, 5 Nev. 400.

As an aid to determine the meaning of a provision of the constitution intended by its framers, the proceedings and debates in the constitutional convention may be considered. Ex Parte Shelor, 33 Nev. — (111 P. 290, 293, 294).

The constitutionality of a statute, under which any right is claimed in an action, may always be inquired into. Meagher v. County of Storey, 5 Nev. 245.

The power of determining whether a given statute is repugnant to the principles of the

constitution with which it is alleged to conflict belongs to the judiciary, and their decision is conclusive; but in all cases of doubt every possible presumption and intentment will be made in favor of the constitutionality of the act of the legislature. State ex rel. Clarke v. Irwin, 5 Nev. 111.

A statute will be sustained by the courts if there is any reasonable doubt of its unconstitutionality. State ex rel. Cutting v. Westfield, 24 Nev. 29 (49 P. 534); Quillici v. Strosmider, 33 Nev. — (115 P. 178); State ex rel. Dunn v. County Commissioners, 21 Nev. 235, 240.

The supreme court will not pass upon a constitutional question unless it is clearly involved, and a decision thereon is necessary to a determination of the case. State ex rel. Winnie v. Board of County Commissioners of

Storey County, 25 Nev. 452 (51 L. R. A. 229, 62 P. 237).

A statute can only be declared unconstitutional where specific restrictions upon the power of the legislature can be pointed out, and the case shown to come within them, and not upon any general theory that the statute is unjust, or oppressive, or impolitic, or conflicts with a spirit supposed to pervade the constitution, but not expressed in words. *Sawyer v. Dooley*, 21 Nev. 390 (32 P. 437).

In construing the constitution the thing to be sought is the thought expressed. *State ex rel. Lewis v. Doron*, 5 Nev. 400.

Words used in a constitution, unless qualified so as to alter their ordinary and usual meaning, must be received in such meaning. *State ex rel. Clarke v. Irwin*, 5 Nev. 111.

The constitution is to be construed in the ordinary sense and usage of language, literally, unless some apparent absurdity, or obvious and manifest violation of the sense of the instrument, or unmistakable intent of its framers, forbids. *State ex rel. Lewis v. Doron*, 5 Nev. 399.

When language is used in the constitution capable of two interpretations, and there is nothing in the general context of the instrument to determine which interpretation best conforms to the intention of the convention, then resort may be had to a strict grammatical construction of the language to determine its effect. *Vesey v. Hermann*, 1 Nev. 36.

It is the duty of the courts in construing the constitution to ascertain the intention of those who framed the instrument and the people who ratified it. The legislature has the power to enact any law not prohibited by the constitution; but in seeking for limitations and restrictions courts must not confine themselves to express prohibitions. Negative words are not indispensable in the creation of limitations to legislative power. If the constitution prescribes one method of filling an office, the legislature cannot adopt another. *State ex rel. Perry v. Arrington*, 18 Nev. 412 (4 P. 735).

Whenever the interpretation of a statute or a constitution in a certain way will result in manifest injustice, courts will always scrutinize the statute or constitution closely to see if it will not admit of some other interpretation. *State v. Kruttschnitt*, 4 Nev. 178, 200, 202, 203.

A law passed by the legislature, constitutional in part, but unconstitutional as to some of its provisions, will be sustained as far as it is constitutional, unless the whole scope and object of the law is defeated by rejecting the objectionable features. *State ex rel. Keith v. Westerfield*, 23 Nev. 468 (49 P. 119).

If a law be passed by the legislature, constitutional in part but unconstitutional as to some of its provisions, that which is constitutional will be sustained unless the whole scope and subject of the law is defeated by rejecting the objectionable features.

In this case, rejecting that part of the act

which is unconstitutional, there still remains a complete revenue law. *State v. Eastabrook*, 3 Nev. 173, 177, 178, 179, 180, 181.

When part of a statute is unconstitutional it will not authorize the court to declare the remainder void unless all the provisions are connected in subject-matter dependent on each other. *State ex rel. Rosenstock v. Swift*, 11 Nev. 128.

Where a portion of a statute is complete in itself and capable of being executed wholly independent of that which may be rejected, and there is no reason to suppose that the legislature would not have passed the act except as a whole: Held, that the courts will affirm the validity of such independent part, without considering whether the other is or is not unconstitutional. *State ex rel. Dunn v. Board of Commissioners of Humboldt County*, 21 Nev. 235 (29 P. 974).

The fact that a provision in an act to disincorporate a town, fixing the boundaries thereof, may be unconstitutional, as special legislation, because varying from the general act providing that the county commissioners shall fix the boundaries of disincorporated towns, does not invalidate so much of the act as disincorporates the town. *State ex rel. Osburn v. Beck*, 25 Nev. 69 (56 P. 1008).

In constitutional interpretation, contemporaneous legislation is always considered of force. *State ex rel. Ash v. Parkinson*, 5 Nev. 17.

Where a constitutional provision has been borrowed from another state after its meaning has been judicially determined by such state, the construction so put upon it is deemed adopted with the language. *Hess v. Pegg*, 7 Nev. 23, 27, 30.

When the provisions of an unconstitutional act attempts to repeal a former statute, held that the repealing clause falls with the act. *State ex rel. Keyser v. Hallock*, 14 Nev. 202 (33 A. R. 559).

An act of the legislature which was unconstitutional at the time of its enactment will not obtain validity by a subsequent change in the constitution authorizing such legislation. *Comstock M. & M. Co. v. Allen*, 21 Nev. 325, 330 (31 P. 434).

Courts will not consider an objection to the constitutionality of an act of the legislature by a party whose rights it does not affect, and who has, therefore, no interest in defeating it. *State ex rel. Osburn v. Beck*, 25 Nev. 69 (56 P. 1008).

Only one whose rights are affected can assert the unconstitutionality of the direct primary law of March 23, 1909 (Stats. 1909, c. 198), on the ground that it prevents one from being a candidate who has been defeated at a primary election. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444, 445).

The legislature has complete control of the entire subject of counties and county-seats, except where prohibited by constitutional provisions. *Quillici v. Strosnider*, 33 Nev. — (115 P. 178).

## POLITICAL DATA

### In Relation to the Territorial Government, Constitution, and the State Government of Nevada

428. The first public meeting, in what is now Nevada, of which any record was kept, was held at "Mormon Station" (now Genoa), November 12, 1851. The object of this meeting was to organize a squatter government, and to adopt local rules for the government of the settlers and their property. The meeting agreed upon a petition to the National Congress for a Territorial Government. A second meeting was held November 19th, same year, and the next day a local form of government was adopted.

Carson County, Utah, was organized by the following act:

*An Act defining the boundaries of Carson County, and providing for the organization thereof.*

SECTION 1. Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That all that portion of the country bounded north by Desert County, east by the parallel of longitude 118°, south by the boundary line of this Territory, and west by California, is hereby included within the limits of Carson County, and until organized is attached to Millard County for election, revenue and judicial purposes.

SEC. 2. The Governor is hereby authorized to appoint a Probate Judge for said county, when he shall deem it expedient, and said Probate Judge, when appointed, shall proceed to organize said county, by dividing the county into precincts and causing an election to be held according to law, to fill the various county and precinct offices, and locate the county-seat thereof.

W. RICHARDS,  
*President of the Council.*

J. M. GRANT,  
*Speaker of the House of Representatives.*

Approved January 17, 1854.

BRIGHAM YOUNG,  
*Governor of Utah Territory.*

TERRITORY OF UTAH—SECRETARY'S OFFICE.

I, Elijah Sells, Secretary of Utah Territory, do hereby certify that the above and foregoing is a true copy.

Witness my hand and the Great Seal of the Territory this 22d day of October, 1892.

[SEAL]

ELIJAH SELLS,  
*Secretary of Utah Territory.*

This embraced all of Washoe, Douglas, Lyon, Ormsby and Storey Counties, the greater part of Esmeralda and Churchill Counties, and a portion of Humboldt.

The first attempt at representation at Washington was made by electing James W. Crane as a delegate to represent the claims of the settlers to a Territorial Government. Crane having died, John J. Musser was elected his successor November 12, 1859.

On June 6, 1859, a mass meeting of delegates from the several districts was held, at which the 14th day of July, 1859, was fixed for holding an election for the purpose of electing delegates to a constitutional convention. Delegates

so elected met at Genoa on the 18th day of the same month, and in a ten days' session adopted a declaration of rights and a constitution.

This constitution was submitted to the people September 1, 1859. The constitution was adopted, and Isaac Roop elected Governor, with a Legislature and other state officers. Roop was the only officer who attempted to qualify.

The Legislature met at Genoa on the 15th day of December, 1859, and adjourned to meet in July, 1860. They never met again.

John Cradlebaugh, one of the United States District Judges for Utah Territory, arrived at Genoa in the summer of 1859, and impaneled the first grand jury that ever met in what is now the State of Nevada.

#### TERRITORIAL GOVERNMENT

The Territory of Nevada was organized by an Act of Congress entitled "An Act to organize the Territory of Nevada," approved March 2, 1861.<sup>1</sup>

In pursuance of this Act, James W. Nye of New York was appointed and commissioned Governor of Nevada Territory by President Lincoln March 22, 1861.

Governor Nye arrived in Carson July 8, 1861, and on the 11th day of that month issued a proclamation declaring the Territorial Government organized.

The population, as shown by a census taken by Henry DeGroot, July, 1861, was 16,347. The following officers constituted the Territorial Government: J. W. Nye, Governor; Orion Clemens, Territorial Secretary; Benj. B. Bunker, Attorney-General; John T. Lockhart, Indian Agent; Perry G. Childs, Territorial Auditor; J. H. Kinkead, Treasurer; John W. North, Surveyor-General; Butler Ives, Deputy Surveyor-General; John F. Kidder and Julius E. Garret, Surveyor-General's Clerks; S. C. Gallagher, Governor's Private Secretary; John Cradlebaugh, Delegate in Congress; George Turner, Chief Justice Supreme Court; Horatio N. Jones, Associate Justice; Gordon N. Mott, Associate Justice, and J. McC. Reardon, Clerk.

The District Courts were organized as follows: First District: Gordon N. Mott, Judge; David M. Hanson, Clerk; Dighton Carson, District Attorney. Second District: George Turner, Judge, Alfred Helm, Clerk; Marcus D. Larrowe, District Attorney. Third District: Horatio N. Jones, Judge; Alfred James, Clerk; E. B. Zabriskie, District Attorney.

The following were appointed Probate Judges: Chauncey Noteware, Douglas County; A. W. Oliver, Humboldt County; William Haydon, Lyon County; E. C. Dixon, Ormsby County; L. W. Ferris, Storey County.

Members of the First Territorial Council were: J. W. Pugle, Ira M. Luther, W. M. Stewart, John W. Grier, Thomas Hannah, A. W. Pray, J. L. Van Bokkelen, Solomon Geller, Isaac Roop. The officers of the Council were: J. C. Van Bokkelen, President; Henry O. Smeathmen, Secretary, and W. H. Barstow, Assistant Secretary; Noah T. Carpenter, Sergeant-at-Arms; P. H. Shannon, Messenger, and Henry Lewis, Page.

Members of the Assembly were: William Teall, Samuel Youngs, James McLean, William P. Harrington, Jr., John D. Winters, Wm. L. Card, R. M. Ford, John H. Mills, Mark H. Bryan, Ephraim Durham, Miles N. Mitchell, Edward C. Ing, James H. Sturtevant, William J. Osborn, John C. Wright. The officers of the Assembly were: Miles N. Mitchell, Speaker; William Martin Gillespie, Clerk; Samuel E. Wetherell, Assistant Clerk; J. B. McCormack, Sergeant-at-Arms; Charles C. Conger, Assistant Sergeant-at-Arms; C. S. Pierson, Messenger; Robert T. Haslan, Page.

The Territorial Legislature of 1862 passed an Act entitled "An Act to frame a Constitution and State Government for the State of Washoe,"<sup>2</sup> which was approved December 20, 1862, providing for an election on the first Wednesday in September, 1863, at which election the question of State Government or no State Government was submitted at the same time delegates were voted

<sup>1</sup>Secs. 192-208.

<sup>2</sup>Stats. 1862, p. 128.

for as members of the convention. At this election the vote showed a popular demand for statehood, and elected the following citizens as members of a convention:

Kinkead, John H.....	Ormsby County
Gibson, George L.....	Ormsby County
Wasson, Warren.....	Ormsby County
Johnson, J. Neely.....	Ormsby County
Dorsey, E. B.....	Ormsby County
Noteware, C. N.....	Douglas County
Haines, J. W.....	Douglas County
Small, James W.....	Douglas County
Stark, James.....	Esmeralda County
Bechtel, F. K.....	Esmeralda County
Youngs, Samuel.....	Esmeralda County
Stearns, L. O.....	Esmeralda County
Connor, Henry.....	Esmeralda County
Epler, W.....	Humboldt County
Nightingill, A. W.....	Humboldt County
Harrison, W. R.....	Humboldt County
Ralston, J. H.....	Lander County
Larrowe, Marcus D.....	Lander County
Kennedy, F. N.....	Lyon County
Hickok, W. B.....	Lyon County
Hudson, George A.....	Lyon County
Verdin, Wm. H.....	Lyon County
McClure, James B.....	Lyon County
Stewart, Wm. M.....	Storey County
Chapin, S. A.....	Storey County
Mitchell, M. N.....	Storey County
Plunkett, J. R.....	Storey County
Brosnan, C. M.....	Storey County
Collins, John A.....	Storey County
Ball, N. A. H.....	Storey County
Albon, W. G.....	Storey County
Corey, J. C.....	Storey County
Hite, Levi.....	Storey County
North, J. W.....	Washoe County
Ing, E. C.....	Washoe County
Porter, C. S.....	Washoe County
Shamp, T. B.....	Washoe County
Ent, F. A.....	Washoe County

On the 2d day of November, 1863, the members elected to form a convention were called to order by Orion Clemens, Territorial Secretary, and the body was organized by the election of John W. North as President, and Wm. M. Gillespie as Secretary. This convention was in session thirty-two days, and adjourned on the 11th day of December, 1863. On the 19th day of January, 1864, the Constitution framed by this convention was submitted to a vote and at the same time the following ticket was voted for state officers:

For Representative in Congress—John B. Winters of Lyon County.

For Governor—Miles N. Mitchell of Storey County.

For Lieutenant-Governor—M. S. Thompson of Humboldt County.

For Attorney-General—H. C. Worthington of Lander County.

For Justices Supreme Court—J. B. Harmon of Storey County; M. D. Larrowe of Lander County; R. S. Mesick of Esmeralda County.

For Clerk Supreme Court—Alfred Helm of Ormsby County.

For Secretary of State—Orion Clemens of Ormsby County.

For State Treasurer—W. B. Hickok of Lyon County.

For State Controller—Edwin A. Sherman of Esmeralda County.

For Superintendent of Public Instruction—A. F. White of Ormsby County.

For State Printer—G. W. Bloor of Storey County.

The Constitution was overwhelmingly defeated, while the officers were elected, but found their honors empty because there were no offices to fill.

The question of statehood was still agitated. A session of the Territorial Legislature was held in January and February, 1864, but no provision was made for another convention. On the 21st of March, 1864, the Congress of the United States passed an Act, the title of which reads: "An Act to enable the people of the Territory of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States."<sup>1</sup>

Under the Congressional Act delegates to a convention were elected, and on the 4th of July, 1864, met at Carson City, Nevada. The Constitution of 1863 was taken as a basis, and, after a session of twenty-three days, the present Constitution was formulated, differing in but few material features from that of 1863.

The personnel of this convention was as follows:

## MEMBERS

Name	County	Profession	Age	State in life	Place of nativity
Ball, Nathaniel A. H.	Storey	Banker	37	Single	New Hampshire
Banks, James A.	Humboldt	Mining Supt.	36	Single	Pennsylvania
Belden, W. W.	Washoe	Lumber dealer	30	Married	Vermont
Brady, H. B.	Washoe	Mechanic	28	Single	Connecticut
Brosnan, Cornelius M.	Storey	Lawyer	49	Married	Ireland
Chapin, Samuel A.	Storey	Miner	52	Married	Massachusetts
Collins, John A.	Storey	Miner	50	Married	Vermont
Crawford, Israel	Ormsby	Editor	42	Married	New York
Crosman, J. S.	Lyon	Miner	44	Married	New York
De Long, Charles E.	Storey	Lawyer	32	Married	New York
Dunne, E. F.	Humboldt	Lawyer	28	Single	New York
Earl, Josiah	Storey	Lumber dealer	42	Married	Ohio
Fitch, Thomas	Storey	Lawyer	29	Married	New York
Frizell, Lloyd	Storey	Attorney	40	Single	Ohio
Folsom, Gilman N.	Washoe	Lumberman	35	Married	Maine
Gibson, Geo. L.	Ormsby	Merchant	40	Married	Maine
Haines, J. W.	Douglas	Farmer	39	Married	Lower Canada
Hawley, Albert T.	Douglas	Lawyer	33	Single	Kentucky
Hovey, Almon	Storey	Merchant	45	Married	New York
Hudson, George A.	Lyon	Mill owner	54	Single	Massachusetts
Johnson, J. Neely	Ormsby	Lawyer	38	Married	Indiana
Jones, William H.	Humboldt				
Kennedy, Francis N.	Lyon	Lawyer	25	Single	Pennsylvania
Kinkead, J. H.	Ormsby	Merchant	37	Married	Pennsylvania
Lockwood, A. J.	Ormsby	Mechanic	30	Single	New York
Mason, B. S.	Esmeralda	Physician	47	Widower	New York
McClinton, J. G.	Esmeralda	Editor	26	Single	Illinois
Morse, E. A.	Lander				
Murdock, H. E.	Churchill	Millwright	64	Single	New York
Nourse, George A.	Washoe	Lawyer	39	Married	Maine
Parker, H. G.	Lyon	Mining Supt.	35	Married	Vermont
Proctor, Francis M.	Nye	Lawyer	36	Married	Kentucky
Sturtevant, James H.	Washoe	Farmer	36	Married	New York
Tagliabue, Francis	Nye	Surveyor	31	Single	England
Tozer, Charles W.	Storey	Mining, Milling	32	Single	New York
Warwick, J. H.	Lander	Lawyer	38	Married	Connecticut
Wellington, D.	Esmeralda				
Wetherell, William	Esmeralda	Mining	44	Single	Pennsylvania
Williams, R. H.	Lander				

<sup>1</sup>Secs. 209-220, *et seq.*

## OFFICERS

Name	County	Office	Age	State in life	Place of nativity
Johnson, J. Neely	Ormsby	President	38	Married	Indiana
Gillespie, William M.	Storey	Secretary	26	Single	Albany, N. Y.
Whitford, Andrew	Storey	Asst. Secretary	32	Single	Rhode Island
Marsh, Andrew J.	California	Official Reporter	38	Married	New York
Carson, Thomas M.	Ormsby	Sergt.-at-Arms	38	Single	Massachusetts
Skeene, William E.	Ormsby	Doorkeeper	36	Married	Indiana
Richard, George	Ormsby	Page	12	Single	California

The Constitution framed by this convention was submitted to the people on the fourth Wednesday in September, 1864, and was approved by a considerable majority of the electors voting. On the 31st day of October following the State was by proclamation<sup>1</sup> declared to be one of the States of the Union.

At the general election, held a few days after, the following-named citizens were elected national and state officers:

For Presidential Elector.....	S. T. Gage of Storey County
For Presidential Elector.....	A. S. Peck of Esmeralda County
For Presidential Elector.....	A. W. Baldwin of Storey County
For Governor.....	H. G. Blasdel
For Lieutenant-Governor.....	J. S. Crosman
For Member of Congress.....	H. G. Worthington
For Judge of Supreme Court.....	H. O. Beatty
For Judge of Supreme Court.....	C. M. Brosnan
For Judge of Supreme Court.....	J. F. Lewis
For Clerk of Supreme Court.....	Alfred Helm
For Secretary of State.....	C. N. Noteware
For Attorney-General.....	George A. Nourse
For Treasurer.....	E. Rhodes
For Controllor.....	A. W. Nightingill
For Surveyor-General.....	S. H. Marlette
For Superintendent of Public Instruction.....	A. F. White
For Adjutant-General.....	John Cradlebaugh
John Church was chosen State Printer, and Thomas Wells the Governor's Private Secretary.	

An Act of the Legislature of 1861<sup>2</sup> provided for a territorial seal, designed as follows:

Mountains with a stream of water coursing down their sides and falling on the overshot wheel of a quartz mill at the base. A miner leaning on his pick and upholding a United States flag with a motto expressing the two ideas of loyalty to the Union and the wealth to sustain it. *Volens et Potens*.

Several designs were made and submitted for a state seal, none of which proved acceptable. The Legislature in 1866 passed an Act<sup>3</sup> providing for "a Seal of State for the State of Nevada." It is described in the Act as follows: "The Great Seal of the State of Nevada," the design of which shall be as follows, to wit: In the foreground two large mountains, at the base of which, on the right, there shall be located a quartz mill, and on the left a tunnel penetrating the silver leads of the mountain, with a miner running out a car-load of ore and a team loaded with ore for the mill. Immediately in the foreground there shall be emblems indicative of the agricultural resources of the State; a plow, a sheaf and a sickle; in the middle ground a train of railroad cars passing a mountain gorge; also a telegraph line extending along the line

<sup>1</sup>Sec. 430, *post*.

<sup>2</sup>Stats. 1861, p. 295.

<sup>3</sup>Stats. 1866, p. 94.

of the railroad. In the extreme background a range of snow-clad mountains, with the rising sun in the east; thirty-six stars to encircle the whole group in an outer circle, the words "The Great Seal of the State of Nevada," to be engraven with these words for the motto of the State: "All for Our Country."

Extract from

## "A RETROSPECT AND A PROSPECT"

[Commencement address delivered at the University of Nevada May 17, 1911, upon the occasion of the twenty-fifth anniversary of the establishment of the State University at Reno.]

429. The struggle with the elements for a home and fortune makes strong characters, and they were strong characters who made a State from the Territory of Nevada. There is nothing else so alluring to men of energy, daring and perseverance as the quest of the precious metals. It was the gold in the gulches and ravines of California which in '49 and the '50's caused stalwart Americans all over the land to leave their offices, their workshops, their farms, their colleges, and turn their faces westward and pursue the long, tiresome and perilous journey across the plains or by the way of the Isthmus or around The Horn to the Golden Gate. It was the silver in the veins and ledges of Nevada, a decade later, that turned the tide of these modern Argonauts back across the Sierras, to a part of what was then known as the Great American Desert. The rush of population to Western Utah, caused by the discovery of the Comstock Lode and other great mines with the accompanying production of precious metals, then doubly valuable to the Nation, made a new territorial government a necessity and the Territory of Nevada was created. President Lincoln appointed James W. Nye Territorial Governor and Orion Clemens, brother of Mark Twain, Territorial Secretary. The appointment of Governor Nye was an exhibition of the wisdom and foresight of Mr. Lincoln. We of this day, I fear, do not fully appreciate the commanding figure of Governor Nye in the history of this State. Nye was one of the most gifted and persuasive orators in the United States of his time. He was a man of varied experience, a lawyer by profession from the State of New York, who had served upon the Bench of his native State and also as the first president of the Metropolitan Board of Police of New York City. With William H. Seward, he had traveled on a stumping tour of the Western States in the first Lincoln campaign. He was destined to play no small part in the affairs of the Pacific Coast. With Thomas Starr King, the orator-clergyman of San Francisco, he is mentioned as doing valiant service in keeping the Pacific Coast States and Territories steadfast for the Union cause during the Great Rebellion. The political necessities growing out of the Civil War caused President Lincoln to deem the admission of the Territory of Nevada into the Union as a State a matter of the very greatest importance. His administration had determined that the Constitution should be amended so that slavery should be abolished.

"This," says Mr. Charles A. Dana, in his book—*Recollections of the Civil War*—"was not only a change in our national policy; it was also a most important military measure. It was intended, not merely as a means of abolishing slavery forever, but as a means of affecting the judgment and the feelings of those in rebellion. It was believed that such an amendment to the Constitution would be equivalent to new armies in the field; that it would be worth at least a million men; that it would be an intellectual army

that would tend to paralyze the enemy and break the continuity of his ideas." To thus amend the Constitution required that the proposed amendment be ratified by three-fourths of the States. When that question came to be considered, the administration found that, of the States it could rely upon, it was one short of the necessary number. The genius of President Lincoln solved the problem. He would create a State out of the Territory of Nevada for the purpose, and rely on the patriotism of her people to ratify the amendment. In March, 1864, the question of allowing Nevada to form a State Government came up in the House of Representatives. There was strong opposition to it, but Mr. Lincoln threw into the breach the potent force of the administration and the measure was carried. Mr. Dana, then Assistant Secretary of War and one of the President's confidential advisers, quotes Mr. Lincoln as saying, shortly before the vote was taken: "Here is the alternative—that we carry this vote, or be compelled to raise another million, and I don't know just how many more, men, and fight, no one knows how long."

When great political questions are in the balance, sometimes events follow each other with remarkable rapidity. On the 21st day of March, 1864, the enabling Act for Nevada<sup>1</sup> passed Congress and was approved by President Lincoln. The Act provided for an election to be held on the first Monday of June following, for delegates to a constitutional convention to be held just one month later. The convention met on the 4th day of July, 1864, adopted a proposed constitution, which by the terms of the enabling Act, was voted upon and approved by the people on the first Wednesday of the following September. As soon as the vote could be canvassed, a copy of the Constitution was transmitted to the President by telegraph, at a cost of more than thirty-four hundred dollars for the one dispatch. (We may observe here in passing that there has been material progress in the reduction of telegraph tariffs since that time.) By the terms of the enabling Act, the approval of the Constitution was placed exclusively with the President. On the 31st day of October, President Lincoln issued his proclamation declaring Nevada admitted to the Union<sup>2</sup> on an equal footing with the original States. Eight days later an election for state and county officers was held and the newly elected officials assumed their duties on the first Monday in December. On the 1st day of February, 1865, Congress submitted to the several States the Thirteenth Amendment, and two weeks later<sup>3</sup> it was ratified by the Legislature of the new State of Nevada. Well may Nevada be called the Battle-Born State! \* \* \*

## PROCLAMATION

### ANNOUNCING THE ADMISSION OF NEVADA—1864

*By the President of the United States of America*

#### A PROCLAMATION

430. Whereas the Congress of the United States passed an act, which was approved on the 21st day of March last, entitled "An act to enable the people of Nevada to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states";

<sup>1</sup> Secs. 209-219.

<sup>2</sup> Sec. 430, *post*.

<sup>3</sup> Stats. 1864-5, p. 457.

And whereas the said constitution and state government have been formed, pursuant to the conditions prescribed by the fifth section of the act of Congress aforesaid, and the certificate required by the said act, and also a copy of the constitution and ordinances, have been submitted to the President of the United States:

Now, therefore, be it known, that I, ABRAHAM LINCOLN, President of the United States, in accordance with the duty imposed upon me by the act of Congress aforesaid, do hereby declare and proclaim that the said State of Nevada is admitted into the Union on an equal footing with the original states.

In witness 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 thirty-first day of October, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States, the eighty-ninth.

[L. S.]

ABRAHAM LINCOLN.

By the President: WILLIAM H. SEWARD.  
*Secretary of State.*

Cited, *Armstrong v. Paul*, 1 Nev. 138.

# REVISED LAWS OF NEVADA

This volume contains all of the existing laws of a general nature comprised in the following volumes:

Laws of Nevada Territory, First Session (1861), Second Session (1862), Third Session (1864); Laws of the State of Nevada, First Session (1864-65), Second Session (1866), Third Session (1867), Special Session of 1867, and each regular biennial session thereafter from the Fourth Session (1869) to and including the Twenty-fifth Session (1911), including, also, the Special Session of 1908.

All references are to sections of this work unless otherwise indicated.

## AGE OF MAJORITY

*An Act fixing the age of majority.*

Approved November 21, 1861, 40

### 431. Lawful age.

SECTION 1. All male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

## AGRICULTURE AND HORTICULTURE

### Agricultural Districts

- |                                     |  |
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| 432. Districts established.         | 436. Directors, how organized.         |
| 433. Associations may be formed.    | 437. Classification of fiscal year.    |
| 434. Officers.                      | 438. Reorganized as state institution. |
| 435. Governor to appoint directors. | 439. Secretary to report to governor.  |

### Aid to District Agricultural Associations

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| 440. Counties may aid.         | 443. Amount of aid limited.  |
| 441. No funds used for racing. | 444. On whose order payable. |
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### Resident, Selling Own Products, Exempt from License

445. Resident pays no license—Applies to certain counties only.

### Horticultural Commissioner

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| 446. Horticultural commissioner appointed. | 450. Compensation of commissioners.  |
| 447. Duties.                               | 451. Commissioners to furnish bonds. |
| 448. Notice to abate nuisance.             | 452. Commissioners may be removed.   |
| 449. County divided into districts.        | 453. Commissioners to make report.   |

### Extermination of Field Mice, Squirrels, or Noxious Vermin

- |                                      |                            |
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| 454. Inspectors, how appointed—Bond. | 455. Duties of inspectors. |
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### Agricultural Experiment Station

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| 456. Experiment station recognized.     | 461. Adams act.                                  |
| 457. Board of control.                  | 462. Federal appropriation—Disposition of funds. |
| 458. Keeping and expenditure of money.  | 463. Publication of report.                      |
| 459. Report to be published.            | 464. Acceptance of national aid.                 |
| 460. Acceptance of grant and agreement. |  |

**Agricultural Experiment Farm at Logan**

- 465. Experiment farm established.
- 466. Commission to select site.
- 467. To certify selection to governor.
- 468. County to furnish land.
- 469. Board of control.
- 470. Board must qualify—Meetings.

**Experiment Dry Farm at Pleasant Valley**

- 471. Farm established.
- 472. Commission to select site.
- 473. Selection to be certified to governor.
- 474. County to provide land.
- 475. Board of control, how constituted.
- 476. Members to qualify—Meetings.

**AGRICULTURAL DISTRICTS**

*An Act to form agricultural districts, to provide for the organization of agricultural associations therein, and for the management and control of the same by the state.*

Approved March 7, 1885, 79

**432. Districts established.**

SECTION 1. The counties of Ormsby, Douglas and Storey shall constitute Agricultural District No. 1; the county of Esmeralda shall constitute Agricultural District No. 2; the county of Humboldt shall constitute Agricultural District No. 3; The county of Elko shall constitute Agricultural District No. 4; the counties of Lyon and Churchill shall constitute Agricultural District No. 5; the counties of Lander and Nye shall constitute Agricultural District No. 6; and the counties of Eureka, Lincoln and White Pine shall constitute Agricultural District No. 7. The exhibitions in Agricultural District No. 6 shall be held in Lander County, and the exhibitions in Agricultural District No. 7 shall be held in White Pine County. *As amended, Stats. 1889, 48.*

**433. Associations may be formed.**

SEC. 2. Any twenty or more persons, citizens within any of the districts above constituted, may form an association for the improvement of the material industries within such district, and when so formed the association shall be known and designated by the name of \_\_\_\_\_ Agricultural Association, and by such name and style shall have perpetual succession, and shall have power and authority to contract and be contracted with, to sue and be sued, to have and use a common seal, to purchase and hold and lease real estate, with such buildings and improvements as may be erected thereon, and may sell and lease and dispose of the same at pleasure. The said real estate shall be used by such association for the purpose of holding exhibitions of horses, cattle and other stock, of the agricultural, horticultural, viticultural, mechanical, manufacturing and domestic products of such district, with a view to the improvement of all the industries in the same. *As amended, Stats. 1889, 48.*

**434. Officers.**

SEC. 3. The officers of such association shall consist of eight directors, who shall constitute a district board of agriculture for District Number \_\_\_\_\_, a president, who shall be one of their number, and a secretary and treasurer not of their number.

**435. Governor to appoint directors.**

SEC. 4. Within ten days after the formation of an agricultural association within any of the districts above constituted, in accordance with the provisions of this act, and notice of such formation to the governor, the governor shall appoint eight resident citizens of such districts as members of a district board of agriculture for said district, whose term of office shall be four years, except as hereinafter provided.

**436. Directors, how organized.**

SEC. 5. Within ten days after their appointment, the persons so appointed shall meet at a place within the district and organize by the election of one

of their number as president of the board and association, who shall hold said office of president one year and until his successor is elected; they shall also elect a secretary and treasurer.

#### 437. Classification of fiscal year.

SEC. 6. At the same meeting the members of the board shall, by lot or otherwise, classify themselves into four classes of two members each. The terms of office of the first class shall expire at the end of the first fiscal year; of the second class, of the second fiscal year; of the third class, of the third fiscal year; and of the fourth class, at the end of the full term of four years. The fiscal year shall be from December first to December first.

#### 438. Recognized as a state institution—Fairs not to conflict with state fairs.

SEC. 7. Each association so formed and organized is hereby declared and shall be recognized a state institution, and the board so appointed and qualified shall have the exclusive control and management of such institution for and in the name of the state, and shall have the possession and care of all the property of the association, and shall fix the terms of office and the bonds of the secretary and treasurer, and determine their salaries and duties. They shall have power to make all necessary by-laws, rules and regulations for the government of the association and the management of its prudential and financial affairs. They shall provide for an annual fair or exhibition by the association of all the industries and industrial products in the district, at such time and place as they may deem advisable; *provided*, that no district fair shall be held in any of the districts at the same time of the state fair; *and provided further*, that the state shall in no event be liable for any premium offered, or award, or for any debt contracted by any district board of agriculture or agricultural association.

#### 439. Secretary to report to governor.

SEC. 8. When any district board of agriculture shall have been classified and organized as herein provided, the secretary of the board shall report such classification and organization to the state board of agriculture; he shall also report the same to the governor, and shall report any vacancy that may occur in the board to the governor, who shall fill the same by appointment for the unexpired term.

### AID TO DISTRICT AGRICULTURAL ASSOCIATIONS

*An Act authorizing the boards of county commissioners of the several counties of this state to grant aid to any district agricultural association within their respective counties, or within any agricultural district of which said county or counties may be a part.*

Approved March 3, 1893, 74

#### 440. Counties may aid.

SECTION 1. For the purpose of aiding each or any district agricultural association within any county or counties of this state, now formed under the laws of this state, which shall hereafter annually hold, within any county or counties comprising said agricultural district, a fair for exhibition in successfully carrying out the purposes for which it has been organized, the boards of county commissioners of the several counties of this state are hereby authorized to appropriate any money or moneys out of the general fund of their respective counties to aid any such district agricultural association, composing any agricultural district of which said county or counties may be a part.

#### 441. No funds used for racing.

SEC. 2. Any moneys hereby appropriated by said board of county com-

missioners shall be used by the boards of directors of each or any such district agricultural associations for the payment of such premiums as may be awarded by each or any of the several district agricultural associations or the board of directors thereof, and for such purposes as the said associations may through their boards of directors deem just and proper; *provided*, that none of the moneys so appropriated by said boards of county commissioners shall be used by the boards of directors of the various district agricultural associations, either directly or indirectly, for the purpose of paying any purse or purses for racing.

#### 442. How funds to be used.

SEC. 3. Before any board of county commissioners within any county in this state shall appropriate any moneys as herein provided, [they] shall have presented to them a certificate under oath signed by the president and secretary of the board of directors of such district agricultural association, showing the amount of money expended by such district agricultural association within such county or counties composing such agricultural district, and that the same was expended for the payment of premiums awarded by the board of directors of such district agricultural association, and that the same was not expended, either directly or indirectly, for the purpose of paying any purse or purses for racing.

#### 443. Amount of aid limited.

SEC. 4. Where more than one county or counties in this state is included in and comprises an agricultural district, the boards of county commissioners of such county or counties are authorized to appropriate, out of the general fund of said county, such money or moneys, for the encouragement of such district agricultural associations, as said board or boards may, in its judgment, deem just and proper; *provided, however*, that in no case shall such appropriation exceed the sum of fifteen hundred dollars in any one year.

#### 444. On whose order payable.

SEC. 5. When the boards of county commissioners of each or any county of this state, constituting and comprising said district agricultural association, shall determine and allow the amount to be annually appropriated for the purposes herein mentioned, the same shall be paid as other bills against the county are paid. All warrants drawn pursuant to the provisions of this section, and of this act, shall be payable to the order of the president of the board of directors of such district agricultural association, or, in case of his absence or inability to serve, then such warrants shall be payable to the order of such member of such board of directors as such board shall, by a majority vote thereof, determine and direct.

### RESIDENT, SELLING OWN PRODUCTS, EXEMPT FROM LICENSE

#### *An Act to encourage agriculture.*

Approved March 16, 1895, 92

#### 445. Resident pays no license—Applies to certain counties only.

SECTION 1. Any citizen or resident of the State of Nevada shall be permitted to sell fruits, eggs and poultry, also pork and beef by the quarter, and any other agricultural products of his own industry without the payment of license; *provided*, that in all counties in this state which cast at the last general election not less than four hundred votes nor more than seven hundred votes, to be determined by the vote cast for secretary of state, pork and beef may be sold in any quantities less than a quarter without the payment of a license. *As amended, Stats. 1899, 32.*

**HORTICULTURAL COMMISSIONER**

*An Act to protect and promote the horticultural interests of the state and to destroy insect pests in orchards and elsewhere.*

Approved March 13, 1903, 91

**446. Horticulture commissioner to be appointed.**

SECTION 1. Whenever a petition is presented to the board of county commissioners of any county, and signed by twenty or more persons who are resident freeholders and possessors of an orchard, or both, stating that certain or all orchards or nurseries, or trees of any variety, are infested with scale insect of any kind injurious to fruit, fruit trees or vines, or are infested with codlin moth or other insects or pests that are destructive to trees or vines, and praying that a commissioner be appointed by them whose duty it shall be to supervise the destruction of such insects or trees as herein provided, the board of county commissioners shall, within twenty days after the presentation of such petition, select and appoint a commissioner for the county, who shall be known as the county horticultural commissioner. The said commissioner shall serve for a period of two years from and after the date of his appointment and qualification, or, unless he shall be sooner removed by order of said board of county commissioners.

**447. Duties.**

SEC. 2. It shall be the duty of the county horticultural commissioner in each county, whenever he shall deem it necessary, to make or cause to be made an inspection of any orchard, or nursery, or trees, or any fruit-packing house, store-room, sales-room, or any other place in his jurisdiction, and if found infested with scale bug, codlin moth, or other insect pests injurious to fruit, fruit trees, trees or vines, he shall notify the owner or owners, or person or persons in charge or possession of said trees or place, as aforesaid, that the same are infested with the said insects, or any of them, or their eggs or larvæ, and he shall require such person or persons to disinfect or destroy the same within a certain time, to be specified. If within such specified time such disinfection or destruction has not been accomplished, the said person or persons shall be required to make application of such treatment, for the purpose of disinfection or destruction of such insect pests, scale bug or codlin moth, as may be prescribed by said commissioner.

**448. Notice to abate nuisance.**

SEC. 3. The notice provided for in section 2 shall be a written notice and may be served upon the person or persons owning or having charge or possession of such infested trees or places, or articles as aforesaid, by the commissioner or by any person deputed by him for that purpose; or they may be served in the same manner as a summons in a civil action. If the owner or owners, or any person or persons in charge or possession of any orchard, or nursery or trees or places, or articles infested with the said insects, or any of them, or their larvæ or eggs, after having been notified as above to destroy the same, or make application of treatment as directed, shall fail, neglect or refuse so to do, he or they shall be deemed guilty of maintaining a public nuisance, and any such orchards, nurseries, trees, or places, or articles thus infested shall be adjudged and the same is hereby declared to be a public nuisance, and may be proceeded against as such. If the owner or owners, person or persons aforesaid, be found guilty, the court shall direct the aforesaid county horticultural commissioner to abate the nuisance. All the expenses or liabilities incurred in such proceeding, together with the costs, shall or may be a lien upon the real property of the defendant, or property proceeded against.

**449. County divided into districts.**

SEC. 4. Said horticultural commissioner shall have power to divide the county into districts and to appoint a local inspector for each of said districts who shall be known as "District Horticultural Inspectors," who shall serve without compensation and who shall be subject to the supervision and control of the county horticultural commissioner, and whose authority may at any time be revoked. The county horticultural commissioner, or his local inspectors, shall have full power and authority to enter into any orchard, nursery, or place or places where trees or plants are kept and offered for sale or otherwise, or any house, store-room, sales-room, depot, or any other such place in their jurisdiction, to inspect the same or any part thereof.

**450. Compensation of commissioner.**

SEC. 5. The county horticultural commissioner shall be paid for each day actually engaged in the performance of his duty under this act, which amount or amounts shall be payable out of the county treasury of his county. The amount of compensation shall be fixed and determined by resolution of the board of county commissioners, prior to the time of appointing such county horticultural commissioner.

**451. Commissioner to furnish bond.**

SEC. 6. Before the person appointed as county horticultural commissioner enters upon the discharge of his duties, or at any time thereafter, the board of county commissioners may require a bond of such appointee, which bond shall be conditioned for the true and faithful performance of the duties of such appointee hereunder, and which bond shall be in an amount with sureties, to be fixed and approved by said board of county commissioners.

**452. Commissioner may be removed.**

SEC. 7. If the county horticultural commissioner of any county shall fail or neglect to perform the duties of his office as required by this act, he may be removed, and the district attorney of such county may institute a civil action to recover from the sureties on such bond all damages occasioned by such failure or neglect, or any person aggrieved thereby shall have a right of action upon such bond against the sureties thereon. In case of removal of such county horticultural commissioner, or of vacancy, occasioned by death, resignation, or otherwise, the county commissioners may fill such vacancy thus formed, by appointment.

**453. Commissioner to make report.**

SEC. 8. It shall be the duty of the county horticultural commissioner to keep a true and accurate record of his and his local inspectors' official acts hereunder, and to make a quarterly report to the board of county commissioners, and they may withhold any compensation due such commissioner until such time as such report is made.

**EXTERMINATION OF FIELD MICE, SQUIRRELS OR NOXIOUS VERMIN**

*An Act to provide for the appointment of inspectors to inspect lands infected with, or threatened with damage by, field mice, squirrels, or other noxious vermin, to prescribe their duties and fix their compensation.*

Approved March 16, 1909, 123

**454. Inspectors, how appointed—Bond.**

SECTION 1. Whenever it shall appear to the board of county commissioners of any county in this state that the agricultural interests of said county are being damaged, or threatened with damage, by reason of the depredations of field mice, squirrels, or other noxious vermin, it shall be the duty of the said

board of county commissioners to appoint some suitable person or persons to inspect the lands so infested, or threatened with infection, and take all necessary means for the extermination of the same. The inspectors so appointed shall, before entering upon the duties of their office, take and file with the board of county commissioners a bond to be approved by said board in a sum not exceeding one thousand (\$1,000) dollars, conditioned for the faithful discharge of the duties of their office, and shall take the official oath. Said inspectors shall receive a compensation not exceeding five dollars (\$5) per day for each and every day actually employed by them in the discharge of their duties, and the necessary expenses while so employed.

#### 455. Duties of inspectors.

SEC. 2. It shall be the duty of any of the said inspectors, when complaint is made to him in writing, by five or more residents of the county, owning or occupying lands in the vicinity, that certain lands therein described, are infested with field mice, squirrels, or other noxious vermin, to immediately examine the tract or tracts of land complained of, and if upon such investigation, he shall find that the lands so complained of, or any portion thereof, is so infested with field mice, squirrels, or other noxious vermin, as to seriously damage, or threaten serious damage to lands in its vicinity, he shall serve a written notice upon the owner or occupant of said land to immediately take such steps to destroy the same, and if the party, or parties, so notified, do not, within five days from the time of receiving said notice, proceed to do so, the inspector shall immediately take such measures as may be necessary to exterminate such field mice, squirrels, or other noxious vermin, and when he shall have completed doing so, he shall present an itemized bill of the expenses incurred therefor, to the owner or occupant of said premises so treated, and if said owner or occupant shall fail to pay the same within fifteen days from the date of the presentation, the inspector performing the work shall so notify the board of county commissioners of his county, with a statement containing a general description of the land treated, the name of the owner or occupant thereof, the time when said land was treated by him, the cost of the treatment, and that the same has not been paid, whereupon such indebtedness shall become a lien against the land so treated, which said lien shall not be removed, or defeated until such indebtedness shall have been fully paid, and it shall be the duty of said board of county commissioners to require the district attorney of the county to collect the amount by suit in any court of competent jurisdiction.

#### AGRICULTURAL EXPERIMENT STATION

*An Act in relation to the agricultural experiment station of this state.*

Approved February 8, 1889, 30

#### 456. Agricultural experiment station recognized.

SECTION 1. The agricultural experiment station, organized and established by the board of regents of the state university at, and in connection with, said state university, is hereby recognized and shall be continued as a part of said state institution, and shall be conducted by a "Board of Control" hereinafter provided for, for the purposes of acquiring and diffusing among the people useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science, said state university having been established in accordance with the provisions of an act of Congress approved July second, eighteen hundred and sixty-two, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanical arts," and acts amendatory thereof or supplementary thereto.

**457. Board of control.**

SEC. 2. The board of control of said agricultural experiment station shall consist of the board of regents of the state university, and they shall organize said board and choose its officers.

**458. Keeping and expenditure of money.**

SEC. 3. The board of control of said agricultural experiment station shall, to the best of its ability, observe and carry out the requirements of "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto," approved by the president March second, eighteen hundred and eighty-seven. The said board of control shall have charge of the receipts, safe keeping and expenditure of all money appropriated by Congress for the benefit and use of said agricultural experiment station; they shall be allowed and paid all necessary expenses incurred by them severally in the discharge of their official duties, but shall receive no salary or compensation for their services.

**459. Report to be published.**

SEC. 4. Said board of control shall make a report at the end of each fiscal year to the governor, and twelve hundred copies thereof shall be printed at the state printing office for general distribution by said board. The governor shall transmit all said annual reports to the legislature.

**460. Acceptance and agreement.**

SEC. 5. The legislature of Nevada hereby gratefully assents to the purposes of all grants of money made heretofore, and all which may hereafter be made, to the State of Nevada by Congress, under the act of Congress, the title of which is recited in section three of this act, and agrees that the same shall be used only for the purposes named in said act of Congress, or acts amendatory thereof or supplemental thereto.

*An Act in relation to the agricultural experiment station  
of the State of Nevada.*

Approved March 29, 1907, 433

**461. Adams act.**

SECTION 1. The board of control of the agricultural experiment station of Nevada shall, to the best of its ability, observe and carry out the requirements of "An act to provide for the increased annual appropriation for the agricultural experiment stations, and regulating the expenditures thereof," approved March 16, 1906, generally known as the Adams act. The said board of control shall have charge of the receipts, safe keeping, and expenditure of the money appropriated by Congress under this act for the benefit and use of the agricultural experiment station of Nevada.

**462. Federal appropriation—Disposition of funds.**

SEC. 2. This act of Congress, approved March 16, 1906, entitled "An act to provide for an increased annual appropriation for the agricultural experiment stations, and regulating the expenditures thereof," provides the sum of five thousand dollars for the fiscal year ending June 30, 1906; the sum of seven thousand dollars for the fiscal year ending June 30, 1907; the sum of nine thousand dollars for the fiscal year ending June 30, 1908; the sum of eleven thousand dollars for the fiscal year ending June 30, 1909; the sum of thirteen thousand dollars for the fiscal year ending June 30, 1910; the sum of fifteen thousand dollars for the fiscal year ending June 30, 1911; to be paid as provided in the said act to each state and territory for the more

complete endowment and maintenance of agricultural experiment stations now established, or which may hereafter be established in accordance with the act of Congress approved March 7, 1887. The money thus appropriated is to be applied only to paying the necessary expenses of conducting original research or experiments bearing directly on the agricultural industry of the United States, having due regard to the varying conditions and needs of the respective states and territories.

#### 463. Publication of report.

SEC. 3. The State of Nevada herewith provides that the results of the experiments and investigations conducted under this act shall be published by the state.

#### 464. Acceptance of national aid.

SEC. 4. The legislature of Nevada hereby gratefully assents to the purposes of all grants of money made under this act, and agrees that the same shall be used only for the purposes named in said act of Congress, or acts amendatory thereto, or supplementary thereto.

### AGRICULTURAL EXPERIMENT FARM AT LOGAN

*An Act to establish an agricultural experiment farm in the southeastern part of this state and making an appropriation therefor.*

Approved March 2, 1905. 59

#### 465. Experiment farm established.

SECTION 1. An agricultural experiment farm for the purpose of making experiments and diffusing information in agriculture, horticulture and gardening in the semi-tropical part of this state is hereby established in the southeastern part of this state, the same to be located as hereinafter provided.

#### 466. Commission to select site.

SEC. 2. A commission of three persons is hereby created, to be appointed by the governor, whose duty it shall be, within four months after the approval of this act, to visit the southeastern part of this state situated in the semi-tropical region and select a site for the location of said agricultural experiment farm. Said commission shall serve without compensation, but they shall have their actual expenses, and the same shall be paid when approved by the state board of examiners.

#### 467. To certify selection to governor.

SEC. 3. The said commission, or a majority thereof, shall have full power to select the site for said farm, and, when so selected, they shall certify the same to the governor of the state. Any vacancy that may occur in said commission shall be filled by the governor.

#### 468. County to furnish land.

SEC. 4. As a condition to the location of said agricultural experiment farm, the county in which said commission shall decide to locate the same shall vest in the state a good and sufficient title to the land, with good and adequate water right for the successful operation of said agricultural experiment farm. Upon the acceptance by the governor of the state of the title to said land, said title to be approved by the attorney-general, the state shall establish at such place an agricultural experiment farm, to be under the control and management of the board of control of the Nevada Agricultural Experiment Association.

*An Act providing for certain changes in the control and management of the state agricultural experiment farm, located at Logan, Lincoln County, Nevada, and making an appropriation therefor.*

Approved February 28, 1907, 52

#### 469. Board of control.

SECTION 1. The board of control of the state agricultural experiment farm located at Logan, Lincoln County, Nevada, shall consist of three members, to be appointed by the governor of the state, within thirty days after the approval of this act. Two members of said board of control shall be practical farmers, residing within the county in which said state agricultural experiment farm is located, and the third member of said board shall be a professor in the agricultural department of the state university, and a member of the Nevada Agricultural Experiment Station. The two resident members of said board of control shall receive for their services a compensation of ten dollars per month, and the member of said board who is connected with the state university and Nevada Agricultural Experiment Station, shall receive his actual traveling expenses, and the same shall be paid when approved by the state board of examiners. They shall hold their office for a term of two years from the date of their appointment, and their successors shall be appointed in like manner. The governor may make, from time to time, such changes in the personnel of said board of control as he may deem necessary.

#### 470. Board must qualify—Meetings.

SEC. 2. The members of said board of control, before entering upon the duties of their office, shall qualify by taking the oath of office before some officer authorized to administer such oaths. They shall hold meetings at said state agricultural experiment farm on the first Monday of each month, or oftener, if deemed expedient, and two members shall constitute a quorum for the transaction of business.

### EXPERIMENT DRY FARM AT PLEASANT VALLEY

*An Act to establish an agricultural experiment dry farm in the northeastern part of this state, creating a commission in connection therewith, providing for its expenses and conferring certain powers thereon, imposing certain duties on the governor and attorney-general in relation thereto, providing for the government thereof, and making an appropriation therefor.*

Approved March 2, 1909, 59

#### 471. Agricultural experiment farm established.

SECTION 1. An agricultural experiment dry farm for the purpose of making experiments and diffusing information in agriculture, horticulture and gardening in the semi-arid part of this state is hereby established in the northeastern part of this state, the same to be located as hereinafter provided.

#### 472. Commission to select site.

SEC. 2. A commission of three persons is hereby created, to be appointed by the governor, whose duty it shall be, within four months after the approval of this act, to visit the northeastern part of this state situated in the semi-arid region and select a site for the location of said agricultural experiment dry farm. Said commission shall serve without compensation, but they shall have their actual expenses, and the same shall be paid when approved by the state board of examiners.

**473. Selection to be certified to governor.**

SEC. 3. The said commission, or a majority thereof, shall have full power to select the site for said farm, and when so selected, they shall certify the same to the governor of the state. Any vacancy that may occur in said commission shall be filled by the governor.

**474. County to provide land.**

SEC. 4. As a condition to the location of said agricultural experiment dry farm, the county in which said commission shall decide to locate the same shall vest in the state a good and sufficient title to the land, with good and adequate water right for the successful operation of said agricultural experiment dry farm. Upon the acceptance by the governor of the state of the title to said land, said title to be approved by the attorney-general, the state shall establish at such place an agricultural experiment dry farm, to be under the control and management of the board of control of the Nevada Agricultural Experiment Station.

*An Act providing for certain changes in the control and management of the state agricultural experiment dry farm, located at Pleasant Valley, Elko County, Nevada, and making an appropriation therefor.*

Approved March 3, 1911, 34

**475. Board of control—How constituted.**

SECTION 1. The board of control of the state agricultural experiment dry farm located at Pleasant Valley, Elko County, Nevada, shall consist of three members, to be appointed by the governor of the state, within thirty days after the approval of this act. Two members of said board of control shall be practical farmers, residing within the county in which said state agricultural experiment dry farm is located, and the third member of said board shall be a professor in the agricultural department of the state university and a member of the Nevada Agricultural Experiment Station. The two resident members of said board of control shall receive for their services a compensation of ten dollars per month, and the member of said board who is connected with the state university and Nevada Agricultural Experiment Station shall receive his actual traveling expenses, and the same shall be paid when approved by the state board of examiners. They shall hold their office for a term of two years from the date of their appointment, and their successors shall be appointed in like manner. The governor may make, from time to time, such changes in the personnel of said board of control as he may deem necessary.

**476. Members to qualify—Meetings.**

SEC. 2. The members of said board of control, before entering upon the duties of their office, shall qualify by taking the oath of office before some officer authorized to administer such oath. They shall hold meetings at said state agricultural experiment dry farm on the first Monday of each month, or oftener, if deemed expedient, and two members shall constitute a quorum for the transaction of business.

See State Agricultural Society, secs. 3916-3932.

## APIARIES

477. Inspectors appointed.

480. To destroy infected hives.

478. Commissioners to fix compensation.

481. Penalty for violation.

479. Duties of inspector.

*An Act to prevent the dissemination of disease among apiaries; to provide for the appointment of an inspector, and to define his duties and compensation.*

Approved March 6, 1901, 47

477. Inspector appointed.

SECTION 1. The board of county commissioners of any county, wherein bees are kept, are hereby authorized, upon the petition of two or more bee owners, to appoint an inspector of apiaries, to hold office during the pleasure of said board.

478. County commissioners to fix compensation.

SEC. 2. The board of county commissioners shall fix and determine the compensation, not to exceed three dollars per day, of said inspector of apiaries, to be paid out of the funds of the county not otherwise appropriated.

479. Duty of inspector.

SEC. 3. It shall be the duty of such inspector to inspect all the apiaries within the county once each year between the first day of April and the first day of September, and if the disease known as foul brood is found to exist in any apiary the inspector shall notify the person in charge thereof and allow him to treat the infected colonies by what is known as the McAvoy method, which shall consist of the following treatment: The person in charge shall within ten days, after having been notified by the inspector, transfer the colonies so infected into clean hives free from all comb, brood, honey or wax; and if foundation is used for starters, such starters shall not exceed one-half inch in width. He shall within not less than four, and not later than seven days from the time of such transfer, again transfer the same colonies in like manner. He shall within not less than three days, and not more than seven days from the time of the second transfer, again transfer the same colonies in like manner, except that he may use full sheets of foundation. All comb from such diseased colonies shall be immediately reduced to wax, and all honey, cocoons and refuse from such colonies shall be destroyed by burning the same. All hives, frames, and fixtures, in and upon which such bees have been kept shall be thoroughly renovated by boiling in hot water. The rendering of all wax and the burning of all honey, cocoons and refuse shall be done within a building properly arranged to exclude the bees therefrom. *As amended, Stats. 1903, 40.*

480. To destroy infected hives.

SEC. 4. If any person in charge of an apiary after having been notified by the inspector shall fail to treat such colonies by the McAvoy method within the specified time, it shall then be the duty of the inspector to immediately proceed to such apiary and destroy all hives so infected together with the combs and bees thereon by burning the same. *As amended, Stats. 1903, 41.*

481. Penalty for violation.

SEC. 5. It shall be unlawful for any person to keep bees in any other than a movable frame hive. It shall be unlawful for any person to feed, or allow exposed in any place where bees may attain access thereto, except in the hives where bees are kept, any honey, either comb, extracted, broken, strained or of any other kind. It shall be unlawful for any person to sell or offer for sale any honey from a colony infected with foul brood. Any person failing to comply with the provisions of this act shall be deemed guilty of a

misdemeanor and upon conviction thereof shall be punished by a fine for the first offense of not less than twenty-five dollars, nor more than fifty dollars, and for each subsequent offense not less than fifty dollars nor more than one hundred dollars. *As amended, Stats. 1903, 41.*

## APPRENTICES

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| 482. Minors may be bound as apprentices.  | 490. County commissioners' duties—Cruelty, neglect or breach of covenant—Complaints—Summons. |
| 483. Orphans and other children may be bound by county commissioners.           | 491. Jury to be summoned—In case of breach of contract.                                      |
| 484. Indenture or covenant, how and by whom signed.                             | 492. Verdict and judgment—Costs.   |
| 485. Form of indenture and covenants.   | 493. Bad conduct of child—Costs not payable by county.                                       |
| 486. Children to be taught—Clothing, food, money.                               | 494. Fees of witnesses and jurors, how paid.   |
| 487. Duties of master or mistress—Teaching—Food and clothes.                    | 495. Penalties of persons aiding runaways.   |
| 488. Record of covenant.  | 496. Penalties for concealing runaways.  |
| 489. County recorder to record all covenants—Certified copies—Fees of recorder. | 497. Relative to liability of guardians.   |

### *An Act concerning apprentices.*

Approved March 8, 1879, 93

#### 482. Minors may be bound as apprentices.

SECTION 1. Any male person under the age of eighteen years, or any female person under the age of fifteen years, may be bound until they arrive at those ages respectively, or for any shorter period, to serve as a business clerk, or as an apprentice to any mechanic's trade, or business of skilled labor in manner herein provided.

#### 483. Orphans and other children may be bound by county commissioners.

SEC. 2. The boards of county commissioners in the several counties in this state are hereby empowered to bind out any orphan (not otherwise provided for by law) or any destitute child, or the child of any person who shall not provide for the support and tuition of such child.

#### 484. Indenture or covenant, how and by whom signed.

SEC. 3. The indenture or covenant for a term of apprenticeship or service shall be signed and sealed by the father, or, in case of death or inability of the father, shall be signed and sealed by the mother or guardian, or in case of an orphan or destitute child, by the district judge of the district in which such orphan or destitute child resides, of the one part, and by the master, mistress, or guardian, of the other part.

#### 485. Form of indenture and covenants.

SEC. 4. The indenture or covenant for apprenticeship or service, shall contain a statement of the age and time of service of the minor, and if such age shall be unknown, then it shall be inserted according to the best information obtainable, which age shall, in relation to the term of apprenticeship or service, be deemed and taken as the true age of such minor.

#### 486. Children to be taught—Clothing, food, money.

SEC. 5. The indenture or covenant by which any minor may be bound shall contain, in case of a female, bound to serve for four years or more, a covenant on the part of the master or mistress to teach, or cause such female minor to be taught, to read and write the English language, and also the first four rules of arithmetic; and in all cases the master or mistress shall cove-

nant to furnish such female minor with an ample supply of decent clothing, and wholesome food, and at the expiration of the term of service to furnish the said minor with two full suits of female wearing apparel, and fifty dollars in money.

#### 487. Duties of master or mistress—Teaching—Food and clothes.

SEC. 6. In case of a male minor being bound to serve five years or more, the master or mistress shall covenant to teach, or cause such minor to be taught to read and write the language, the rules and principles of common English grammar, and so much of arithmetic as will include the single rule of three. And in all cases to furnish such male minor with substantial food and decent wearing apparel; and, also, at the expiration of the term of service, to furnish the said minor at least two suits of common clothing, each suit being of the value of not less than twenty-five dollars, and the sum of one hundred dollars in money, and the said master or mistress shall further covenant that all money or property stipulated to be delivered or paid by the master or mistress shall be secured to and for the sole use and benefit of the minor.

#### 488. Record of covenant—Penalty for failure.

SEC. 7. It shall be the duty of the master or mistress to cause the indenture or covenant of service to be recorded within thirty days from the execution thereof, by the recorder of the county in which the master or mistress resides, and on failure so to do the said minor shall be discharged from his or her service or apprenticeship, and the master or mistress shall remain liable for the payment of all property stipulated to be paid by his or her covenant.

#### 489. County recorder to record all covenants—Certified copies—Fees of recorder and how paid—Penalty of the recorder.

SEC. 8. It shall be the duty of the county recorder to record all indentures or covenants of service or apprenticeship, in a book to be by him provided for that purpose, and he shall indorse the date of the receipt and the time of recording the same, and shall furnish certified copies of the same when required, for which service he shall be entitled to such fees as are provided by law for such labor, the same to be paid by the person or persons requiring such certified copy; and a certified copy of the indentures shall be prima facie evidence of the existence and stipulations of said indenture; and any county recorder who shall neglect or refuse to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor exceeding five hundred dollars.

#### 490. County commissioners' duties—Cruelty, neglect, or breach of covenant—Complaints—Summons.

SEC. 9. It shall be the duty of the county commissioners, in the county where any minor is bound, as provided in this act, to inquire as often as once in every three months into the usage of any minor bound as aforesaid, and to defend such minor or child from the cruelty, neglect, or breach of covenant of the master or mistress, or any parent, guardian or trustee, or friend of any such male or female minor bound as aforesaid, as well as the board of county commissioners, may enter complaint against such master or mistress before any justice of the peace, in the county where any such master or mistress resides, and such justice of the peace shall summon such master or mistress forthwith to appear before him, and if he can reconcile the parties to each other he shall make such order therein as the equity and justice of the case may require.

**491. Jury to be summoned—In case of breach of contract.**

SEC. 10. If said justice of the peace shall be unable to settle and adjust the difference in dispute between the parties, he shall issue a venire to any constable of the township to summon five disinterested citizens, to be therein named, to meet at a time and place certain, not to exceed three days thereafter, and the five jurors, or such other persons as the justice may appoint, in case of their failure to attend, when met and qualified, shall proceed to hear the evidence in the case, and if they find such master or mistress guilty of a breach of his or her indenture or covenant, or neglect or refusal to furnish necessary food or clothing, or of cruelty towards such minor, they shall render their verdict in writing accordingly, and shall assess the damages such minor or child may have sustained.

**492. Verdict and judgment—Costs.**

SEC. 11. Whereupon the justice shall enter the verdict in his docket, and shall render judgment thereon for the damages so found by the jury, and costs against said master or mistress, and award execution accordingly; and the indenture or covenant of service shall be void from the rendition of judgment; but if the jury shall find the defendant not guilty, the justice shall render judgment for costs against the parent, guardian, trustee, friend or other party or parties who have made the complaint (when such complaint has been made without probable cause), as the case may be, and shall issue execution accordingly.

**493. Bad conduct of child—Costs not payable by county.**

SEC. 12. When the conduct and habits of the minor apprentice, clerk or servant shall become immoral and dissolute, and when such minor shall act in disregard of the reasonable commands of his or her master or mistress, when the authority of such master or mistress shall be exerted for his or her reformation without effect, the master or mistress may complain to any justice of the peace in the county, who shall give notice to the board of county commissioners, and to the parent, guardian, trustee or friend of such minor, as the case may be, and such proceeding shall be had as to summoning and impaneling a jury, provided in section 10 of this act; and if upon such investigation the said jury shall be of opinion that said master or mistress should be discharged from his or her covenants, they shall certify the same in writing to said justice, who shall enter the same upon his docket, and thereupon the said indenture shall be void. But no judgment for costs shall be entered against any board of county commissioners, nor against any parent, guardian, trustee or friend of said minor, but the said costs (except for the witnesses for the minor) shall be paid by the master or mistress.

**494. Fees of witnesses and jurors, and how paid.**

SEC. 13. The jurors and witnesses summoned and attending under the provisions of this act shall be allowed two dollars per day, and the justices and constables such compensation as is allowed by law for similar services.

**495. Penalties of persons aiding runaways.**

SEC. 14. Every person who shall counsel, persuade, entice, aid or assist any minor or apprentice, clerk or servant, as provided for in this act, to run away, or absent himself or herself from the service of his or her master or mistress, shall forfeit and pay a sum not exceeding two hundred dollars, to be sued for and recovered by action of debt, with costs, by such master or mistress, before any justice of the peace having jurisdiction thereof.

**496. Penalties for concealing runaways.**

SEC. 15. Every person who shall harbor or conceal any minor apprentice, clerk or servant, as provided in this act, knowing such apprentice, clerk or

servant to have run away, shall forfeit and pay to such master or mistress a sum not to exceed two hundred dollars, damages to be recovered in an action on the case before any court having competent jurisdiction thereof.

#### 497. Relative to liability of guardians.

SEC. 16. No board of county commissioners, nor any parent, guardian, trustee or friend of any minor or apprentice, clerk or servant, provided for by this act, shall be liable, upon any covenant contained in any indenture or covenant of service, unless the same shall contain an express covenant therein that the said commissioners, parent, guardian, trustee or friend of such minor is made individually liable.

## ATTORNEYS

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|---|-----------------------------------|
| 498. How known.   | 512. Conviction of attorney.      |
| 499. Who admitted to practice.                                | 513. Proceedings to remove.       |
| 500. Admission of attorneys—Examining committee—Oath and fee. | 514. Accusation to be in writing. |
| 501. How licensed.  | 515. Accusation, what to state.   |
| 502. Entered on roll.   | 516. To appear and answer.        |
| 503. Oath and licenses.                                       | 517. Appearance of accused.       |
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### *An Act relative to attorneys and counselors at law.*

Approved October 31, 1861, 6

#### 498. How known.

SECTION 1. All persons admitted to practice in any of the courts of this territory, shall be known as attorneys and counselors at law.

#### 499. Who admitted to practice.

SEC. 2. Any citizen of the United States, or person resident of this state, who has, bona fide, declared his intention to become a citizen in the manner required by law, of the age of twenty-one years, and who possesses the necessary qualifications of good moral character, learning and ability, shall be entitled to admission as an attorney and counselor in all the courts of this state. Under this act females shall have the same right and privileges as males. *As amended, Stats. 1907, 148.*

#### 500. Admission of attorneys—Examining committee—Oath and fee.

SEC. 3. Every applicant for admission as attorney and counselor at law shall produce satisfactory testimonials of good moral character, and undergo such examination, as to his qualification, as the supreme court may direct; *provided*, that such examinations and testimonials may be dispensed with at the discretion of said court; and it is hereby made the duty of the supreme court, upon application of the district judge of any judicial district within this state, to appoint a committee to examine persons applying for admission as attorneys and counselors at law, under such rules and regulations as the supreme court may prescribe, which committee shall consist of the district judge of the district, and at least two attorneys at law of the district in which the committee is appointed. And it shall be the duty of the com-

mittee so appointed to examine persons applying for admission to practice law, and report to said supreme court the result of such examination, with recommendation that the person or persons so examined be or be not admitted to practice law. Upon the filing and approval by said supreme court of the report of any committee so appointed, the supreme court may order the clerk of said supreme court to issue to the person or persons so recommended a license, authorizing such person or persons to practice as attorneys and counselors at law in all the state courts within this state; but no license shall be issued, under the provisions of this act, until the person to whom the same may issue shall have filed with the clerk of the supreme court his official oath, and paid over to the state treasurer the sum of twenty-five dollars, as now provided by law. *As amended, Stats. 1871, 148; 1875, 142.*

Additional fees for admission of attorney, see secs. 2006 and 3953.

#### 501. How licensed.

SEC. 4. If he be duly qualified, the court shall admit him as attorney and counselor in all the courts of the state, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate shall be his license. *As amended, Stats. 1871, 148.*

#### 502. Entered on roll.

SEC. 5. Any district court of this state may order to be entered upon its roll of attorneys the name of any person who shall produce a license given to him by the clerk of the supreme court, as in this act provided. *As amended, Stats. 1871, 148.*

#### 503. Oath and license.

SEC. 6. Every person, before receiving a license to practice law, shall take, before some officer authorized by the laws of this state to administer oaths, the oath prescribed by law, and after procuring the state controller's order on the state treasurer, to receive the same, pay over to the said state treasurer the sum of twenty-five dollars, for the use of the state library fund; and the clerk of the court shall require of the person so admitted the clearance of the state controller, certifying the payment of said twenty-five dollars into the state treasury, before issuing such license, and in no case shall the license be issued until such clearance is filed in the office of the clerk. *As amended, Stats. 1871, 148; 1873, 114.*

#### 504. Examination dispensed with.

SEC. 7. The examination may be dispensed with in the case of a person who has been admitted attorney and counselor in the highest courts of a sister state or territory, or a foreign country, where the common law of England constitutes the basis of jurisprudence. His affidavit of such admission, or his license showing the same, together with satisfactory evidence of good moral character, shall be deemed sufficient to entitle him to admission; but the court may examine the applicant as to his or her qualifications. *As amended, Stats. 1907, 148.*

#### 505. Roll kept.

SEC. 8. Each clerk shall keep a roll of attorneys and counselors of the court of which he is clerk, which shall be a record of the court.

#### 506. Practicing without license.

SEC. 9. If any person shall practice law in any court in this state, except a justice's, recorder's or municipal court, without having received a license as attorney and counselor, after admission by the supreme court, he shall be deemed guilty of a contempt of court, and punished as in other cases of con-

tempt, and shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined one hundred dollars or imprisoned in the county jail fifty days. *As amended, Stats. 1871, 149.*

This section limits the right of appearing as an attorney before courts-martial to those who have obtained

the required license. *State ex rel. Huffaker v. Crosby, 24 Nev. 115, 121 (77 A. S. 786, 50 P. 127).*

**507. Authority of attorney.**

**SEC. 10.** An attorney and counselor shall have authority: First—To bind his client in any of the steps of an action or proceeding, by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise. Second—To receive money claimed by his client in an action or proceeding during the pendency thereof, or within one year after judgment and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction in the judgment.

This is not an enlargement of the attorney's authority, but merely a restriction as to the method of exercising it. *State v. Cal. M. Co., 15 Nev. 243.*

Evidence of oral agreement by attorney not to take default is inadmissible on application to set aside default.

*Haley v. Eureka County Bank, 20 Nev. 410 (22 P. 1098).*

An attorney by written stipulation may waive undertaking on appeal. *Hoffman v. Owens, 31 Nev. 481, 486 (103 P. 414).*

**508. Change of attorney.**

**SEC. 11.** The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows: First—Upon his own consent, filed with the clerk or entered upon the minutes. Second—Upon the order of the court or judge thereof on the application of the client.

It is not sufficient presentation of a claim against an estate to hand it to the "attorney for the estate," at least not without showing that it actually reached the administratrix within the proper time for the presentation of

claims. *Douglass v. Folsom, 21 Nev. 441, 447 (33 P. 660).*  
See *State ex rel. Huffaker v. Crosby, 24 Nev. 115, 121 (77 A. S. 786, 50 P. 127)*, under section 10 of this act.

**509. Notice of change.**

**SEC. 12.** When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then he shall be bound to recognize the former attorney.

See *Douglass v. Folsom, 21 Nev. 441, 447 (33 P. 660)*, under section 11 of this act.

**510. Death or removal.**

**SEC. 13.** When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney shall, before any further proceedings be had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

In all other cases to disbar an attorney there must be a verified accusation in writing presented to the court, unless the facts are within its own knowledge, and serv-

ice upon, and appearance by, the accused. *In re Granger, 15 Nev. 57.*

**511. Suspension of attorney.**

**SEC. 14.** An attorney and counselor may be removed or suspended by the supreme court, and by no other court in the territory, for either of the following causes arising after his admission to practice: First—Upon his being convicted of felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence. Second—For wilful disobedience or violation of the order of a court requiring him to do or forbear an act connected with or in the course of his profession. Third—For misconduct in office, or for good cause shown.

Advertising for divorce business misdemeanor, sec. 6462.

This section contemplates a conviction in a court of record; that the docket of a justice of the peace is not conclusive. *In the Matter of Granger, 15 Nev. 56, 57.*

Certain statements concerning a decision of the supreme court held to constitute a contempt of that court, which was not purged by defendant's disavowal of any intent to commit a contempt and by his apology. *In re Chartz, 29 Nev. 110—(5 L. R., A. (N. S.) 916, 124 A. S. 915, 85 P. 352).*

A court-martial, or any other court, other than the supreme court, has no power to suspend a licensed

attorney in the exercise of his rights for any cause and for any length of time. *State ex rel. Huffaker v. Crosby, 24 Nev. 115, 122 (77 A. S. 786, 50 P. 127).*

It is the duty of an attorney to observe the rules of courteous demeanor in open court, and to abstain out of court from all insulting language and offensive conduct towards the judges personally for their judicial acts.

The supreme court has control over attorneys, and may suspend or disbar them for good cause shown.

Language warranting disbarment recited. *In re Breen, 30 Nev. 164, 181 (17 L. R. A. (N. S.) 572, 93 P. 997).*

**512. Conviction of attorney.**

SEC. 15. In the case of the conviction of an attorney or counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which the conviction was had shall, within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction.

See *In re Granger*, 15 Nev. 57, under section 14 of this act.

**513. Proceedings to remove.**

SEC. 16. The proceedings to remove or suspend an attorney and counselor, under the first subdivision of section 14th, shall be taken by the court on the receipt of the certified copy of the record of convictions; the proceedings under the second and third subdivisions of section 14th may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

**514. Accusation to be in writing.**

SEC. 17. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the court.

**515. Accusation, what to state.**

SEC. 18. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

**516. To appear and answer.**

SEC. 19. After receiving the accusation, the court shall, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation, at a specified time, in the same or subsequent term, and shall cause a copy of the order, and of the accusation, to be served upon the accused within a prescribed time before the day appointed in the order.

**517. Appearance of accused.**

SEC. 20. The accused must appear at the time appointed in the order and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

**518. Pleadings.**

SEC. 21. The accused may answer the accusation, either by objecting to the sufficiency, or by denying its truth.

**519. Demurrer.**

SEC. 22. If he object to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

**520. Answer.**

SEC. 23. If an objection to the sufficiency of the accusation be not sustained, the accused shall answer forthwith.

**521. Plea of guilty.**

SEC. 24. If the accused plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he deny the matter charged, the court shall immediately, or at such time as it may appoint, proceed to try the accusation.

**522. Reference to committee.**

SEC. 25. The court may, in its discretion, order a reference to a commit-

tee to take the depositions in the matter, and to report to the court before proceeding to try the accusation.

### 523. Judgment on conviction.

SEC. 26. Upon conviction, in cases arising under the first subdivision of section 14th, the judgment of the court shall be, that the name of the party be stricken from the roll of attorneys and counselors of the court, and he be precluded from practicing as such attorney or counselor in all the courts of this territory; and, upon conviction in cases under the second and third subdivisions of section 14th, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right of practice as attorneys or counselors in the courts of this territory, permanently or for a limited period.

### 524. May appear in own behalf.

SEC. 27. Nothing in this act shall be so construed as to prevent any person from appearing in his own behalf in any court in this territory.

Attorneys assigned to defend persons charged with crime may be compensated, secs. 7339-40.

*An Act requiring that certain officers performing legal functions shall possess legal qualifications.*

Approved March 24, 1909, 313

### 525. Who eligible.

SECTION 1. No person shall be eligible to the office of justice of the supreme court, district judge, or district attorney unless he shall be a bona fide resident of the State of Nevada and an attorney duly licensed and admitted to practice law in all the courts of this state.

## AUTHENTICATION OF RECORDS

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|--|---|
| 526. Authentication of legislative acts and proof of judicial proceedings of states. | 528. Copies of foreign records, etc., relating to land titles in the United States. |
| 527. Proof of records kept in offices not pertaining to courts.                      | 529. Little & Brown's edition of the statutes to be evidence.                       |

[From Revised Statutes of the United States.]

### 526. Authentication of legislative acts and proof of judicial proceedings of states.

SEC. 905. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said 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 the United States as they have by law or usage in the courts of the state from which they are taken.

Statutes of state or territory. Commercial Bank v. Patterson, 2 Cranch (C. C.) 346; United States v. Amedy, 11 Wheat. (U. S.) 392; United States v. Jones, 1 Wash. (U. S.) 363; Creig v. Brown, Pet. (C. C.) 352. Judicial proceedings. In re Runey, 20 Fed. Cas. No. 12032; Fitzsimmons v. Johnson, 90

Tenn. 416; Channing v. Reiley, 4 Cranch (C. C.) 528; Harrison v. Weatherby, 180 Ill. 418; Ferguson v. Harwood, 7 Cranch (U. S.) 408; Hade v. Brotherton, 3 Cranch (C. C.) 594; Matter of Leary, 10 Ben. (U. S.) 197. Attestation by clerk. Ritchie v. Carpenter, 2 Wash. 512; Ferguson v. Harwood, *supra*.

By deputy. Willock v. Wilson, 178 Mass. 68. Seal, how annexed. Turner v. Waddington, 3 Wash. (U. S.) 126; Talcott v. Ins. Co., 2 Wash. (U. S.) 449; Ritchie v. Carpenter, *supra*.

Certificate of judge or magistrate. Northwestern M. L. I. Co. v. Stevens, 71 Fed. 258; Smith v. Brackett, 69 Conn. 492; Gardner v. Lindo, 1 Cranch (C. C.) 78; United States v. Biebusch, 1 Fed. 213; Kinnealey v. Rumbough, 96 N. C. 193; Taylor v. Carpenter, 2 W. & M. (U. S.) 1; Stewart v. Clark, Hempst. (U. S.) 94; Keith v. Stiles, 92 Wis. 15; Willock v. Wilson, *supra*; Bennett v. Bennett, Deady, 299; Grigg v. Conway, Hempst. (U. S.) 538; Cregg v. Brown, Pet. (C. C.) 352; Catlin v. Underhill, 4 McLean (U. S.) 199.

Mode of authentication not exclusive. Gribble v. Presco, 15 Fed. 689; Wells v. Davis, 105 N. Y. 670; Hewitt v. Bank, 64 Neb. 463; Guarantee Co. v. Potteries Co., 56 N. J. Eq. 441; Otto v. Trump, 115 Pa. St. 425; Willock v. Wilson and Ritchie v. Carpenter, *supra*.

Sufficiency of authentication, question of law. Wittemore v. Malcomson, 28 Fed. 605.

Authentication according to statute not required by U. S. courts as to records of a state court where introduced in evidence in a federal court in the same state. Mewster v. Spalding, Channing v. Keiley, Bennett v. Bennett, *supra*.

Statute does not apply to the courts of the United States. Turnball v. Payson, 95 U. S. 418; Owings v. Hull, 9 Pet. (U. S.) 607; United States v. Wood, 28 Fed. Cas. No. 16757; In re Neale, 17 Fed. Cas. No. 10066; Mason v. Lawrason, 1 Cranch (C. C.) 190; National Acc. Soc. v. Spiro, 94 Fed. 750; Buford v. Hickman, Hempst., 232; O'Hara v. Mobile R. R. Co., 76 Fed. 718; Embrey v. Palmer, 107 U. S. 3; Galpin v. Page, 3 Sawy. (U. S.) 93; Union Bank v. Memphis, 111 Fed. 56.

Courts of the District of Columbia. Embrey v. Palmer, *supra*.

## 527. Proofs of records kept in offices not pertaining to courts.

SEC. 906. All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor or secretary of state, the chancellor or keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor or keeper of the great seal, it shall be under the great seal of the state, territory or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

Section construed. Williams v. United States, 137 U. S. 113; Chase v. Caryl, 57 N. J. L. 545; Jones v. Melindy, 62 Ark. 203.

Does not exclude every other mode of authentication. Logansport Co. v. Knowles, 15 Fed. Cas. No. 8466.

## 528. Copies of foreign records relating to land titles in the United States.

SEC. 907. It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the departments, the solicitor of the treasury, or the commissioner of the general land office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the solicitor of the treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the

same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals.

529. Little & Brown's edition of the statutes to be evidence.

SEC. 908. The edition of the laws and treaties of the United States, published by Little & Brown, shall be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several states, without any further proof or authentication thereof.

## BAILMENTS

### Relating to Sales of Unclaimed Property

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| 530. Articles remaining over one year. | 537. Storage of unclaimed freight.                                      |
| 531. Notice posted.                    | 538. Responsibility of carrier.   |
| 532. Disposal of excess.               | 539. Service of notice.   |
| 533. Costs of sale limited.            | 540. Perishable freight.  |
| 534. Bailees may sell goods, when.     | 541. Sale of property to pay freight—Surplus proceeds, how disposed of. |
| 535. Proceeds, how disposed of.        | 542. Unclaimed proceeds, how disposed of.                               |
| 536. Not to apply to pawnbrokers.      |   |

*An Act for the protection of jewelers, watchmakers and watch repairers.*

Approved February 10, 1885, 20.

530. Articles remaining over one year.

SECTION 1. Watches, jewelry, or other articles, after having been repaired and remaining over one year with any jeweler, watchmaker or watch repairer, in this state, shall be subject to sale at public auction, to the highest bidder, for charges due thereon for repairs and accrued interest.

531. Notice posted.

SEC. 2. At least twenty days before offering any of the articles mentioned in this act for sale, the holder or holders thereof shall post in front of his or their place of business the day and date of sale, and a particular description of the article to be sold, name of depositor, amount of charges thereon and accrued legal interest, which charges and interest shall become a lien on the article so posted for sale, which sale shall be by public auction to the highest bidder.

532. Disposal of excess.

SEC. 3. The excess, if any, after deducting charges for repairs and interest, shall be placed in the county treasury, subject to the laws governing escheats.

533. Costs of sale limited.

SEC. 4. The cost of any sale of any such watch, watches, jewelry, or other article, shall in no event be more than ten per cent on the whole amount realized from the sale of the same, and any watchmaker, watch repairer, or jeweler, who fails to pay the excess aforesaid into the county treasury, as provided in section 3 of this act, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding five hundred dollars, nor less than ten dollars, and costs of suit, and on failure of defendant to pay such fine and costs he shall be imprisoned in the county jail, at the rate of

one day for every two dollars of such fine and costs, until the whole thereof shall be fully satisfied.

*An Act defining the rights of bailees for hire of goods in storage, as to disposition of unclaimed or delinquent property.*

Approved March 24, 1909, 216

**534. Bailees may sell goods, when.**

SECTION 1. When any goods, merchandise or other property to be placed in storage has been received by any person, persons, firm or corporation acting as bailee for hire of said goods, merchandise, or other property to be placed in storage in any room, building or other structure belonging to or leased by the said person, persons, firm, or corporation acting as bailee, it shall be the right and the right is hereby granted to said bailee to sell the said goods, merchandise, or other property at public auction to the highest bidder not less than six (6) months after the bailor has first failed to pay the storage charges on the said goods, merchandise, or other property; *provided*, that said sale shall not be had contrary to any agreement or contract between bailor and bailee; *provided, further*, that the bailee shall notify the bailor of the intended sale thirty (30) days previous thereto if the bailor's address or residence be known to the bailee; if not known, then the bailor shall publish notice in any newspaper most likely to give notice at least once weekly for a period of four (4) weeks successively, or, if there be no newspaper published in the town or township wherein the bailee resides, then notice may be given by posting notices in three (3) or more public places in said town or township for a period of four (4) weeks previous to said sale.

**535. Proceeds, how disposed of.**

SEC. 2. Out of the proceeds of said sale the bailee may pay all just claims against the property sold, including the bailee's charges for storage. If there be any surplus after all just claims are satisfied, the bailee shall pay the same to the bailor, if his address be known; if not, then the bailee shall deposit the same with the county treasurer of the county wherein such sale was made, who shall hold the same for one year (for the benefit of the owner), and if no owner appear to claim the said surplus it shall be paid over to the state treasurer for the benefit of the state school fund.

**536. Not to apply to pawnbrokers.**

SEC. 3. The provisions of this act shall in no case be construed to affect any person, persons, firm or corporation doing a pawnbroking or money-lending business in this state, and not acting as bailee for hire within the intentment of this act.

*An Act defining the rights of common carriers, as to the disposition of unclaimed property.*

Approved February 25, 1875, 86

**537. Storage of unclaimed freight.**

SECTION 1. When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission, forwarding merchant, or warehouseman, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission, forwarding merchant or warehouseman may hold or store the same with some responsible person until the freight and all just and reasonable charges on same are paid.

**538. Responsibility of carrier.**

SEC. 2. If a consignee does not accept and remove freight within twenty-

four hours after notice has been served on him by the carrier, the carrier is released from further liability, by placing the freight in a suitable warehouse on storage, or the carrier may hold the same upon his responsibility as a warehouseman.

#### 539. Service of notice.

SEC. 3. If the consignee's place of residence or business be unknown, notice may be served on him through the postoffice, and the carrier may place the freight in a suitable warehouse on storage and give notice thereof to the consignor.

#### 540. Perishable freight.

SEC. 4. If from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien of freightage.

#### 541. Sale of property to pay freight—Surplus proceeds, how disposed of.

SEC. 5. If no person calls for the freight or other property received by such railroad, express company or other common carrier, commission, forwarding merchant, or warehouseman, within sixty days from the receipt thereof, the carrier, forwarding, commission merchant, or warehouseman may sell such property, or so much thereof, at auction to the highest bidders, as will pay freight and other just and reasonable charges, first having given notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper ten days, or if a weekly paper, four weeks, published where such sale is to take place, or if there is no paper published at the place where such sale is to take place, by posting a notice of the sale conspicuously in at least three public places; and if any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property, at any time thereafter, on demand being made therefor within six months after the sale; *provided*, that any trunk or valise, with their contents, shall be held six months before being advertised for sale.

#### 542. Unclaimed proceeds, how disposed of.

SEC. 6. If the owner, or his agent, fails to demand such surplus within six months from the time of such sale, then it shall be paid over to the county treasurer of the county in which the sale is made, to be held by him for a period of twelve months, subject to the order of the owner, after which time, if the same is not paid to the owner, or his authorized agent, or some person legally entitled to receive the same, it shall be paid over to the treasurer of the county where such sale is made, who shall pay the same over to the state treasurer for the benefit of the state school fund.

## BANKRUPTCY

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|---|---|
| <p>543. Meaning of words and phrases.<br/> 544. Creation and jurisdiction.<br/> 545. Acts of bankruptcy.<br/> 546. Who may become bankrupts.<br/> 547. Partners.<br/> 548. Exemptions of bankrupts.<br/> 549. Duties of bankrupts.<br/> 550. Death or insanity of bankrupts.<br/> 551. Protection and detention of bankrupts.<br/> 552. Extradition of bankrupts.<br/> 553. Suits by and against bankrupts.<br/> 554. Compositions, when confirmed.<br/> 555. Compositions, when set aside.<br/> 556. Discharges, when granted.<br/> 557. Discharges, when revoked.<br/> 558. Co-debtors of bankrupts.<br/> 559. Debts not affected by a discharge.<br/> 560. Process, pleadings, and adjudications.<br/> 561. Jury trials.<br/> 562. Oaths, affirmations.<br/> 563. Evidence.<br/> 564. Reference of cases after adjudication.<br/> 565. Jurisdiction of United States and state courts.<br/> 566. Jurisdiction of appellate courts.<br/> 567. Appeals and writs of error.<br/> 568. Arbitration of controversies.<br/> 569. Compromises.<br/> 570. Designation of newspapers.<br/> 571. Offenses.<br/> 572. Rules, forms, and orders.<br/> 573. Computation of time.<br/> 574. Transfer of cases.<br/> 575. Creation of two officers.<br/> 576. Appointment, removal, and districts of referees.<br/> 577. Qualifications of referees.<br/> 578. Oaths of office of referees.</p> | <p>579. Number of referees.<br/> 580. Jurisdiction of referees.<br/> 581. Duties of referees.<br/> 582. Compensation of referees.<br/> 583. Contempts before referees.<br/> 584. Records of referees.<br/> 585. Referee's absence or disability.<br/> 586. Appointment of trustees.<br/> 587. Qualifications of trustees.<br/> 588. Death or removal of trustees.<br/> 589. Duties of trustees.<br/> 590. Compensation of trustees, receivers, and marshals.<br/> 591. Accounts and papers of trustees.<br/> 592. Bonds of referees and trustees.<br/> 593. Duties of clerks.<br/> 594. Compensation of clerks and marshals.<br/> 595. Duties of attorney-general.<br/> 596. Statistics of bankruptcy proceedings.<br/> 597. Meetings of creditors.<br/> 598. Voters at meetings of creditors.<br/> 599. Proof and allowance of claims.<br/> 600. Notice to creditors.<br/> 601. Who may file and dismiss petitions.<br/> 602. Preferred creditors.<br/> 603. Depositories for money.<br/> 604. Expenses of administering estates.<br/> 605. Debts which may be proved.<br/> 606. Debts which have priority.<br/> 607. Declaration and payment of dividends.<br/> 608. Unclaimed dividends.<br/> 609. Liens.<br/> 610. Set-offs and counterclaims.<br/> 611. Possession of property.<br/> 612. Title to property.<br/> 613. Clerks, duties of.<br/> 614. Compensation.<br/> 615. Time when this act shall go into effect.</p> |
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## THE UNITED STATES BANKRUPTCY ACT OF 1898, WITH AMENDMENTS OF 1903, 1906, AND 1910

*An Act to establish a uniform system of bankruptcy throughout  
the United States.*

Approved July 1, 1898; amendments approved February 5, 1903, June 15, 1906, and June 25, 1910

### CHAPTER I DEFINITIONS

#### 543. Meaning of words and phrases.

SECTION 1. (a) The words and phrases used in this act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: (1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition; (2) "adjudication" shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed; (3) "appellate courts" shall include the circuit courts of appeals of the United States, the supreme courts of the territories, and the Supreme Court of the United States; (4) "bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge

has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt; (5) "clerk" shall mean the clerk of a court of bankruptcy; (6) "corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association; (7) "court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee; (8) "courts of bankruptcy" shall include the district courts of the United States and of the territories, the Supreme Court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska; (9) "creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy; (10) "date of bankruptcy," or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed; (11) "debt" shall include any debt, demand, or claim provable in bankruptcy; (12) "discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this act; (13) "document" shall include any book, deed, or instrument in writing; (14) "holiday" shall include Christmas, the Fourth of July, the twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving; (15) a person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts; (16) "judge" shall mean a judge of a court of bankruptcy, not including the referee; (17) "oath" shall include affirmation; (18) "officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer; (19) "persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations; (20) "petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named; (21) "referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or anyone acting in his stead; (22) "conceal" shall include secrete, falsify, and mutilate; (23) "secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets; (24) "states" shall include the territories, the Indian Territory, Alaska, and the District of Columbia; (25) "transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security; (26) "trustee" shall include all of the trustees of an estate; (27) "wage-earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year; (28) words importing the masculine gender may be

applied to and include corporations, partnerships, and women; (29) words importing the plural number may be applied to and mean only a single person or thing; (30) words importing the singular number may be applied to and mean several persons or things.

[By act of March 3, 1911 (U. S. Stats. 1910-11), p. 1134, sec. 130, the U. S. Circuit Courts of Appeals are vested with appellate and supervisory jurisdiction in cases of bankruptcy.]

## CHAPTER II

### CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION

#### 544. Creation and jurisdiction.

SEC. 2. That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several states, the Supreme Court of the District of Columbia, the district courts of the several territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation for such services, as provided in section forty-eight of this act; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

(14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; (19) transfer cases to other courts of bankruptcy; and (20) exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceeding pending in any other court of bankruptcy. *As amended, Acts of February 5, 1903, and June 25, 1910.*

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

### CHAPTER III BANKRUPTS

#### 545. Acts of bankruptcy.

SEC. 3. (a) Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors; or being insolvent applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory, or of the United States; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

(b) A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

(c) It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

(d) Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

(e) Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond. *As amended, Act of February 5, 1903.*

#### 546. Who may become bankrupts.

SEC. 4. (a) Any person except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

(b) Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business or commercial corporation, except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a state or territory or of the United States. *As amended, Acts of February 5, 1903, and June 25, 1910.*

#### 547. Partners.

SEC. 5. (a) A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

(b) The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

(c) The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

(d) The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

(e) The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

(f) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the

individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

(g) The court may approve the claim of the partnership estate against the individual estates and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

(h) In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

#### 548. Exemptions of bankrupts.

SEC. 6. (a) This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

#### 549. Duties of bankrupts.

SEC. 7. (a) The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this act, coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any; and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding; *provided, however*, that he shall not be required to attend a meeting of his creditors, or at or for any examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses

from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

### 550. Death or insanity of bankrupts.

SEC. 8. (a) The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and conclude in the same manner, so far as possible, as though he had not died or become insane; *provided*, that in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the state of the bankrupt's residence.

### 551. Protection and detention of bankrupts.

SEC. 9. (a) A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a state court having jurisdiction, and served within such state, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this act.

(b) The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

### 552. Extradition of bankrupts.

SEC. 10. (a) Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing a warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

### 553. Suits by and against bankrupts.

SEC. 11. (a) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

(b) The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

(c) A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

(d) Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

**554. Compositions, when confirmed.**

SEC. 12. (a) A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors, and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts. In compositions before adjudication the bankrupt shall file the required schedules, and thereupon the court shall call a meeting of creditors for the allowance of claims, examination of the bankrupt and preservation and conduct of the estates. at which meeting the judge or referee shall preside; and action upon the petition for adjudication, shall be delayed until it shall be determined whether such composition shall be confirmed.

(b) An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

(c) A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

(d) The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

(e) Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

**555. Compositions, when set aside.**

SEC. 13. (a) The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

**556. Discharges, when granted.**

SEC. 14. (a) Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

(b) The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such times as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial conditions, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained property

on credit from any person upon a materially false statement in writing made by him to any person or representative for the purpose of obtaining credit from such person; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed any of his property with intent to hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court; *provided*, that a trustee shall not interpose objections to a bankrupt's discharge, until he shall be authorized so to do at a meeting of creditors called for that purpose.

(c) The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

#### 557. Discharges, when revoked.

SEC. 15. (a) The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

#### 558. Co-debtors of bankrupts.

SEC. 16. (a) The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

#### 559. Debts not affected by a discharge.

SEC. 17. (a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the state, county, district, or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another; or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity. *As amended, Act of February 5, 1903.*

## CHAPTER IV

### COURTS AND PROCEDURE THEREIN

#### 560. Process, pleadings, and adjudications.

SEC. 18. (a) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits to enforce a legal or equitable lien in courts of the United States,

except that, unless the judge shall otherwise direct, the order shall be published not more than once a week for two consecutive weeks, and the return day shall be ten days after the last publication unless the judge shall for cause fix a longer time.

(b) The bankrupt, or any creditor, may appear and plead to the petition within five days after the return day, or within such further time as the court may allow.

(c) All pleadings setting up matters of fact shall be verified under oath.

(d) If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this act, and make the adjudication or dismiss the petition.

(e) If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

(f) If the judge is absent from the district, or the division of his district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

(g) Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee. *As amended, Act of February 5, 1903.*

### 561. Jury trials.

SEC. 19. (a) A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

(b) If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

(c) The right to submit matters in controversy, or an alleged offense under this act, to a jury shall be determined and enjoyed, except as provided by this act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

### 562. Oaths, affirmations.

SEC. 20. (a) Oaths required by this act, except upon hearings in court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the state where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

(b) Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

**563. Evidence.**

SEC. 21. (a) A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt and his wife, to appear in court or before a referee or the judge of any state court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this act; *provided*, that the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of a bankrupt.

(b) The right to take depositions in proceedings under this act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

(c) Notice of the taking of depositions, shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

(d) Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

(e) A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

(f) A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

(g) A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart. *As amended, Act of February 5, 1903.*

**564. Reference to cases after adjudication.**

SEC. 22. (a) After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

(b) The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

**565. Jurisdiction of United States and state courts.**

SEC. 23. (a) The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under section 60, subdivision b; section 67, subdivision e; and section 70, subdivision e. *As amended, Acts of February 5, 1903, and June 25, 1910.*

(c) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act.

#### 566. Jurisdiction of appellate courts.

SEC. 24. (a) The Supreme Court of the United States, the circuit court of appeals of the United States, and the supreme courts of the territories in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia.

(b) The several circuit courts of appeals shall have jurisdiction in equity, either interlocutory or final, to superintend or revise in matters of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

#### 567. Appeals and writs of error.

SEC. 25. (a) That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States and to the supreme court of the territories, in the following cases, to wit: (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

(b) From any final decision of a court of appeals, allowing or rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of the state to the Supreme Court of the United States; or

2. Where some justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States.

(c) Trustees shall not be required to give bond when they take appeals or sue out writs of error.

(d) Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

**568. Arbitration of controversies.**

**SEC. 26.** (a) The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

(b) Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

(c) The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

**569. Compromises.**

**SEC. 27.** (a) The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

**570. Designation of newspapers.**

**SEC. 28.** (a) Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

**571. Offenses.**

**SEC. 29.** (a) A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

(b) A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

(c) A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

(d) A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

**572. Rules, forms, and orders.**

SEC. 30. (a) All necessary rules, forms, and orders as to procedure and for carrying this act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

[For rules and forms in bankruptcy as prescribed by U. S. Supreme Court, see 89 Fed. pp. iii to lx; 172 U. S. 653-727; 18 S. C. R. pp. iii to lxxviii; 32 C. C. A. pp. iii to lxxxiv; 1 Fed. Stats. Anno. 607, *et seq.*]

**573. Computation of time.**

SEC. 31. (a) Whenever time is enumerated by days in this act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

**574. Transfer of cases.**

SEC. 32. (a) In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

**CHAPTER V****OFFICERS, THEIR DUTIES AND COMPENSATION****575. Creation of two offices.**

SEC. 33. (a) The offices of referee and trustee are hereby created.

**576. Appointment, removal, and districts of referees.**

SEC. 34. (a) Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

**577. Qualifications of referees.**

SEC. 35. (a) Individuals shall not be eligible to appointment as referees unless they are respectively (1) competent to perform the duties of that office; (2) not holding any office of profit or emolument under the laws of the United States or of any state other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4) residents of, or have their offices in, the territorial districts for which they are to be appointed.

**578. Oaths of office of referees.**

SEC. 36. (a) Referees shall take the same oath of office as that prescribed for judges of the United States courts.

**579. Number of referees.**

SEC. 37. (a) Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

**580. Jurisdiction of referees.**

**SEC. 38.** (a) Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

**581. Duties of referees.**

**SEC. 39.** (a) Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notices to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7) safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

(b) Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors at law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

**582. Compensation of referees.**

**SEC. 40.** (a) Referees shall receive as full compensation for their services, payable after they are rendered, a fee of fifteen dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is

not required from a voluntary bankrupt, and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate if any, as a part of the costs of administration, and from estates which have been administered before them one per centum commissions on all moneys disbursed to creditors by the trustee, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

(b) Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

(c) In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee. *As amended, Act of February 5, 1903.*

### 583. Contempts before referees.

SEC. 41. (a) A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law; *provided*, that no person shall be required to attend as a witness before a referee at a place outside of the state of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

(b) The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

### 584. Records of referees.

SEC. 42. (a) The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

(b) A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

(c) The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

### 585. Referee's absence or disability.

SEC. 43. (a) Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge temporarily fill the vacancy.

### 586. Appointment of trustees.

SEC. 44. (a) The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office

of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

#### 587. Qualifications of trustees.

SEC. 45. (a) Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

#### 588. Death or removal of trustees.

SEC. 46. (a) The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

#### 589. Duties of trustees.

SEC. 47. (a) Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estate; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest, and such trustee as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied; (3) deposit all money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the court fifteen days before the days fixed for the final meetings of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and (11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

(b) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

(c) The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pays the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, which together with the filing fee, shall be paid out of the estate of the bank-

rupt as a part of the costs and disbursements of the proceedings. As amended, Acts of February 5, 1903, and June 25, 1910.

### 590. Compensation of trustees, receivers, and marshals.

SEC. 48. (a) Trustees shall receive for their services payable after they are rendered a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such commission on all money disbursed or turned over to any person, including lienholders, by them, as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such compensation.

(b) In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

(c) The court, may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

(d) Receivers or marshals appointed pursuant to section 2, subdivision 3 of this act shall receive for their services payable after they are rendered compensation by way of commission upon the moneys disbursed or turned over to any person, including lienholders, by them, and also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees, as the court may allow, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred, two per centum on money in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars; *provided*, that in case of the confirmation of a composition such commission shall not exceed one-half of one per centum of the amount to be paid creditors on such compositions; *provided further*, that when the receiver or marshal acts as a mere custodian and does not carry on the business of a bankrupt as provided in clause 5 of section 2 of this act, he shall not receive nor be allowed in any form or guise more than two per centum on the first thousand dollars or less, and one-half of one per centum on all above one thousand dollars on moneys disbursed by him or turned over by him to the trustee and on moneys subsequently realized from property turned over by him in kind to the trustee; *provided further*, that before the allowance of compensation notice of application therefor, specifying the amount, shall be given to creditors in the manner indicated in section 58 of this act.

(e) Where the business is conducted by trustees, marshals, or receivers, as provided in clause 5 of section 2 of this act, the court may allow such officers additional compensation for such services by way of commissions upon the moneys disbursed or turned over to any person including lienholders, by them, and in case of receivers or marshals, also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees; such commissions not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one

thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars; *provided*, that in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such composition; *provided further*, that before the allowance of compensation notice of application therefor specifying the amount asked, shall be given to creditors in the manner indicated in section 58 of this act. *As amended, Acts of June 15, 1903, and June 25, 1910.*

#### 591. Accounts and papers of trustees.

SEC. 49. (a) The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

#### 592. Bonds of referees and trustees.

SEC. 50. (a) Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

(b) Trustees, before entering upon the performance of their official duties and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

(c) The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

(d) The court shall require evidence as to the actual value of the property of sureties.

(e) There shall be at least two sureties upon each bond.

(f) The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

(g) Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h) Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

(i) Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this act, of whose estates they are respectively trustees.

(j) Joint trustees may give joint or several bonds.

(k) If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

(l) Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

(m) Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

**593. Duties of clerks.**

SEC. 51. (a) Clerks shall respectively (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without, and cannot obtain, the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them, or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

**594. Compensation of clerks and marshals.**

SEC. 52. (a) Clerks shall respectively receive as full compensation for their services to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

(b) Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereafter enacted, fixing the compensation of marshals.

**595. Duties of attorney-general.**

SEC. 53. (a) The attorney-general shall annually lay before Congress statistical tables showing for the whole country, and by states, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

**596. Statistics of bankruptcy proceedings.**

SEC. 54. (a) Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the attorney-general, for statistical purposes, within ten days after being requested by him so to do.

**CHAPTER VI****CREDITORS****597. Meetings of creditors.**

SEC. 55. (a) The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county-seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix a date, as soon as may be thereafter, when it shall be held.

(b) At the first meeting of creditors the judge or referee shall preside,

and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

(c) The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this act.

(d) A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

(e) The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

(f) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

#### 598. Voters at meetings of creditors.

SEC. 56. (a) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

(b) Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

#### 599. Proof and allowance of claims.

SEC. 57. (a) Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

(b) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

(c) Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

(d) Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

(e) Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

(f) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

(g) The claims of creditors who have received preferences, voidable under section 60, subdivision b, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section 67, subdivision e, have been made or given, shall not be allowed unless such creditors shall surrender such preferences, conveyances, transfers, assignments or incumbrances.

(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

(i) Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

(j) Debts owing to the United States, a state, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

(k) Claims which have been allowed may be reconsidered for cause and reallocated or rejected in whole or in part, according to the equities of the case before but not after the estate has been closed.

(l) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole or the proportional part thereof if rejected only in part.

(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n) Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment; *provided*, that the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer. *As amended, Act of February 5, 1903.*

## 600. Notice to creditors.

SEC. 58. (a) Creditors shall have at least ten days' notice by mail to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examination of the bankrupt; (2) all hearings upon applications for the confirmation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy; (8) the proposed dis-

missal of the proceedings; and (9) there shall be thirty days' notice of all applications for the discharge of bankrupts. *As amended, Act of June 25, 1910.*

(b) Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

(c) All notices shall be given by the referee, unless otherwise ordered by the judge. *As amended, Act of June 25, 1910.*

### 601. Who may file and dismiss petitions.

SEC. 59. (a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims against any person which amounts in the aggregate in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c) Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

(d) If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

(f) Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

(g) A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors, and to that end the court shall, before entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, and shall cause notice to be sent to all such creditors of the pendency of such application, and shall delay the hearing thereon for a reasonable time to allow all creditors and parties in interest opportunity to be heard. *As amended, Act of June 25, 1910.*

### 602. Preferred creditors.

SEC. 60. (a) A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person,

or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

(b) If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer, if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment and transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person and for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

(c) If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d) If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be reexamined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate. *As amended, Acts of February 5, 1903, and June 25, 1910.*

## CHAPTER VII

### ESTATES

#### 603. Depositories for money.

SEC. 61. (a) Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

#### 604. Expenses of administering estates.

SEC. 62. (a) The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

#### 605. Debts which may be proved.

SEC. 63. (a) Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an

instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee, and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

(b) Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

#### 606. Debts which have priority.

SEC. 64. (a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, state, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

(b) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid creditors in involuntary cases and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the states or the United States is entitled to priority.

(c) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication. *As amended, Acts of February 5, 1903, and June 15, 1906.*

#### 607. Declaration and payment of dividends.

SEC. 65. (a) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b) The first dividend shall be declared within thirty days after the adju-

dication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order; *provided*, that the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed; *and provided, further*, that the final dividend shall not be declared within three months after the first dividend shall be declared. *As amended, Act of February 5, 1903.*

(c) The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

(d) Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such court shall be paid any amounts.

(e) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this act.

#### 608. Unclaimed dividends.

SEC. 66. (a) Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

(b) Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt; *provided*, that in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

#### 609. Liens.

SEC. 67. (a) Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

(b) Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

(c) A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this act; or if the dissolution of such lien would militate against the best

interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

(d) Liens given or accepted in good faith and not in contemplation of or in fraud upon this act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice shall, to the extent of such present consideration only, not be affected by this act.

(e) That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this act subsequent to the passage of this act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or incumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the state, territory, or district in which such property is situate, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened shall have concurrent jurisdiction.

(f) That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect; *provided*, that nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, or other lien of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry. *As amended, Acts of February 5, 1903, and June 15, 1910.*

#### 610. Set-offs and counterclaims.

SEC. 68. (a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b) A set-off or counterclaim shall not be allowed in favor of any debtor

of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

#### 611. Possession of property.

SEC. 69. (a) A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

#### 612. Title to property.

SEC. 70. (a) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him; *provided*, that when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

(b) All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

(c) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchases by the trustee.

(d) Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

(e) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover

the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value; for the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened shall have concurrent jurisdiction.

(f) Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him. *As amended, Act of February 5, 1903.*

### 613. Clerks, duties of.

SEC. 71. That the clerks of the several district courts of the United States shall prepare and keep in their respective offices complete and convenient indexes of all petitions and discharges in bankruptcy heretofore or hereafter filed in the said courts, and shall, when requested so to do, issue certificates of search certifying as to whether or not any such petitions or discharges have been filed; and said clerks shall be entitled to receive for such certificates the same fees as now allowed by law for certificates as to judgments in said courts; *provided*, that said bankruptcy indexes and dockets shall at all times be open to inspection and examination by all persons or corporations without any fee or charge therefor. *Added, Act of February 5, 1903.*

### 614. No additional compensation.

SEC. 72. That neither the referee, receiver, marshal, nor trustee shall in any form or guise receive, nor shall the court allow them, any other or further compensation for his services than that expressly authorized and prescribed in this act. *Added, Act of February 5, 1903, and amended, Act of June 25, 1910.*

### 615. The time when this act shall go into effect.

The original act of 1908 provided as follows:

(a) This act shall go into full force and effect upon its passage; *provided, however*, that no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

(b) Proceedings commenced under state insolvency laws before the passage of this act shall not be affected by it.

The amendatory act of 1903 provided as follows:

SEC. 19. That the provisions of this amendatory act shall not apply to bankruptcy cases pending when this act shall take effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July 1, 1898.

The amendatory act of 1910 provides as follows:

SEC. 14. That the provisions of this amendatory act shall not apply to bankruptcy cases pending when this act shall take effect, but such cases shall be adjudicated and disposed of conformably to the provisions of said act approved July 1, 1898, as amended by said act approved February 5, 1903, and as further amended by said act approved June 15, 1906.

#### SUSPENSION OF STATE INSOLVENCY LAWS.

By the enactment of a uniform system of national bankruptcy in pursuance of constitutional authority, the bankrupt or insolvent laws of the various states are suspended or superseded. In re Macon Sash Co., 112 Fed. 323; In re Storck Lumber Co., 114 Fed. 360;

In re Rogers, 116 Fed. 437; Carling v. Seymour Lumber Co., 113 Fed. 483; In re Curtis, 91 Fed. 737, affirmed 94 Fed. 630; In re Sievers, 91 Fed. 366, affirmed *sub nom.* Davis v. Bohle, 92 Fed. 329; In re Smith, 92 Fed. 135; In re Ogles, 93 Fed. 426.

For other cases, see 1 Fed. Stats. Anno. 526.

For above reason "An Act for the relief of insolvent debtors and protection of creditors" (Stats. 1881, p. 124; amended 1883, p. 94; 1885, p. 29; 1887, pp. 94, 110) is omitted from this work.

## BANKS AND BANKING

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**616. Bank, how incorporated—What articles shall contain.**

**SECTION 1.** Any three or more persons, a majority of whom shall be residents of this state, may execute articles of incorporation and be incorporated as a banking corporation in the manner hereinafter provided. Said articles of incorporation shall contain:

First—The corporate name adopted by the corporation, which shall not be the same name used by any corporation previously organized, or any imitation of such name.

Second—The place where its business is to be conducted.

Third—The purpose for which it is formed.

Fourth—The amount of its capital stock, which shall be divided into shares of the par value of one hundred dollars each, and which shall not be less than \$25,000.

Fifth—The name and place of residence of, and the number of shares subscribed by each stockholder.

Sixth—The names of the stockholders selected to act as the first board of directors, each of whom shall be a bona fide holder of at least one thousand dollars of the stock of said bank, fully paid and not hypothecated, and a majority of whom shall be residents of the same or an adjoining county or counties to that where its business is to be conducted.

Seventh—The length of time the corporation is to exist, which shall not exceed fifty years.

Eighth—And such other matters not inconsistent with law, as the incorporators may deem proper.

**617. Articles of incorporation must be signed by at least three stockholders—Secretary of state to issue certificate—Bank examiner to authorize commencement of business.**

**SEC. 2.** Said articles of incorporation shall be subscribed to by at least three of the stockholders of the proposed banking corporation, and be acknowledged by them before some person competent to take an acknowledgment of deeds, and filed in the office of the clerk of the county in which the principal place of business of the corporation is intended to be located, and one copy thereof, duly certified by the clerk of said county, shall be filed in the office of the secretary of state, and another copy thereof, in like manner, shall be filed in the office of the state banking board. The secretary of state shall issue a certificate in the form provided by law for other corporations, and the existence of such bank as a corporation shall date from the issuance of the certificate by the secretary of state, from which time it shall have and may exercise the powers conferred by law upon corporations generally, except as limited or modified by this act; *provided*, that such bank shall transact no business except the election of officers and the taking and approving of their official bonds, and the receipt of payments on account of the subscriptions of the capital stock, and such other business as is incidental to its organization, until it shall have been authorized by the bank examiner to commence the business of banking as hereinafter provided.

In *Marymont v. State Banking Board*, 33 Nev. — (111 P. 295), it was held that the banking business is a lawful one in which the citizen cannot be denied the right to engage by an act of the legislature.

Ex Parte Pittman, 31 Nev. 43.

See annotation under sec. 623.

The banking business can be regulated, but not prohibited, and it is not only the legislature's power, but its duty, to regulate the business so as to reduce failures to a minimum.

Ex Parte Pittman, 31 Nev. 43.

**618. Statement to be filed with bank examiner.**

**SEC. 3.** When the capital stock of any bank shall have been paid up, in cash, the president or cashier thereof shall transmit to the bank examiner a

verified statement showing the names and places of residence of the stockholders, the amount of stock subscribed and the amount paid in by each, and the bank examiner shall thereupon have the same power to examine into the conditions and affairs of such bank as if it had been before that time engaged in the banking business, and if the bank examiner is satisfied that such bank has been organized as prescribed by law, and that its capital is fully paid in cash, and that it has in all respects complied with the law, he shall issue to such bank, under his hand and seal, a certificate showing that it has been organized and its capital fully paid up as required by law, and is authorized to transact a general banking business, upon payment of the license prescribed by this act; *provided*, that in the reorganization of any banking corporation, the assets may be accepted in lieu of cash at their actual value.

#### 619. Business in which bank may engage.

SEC. 4. A banking corporation organized under the provisions of this act shall be permitted to receive money on deposit, to buy and sell exchange, gold, silver, coin, bullion, uncurrent money and bonds, to loan money on chattel and personal security, or on real estate secured by mortgage; to own a suitable building, furniture, and fixtures, for the transaction of its business; the value of which shall not exceed one-third of the capital and surplus of said bank, fully paid; *provided*, that nothing in this section shall prohibit such bank from holding or disposing of such real estate as it may acquire through the collection of debts due it; *and provided further*, that all banking institutions and trust companies now organized as corporations doing business in this state are hereby permitted to continue said business as at present incorporated, but in all other respects, their business, and the manner of conducting the same, and the operation of said bank or trust company, shall be carried on, subject to the provisions of this act and in accordance therewith; *and provided further*, that no bank or trust company, except those that have complied with the provisions of this act, shall engage in any other business than is authorized by this act.

A receipt of a deposit by the receiving teller of a private bank is the receipt by the private banker, because he is the principal and the teller the agent, and the deposit is the banker's

private property. *Ex Parte Rickey*, 31 Nev. 82. A deposit received by an incorporated bank is the property of the corporation. *Idem*, 82.

Banks may be appointed resident agents of corporations, sec. 1119.

#### 620. May transact trust company business, when.

SEC. 5. Any corporation organized under this act may state in its articles of incorporation that it will carry on a trust company business, either exclusively or in connection with the banking business, and such corporation shall thereupon have power, in addition to the powers conferred upon banks, to act as trustee under any mortgage or bond of any person, firm or corporation, or of any municipality or body politic; and accept and execute any municipal or corporate or individual trust not inconsistent with the laws of this state; to act under the order or appointment of any court as guardian, administrator, receiver or trustee; to act as executor or trustee under any will; and when appointed as such guardian, administrator, receiver, trustee or executor it may, by order of the court having jurisdiction in the premises, be relieved from giving any security bond required by law; to act as fiscal or transfer agent of any state, municipality, body politic or corporation and in such capacity to receive and disburse money and register, transfer and countersign certificates of stock, bonds and other evidences of indebtedness; to act as local or resident agent of foreign corporations, and as agent for insurance companies.

#### 621. Savings bank business, when—Funds of savings bank, how invested—Restrictions.

SEC. 6. Any banking corporation designating its business as that of a

savings bank shall have power to carry on a savings bank business as prescribed and limited in this act. Any savings bank may receive deposits, and such deposits shall be repaid to the depositors or their lawful representatives at such time and with such interest and under such regulations, assented to by the depositors, as shall be prescribed by said bank and approved by the state banking board, which regulations shall be printed and conspicuously posted in some place accessible and visible to all persons in the business office of said bank. The funds of any savings bank, except the reserve provided for in this act, shall be invested in bonds of the United States, or of any state of the United States, or in the public debt or bonds of any city, county, township, village or school district of any state of the United States which shall have been lawfully issued; or may be loaned on negotiable paper secured by any of the above-mentioned classes of security; or upon notes or bonds secured by mortgage lien upon unincumbered real estate; *provided*, that second mortgage loans may be made upon improved farm lands but no loans shall be made upon such lands or other real estate which, including the aggregate amount of all incumbrances shall exceed fifty per cent of the cash value thereof; or upon notes secured by collateral security of known marketable value; or shall be deposited in good solvent banks or held as cash; *provided, also*, that chattel mortgages shall not be deemed collateral security and savings banks are prohibited from investing their funds in them.

#### 622. Pass-book, regulations concerning.

SEC. 7. A pass-book shall be issued to each depositor in a savings bank for all money deposited on open account. Such pass-book shall contain the rules and regulations adopted by such savings bank governing such deposits and shall be accepted by the depositor and thereupon shall be deemed agreed to by him. In such pass-book shall be entered each deposit made by and each payment made to such depositor; *provided*, that nothing in this act shall prohibit a savings bank from issuing time certificates for deposits. When any deposit is made in a savings bank by a minor the said bank may pay to such depositor such sums as may be due him or her, and the receipt of such minor to such savings bank shall be valid.

#### 623. Minimum capital. \$25,000.

SEC. 8. That hereafter no bank or trust company shall be organized, and no bank or banker shall be permitted to carry on business with a less capital than twenty-five thousand dollars, and the full amount of the capital stock of any bank or trust company must be paid in cash before it shall be authorized to commence business, or any individual banker be permitted to be in or continue business. No bank in this state shall hereafter open or maintain any branch bank or office. All of the provisions of this act shall be applicable as far as may be to individuals, firms or associations, as well as to corporations.

The provision in sec. 2 of the banking act of March 24, 1909 (Stats. 1908-09, p. 191) denying to individuals the right to engage in the banking business was held to be in conflict with the state constitution, article 1, section 1, which assures to the citizen rights to liberty, property and happiness, with article 1, section 8, guaranteeing due process of law, and with article 1, section 20, which saves to the people rights not enumerated and possessed by them. It was held that the business of banking is a lawful one in which every citizen may engage. *Marymont v. State Banking Board*, 33 Nev. — (111 P. 295).

In decisions filed January 3, 1911, the Supreme Court of the United States sustained,

as not being in conflict with the federal constitution, the Oklahoma, Nebraska and Kansas acts requiring the payment by all banks in those states of a percentage to a guaranty fund to meet the indebtedness of any bank which may become insolvent, and it was held that the federal constitution does not deny the state the right to regulate the banking business to prohibition, except upon such conditions as it may prescribe, and that objections under the state constitution were not open for consideration by that court. *Noble State Bank v. Haskell* and following cases, opinions of the U. S. Supreme Court, advance sheets, February 1, 1911.

#### 624. Capital stock may be increased or diminished.

SEC. 9. The capital stock of any banking corporation doing business under

the laws of this state may be increased or decreased at any time by a resolution adopted by two-thirds of its stockholders, at any regular meeting or at a special meeting called for that purpose, of which all stockholders shall have due notice, in the manner provided by the by-laws of such corporation. A certificate must be filed with the bank examiner by the officers of the meeting, and by a majority of the directors, showing the compliance with the provisions of this section, the amount to which the capital stock has been increased or decreased, the amount of capital stock represented at the meeting, and the vote upon the question to increase or decrease the capital stock. No such changes in the capital stock of any such corporation shall be valid or binding until the same shall have been approved by the bank examiner. No increase of the capital stock shall be approved by the bank examiner until the amount thereof shall have been paid in cash; *provided, however*, that such increased capital may, when authorized by two-thirds of the stockholders of said bank, be paid in whole or in part from its surplus or undivided profits. Whenever the capital stock of any bank shall be decreased, as provided in this section, each stockholder, owner, or holder of any stock certificate shall surrender the same for cancelation, and shall be entitled to receive a new certificate for his proportion of the new stock. No decrease in the capital stock of any bank shall be approved, unless such bank with reduced capital shall be entirely solvent, and no reduction in capital shall be approved to an amount less than is authorized by this act. Whenever the capital stock of any bank shall be increased or decreased as provided in this section, and the same shall have been approved by the bank examiner, a certificate signed by the president and cashier of the bank, setting forth the amount of stock held by such shareholder shall be filed with the secretary of state, with the county clerk and with the banking board.

#### 625. Directors—Officers—Qualifications—Liability—Meetings.

SEC. 10. The affairs and business of any banking corporation organized under the laws of this state shall be managed or controlled by a board of directors, of not less than three in number, who shall be selected from the stockholders in January of each year, and in such manner as may be provided by the by-laws of the corporation. No person shall be eligible to serve as a director of any bank, organized or existing under the laws of this state, unless he shall be a bona fide owner of one thousand dollars of the stock of such bank, fully paid and not hypothecated. A majority of the board of directors of every bank shall reside in the county where its business is to be conducted or in an adjoining county or counties. Any director, officer, or other person, who shall participate in any violation of the laws of this state, relative to banks, shall be liable for all damages which the said bank, its stockholders, depositors or creditors, shall, in consequence of such violation, sustain. Such director, when appointed shall take, in addition to the usual oath, an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this act, and that he is the owner, in good faith and in his own right of the number of shares of stock required by this act, subscribed by him and standing in his name on the books of the corporation; that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath subscribed by the director making it and certified by the notary public before whom it was taken shall be immediately transmitted to the bank examiner, and shall be filed and preserved in his office. The directors shall elect from their number, president, vice-president or vice-presidents, and shall appoint a cashier, who shall be ex officio secretary, and such other officers as may be provided for in the by-laws. Such officers shall hold their offices for the term of one year and

until their successors have been elected and qualified, unless sooner removed by the board of directors. The board shall require the cashier, and any and all officers and employees of the bank, having care of the funds, to give a good and sufficient bond to be approved by them. The board of directors shall hold at least four (4) regular meetings each year, and at such meetings a thorough examination of the books, records, funds and securities held by the bank or trust company, shall be made and recorded in detail upon its record book.

False oath perjury, sec. 660.

The president and receiving teller of an incorporated bank acting within the scope of their authority are agents of the corporation, and not of each other, and though the president has larger powers than the teller, and may direct his acts, the president is in no sense the principal, but his acts, within the scope of his powers, are the acts of the corporation. Ex Parte Rickey, 31 Nev. 82.

The president of an incorporated bank may be authorized by the directors thereof to do anything within the authority of the bank's charter, except the positive requirements that are personal, and cannot be delegated; and, when he goes beyond the scope of his usual authority, it must be shown in some way that his act was authorized by the directors. Idem, 82.

### 626. Bank closed when officers violate law.

SEC. 11. The violation of any of the provisions of this act by the officers or directors of any bank, organized or existing under the laws of this state shall be sufficient cause to subject the said bank or trust company to be closed and liquidated and for the annulment of its charter.

In *Golden v. District Court*, 31 Nev. 250, it was held that in a proceeding by stockholders to appoint a receiver for a bank and to enjoin its further operation under sec. 94 of the general incorporation act of 1903 (sec. 1195, *infra*.) the directors must be made parties.

In *State v. State Bank and Trust Co.*, 31 Nev. 456, it was held that the superseded act of March 26, 1907 (Stats. 1907, p. 232, c. 119), sec. 10, providing that, on the determination

by the bank commissioners that it is unsafe for a bank to continue business, they shall order the bank examiner to take possession of its property till the court makes an order, and the attorney-general shall bring action to enjoin it from transacting business, and if on the hearing the court finds it solvent, it may dismiss the action, and order the bank restored to possession of its property, did not confer judicial power on an executive board.

### 627. Stockholders individually liable.

SEC. 12. The stockholders of any bank organized under this act, shall be individually liable to the creditors thereof, equally and ratably, and not one for another, in addition to the amount of stock owned by them, in a sum equal to the par value of such stock and no more.

### 628. Bank not to engage in trade.

SEC. 13. No bank shall employ its moneys, directly or indirectly, in trade or commerce by buying or selling goods, chattel wares or merchandise, and shall not invest any of its funds in the stock of any other bank or trust company or corporation, nor make any loans or discounts upon the security of the shares of its own capital 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 twelve months from the time of its purchase, be sold or disposed of at public or private sale; after the expiration of twelve months any such stock shall not be considered as part of the assets of any bank or trust company; *provided*, that it may sell or become the owner of any personal property which may come into its possession as collateral security for any debt or obligation due it, according to the terms of any contract depositing such collateral security, and if there be no such contract then collateral security may be sold in the manner provided by law.

### 629. Available funds—Per cent must be on hand—When bank is deemed insolvent.

SEC. 14. Every bank doing business under the laws of this state shall have on hand in available funds an amount equal to fifteen per cent of its entire deposits; two-thirds of such amount may consist of balances due from

good, solvent banks, selected from time to time, with the approval of the bank examiner, and one-third shall consist of actual cash; *provided*, that any bank that has been made the depository for the reserve of any other bank or banks shall have on hand in the manner provided herein twenty-five per cent of the deposits. Whenever the available funds in any bank shall be below the required amount, such bank shall not make any new loans or discounts otherwise than the discounting or purchasing of bills of exchange, payable at sight; nor make any dividends of its profits until the required proportion between the aggregate of its deposits and its lawful money reserve shall have been restored and the bank examiner shall notify any bank whose lawful money reserve shall be below the amount required to be kept on hand, to make good such reserve, and if such bank shall fail to do so for a period of sixty days after such notice, it shall be deemed to be insolvent and the bank examiner may take possession of the same and proceed in the manner provided in this act, relating to insolvent banks. The bank examiner may refuse to consider, as a part of its reserves, balances due from any bank which shall refuse or neglect to furnish him with such information as he may require from time to time, relating to its business with any other bank doing business under this act, which shall enable him to determine its solvency; *provided*, that all banks doing a savings bank or trust company business, but which do not transact a general banking business, shall be required to keep on hand at all times, in available funds, a sum equal to ten per cent of their deposits, one-half of which may consist of balances due from good solvent banks.

#### 630. Borrower's liability restricted.

SEC. 15. The total liability to any bank of any person, company, corporation or firm for money borrowed, including in the liability of the company or firm, the liabilities of the several members thereof, shall not at any time exceed twenty-five per cent of the capital stock and surplus of such bank, actually paid in, but the discount of bills of exchange drawn in good faith against actual existing values, as collateral security, and a discount or purchase of commercial or business paper, actually owned by the persons, shall not be considered as money borrowed.

#### 631. False statements, how punished.

SEC. 16. Every officer, director, proprietor, partner, agent or clerk of any bank doing business under the laws of the State of Nevada, who knowingly or willingly subscribes to, or makes any false report or makes any false statement or entries in books of such bank, or knowingly subscribes to or exhibits any false writings on paper with the intent to deceive any person or persons as to the condition of such bank, shall be deemed guilty of a felony, and shall be punished by a fine not to exceed one thousand dollars or by imprisonment in the state prison not to exceed five years, or by both such fine and imprisonment.

#### 632. No proprietor, officer or employee to endorse loans.

SEC. 17. It shall be unlawful for any director, proprietor, partner, officer or employee of any bank or trust company to become an endorser or surety for loans to any other person, or in any manner become obligor for money borrowed of or loaned by such bank. The office of any director, officer or employee, who act in contravention to the provisions of this section, immediately thereon becomes vacant, and no such director, officer or employee shall be elected or appointed to such vacancy while such indebtedness exists.

#### 633. No director, officer or employee to borrow without approval of the majority of board.

SEC. 18. It shall be unlawful for any director, officer or employee of any bank directly or indirectly, for himself or as the agent of others, to borrow

money from such bank or trust company, unless he gives good and sufficient security for the repayment of such loan, which loan and security must be approved by a majority vote of the directors, in regular or in special meeting assembled, the applicant not voting, and all the proceedings relating thereto shall be recorded at length in the records of the bank.

**634. Insolvent bank not to receive deposits—Directors and officers individually responsible.**

SEC. 19. It shall be unlawful for any president, director, manager, cashier, or other officer or employee of any banking institution, or proprietor of, or partner in any bank, to assent to the reception of deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances, and it is hereby made the duty of every such officer, manager, proprietor, or agent of, or partners in such banking institution to examine into the affairs of the same and if possible to know its condition, and upon the failure of any such person to discharge such duty, he shall for the purpose of this act, be held to have had knowledge of the insolvency of such bank or trust company, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for deposits so received, and all such debts so contracted; *provided*, that any director who may have paid more than his share of the liabilities mentioned in this section, may have a proper remedy at law against such other persons as shall not have paid their full share of such liabilities, and every person knowingly violating the provisions of this section, or who shall be accessory to, or permit or connive at the receiving or accepting of any such deposits, shall be guilty of a felony and upon conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

See *Ex Parte Smith*, 33 Nev. —, 111 P. 930.

**635. Penalties—Misdemeanor, when—Felony, when.**

SEC. 20. An officer, agent, teller, or clerk of any bank, and every individual banker or agent, and any teller, clerk or agent of an individual banker who receives any deposit, knowing that such bank or banking institution or banker is insolvent, is guilty of a misdemeanor, if the amount of such deposit is less than thirty dollars; if the amount or value of such deposit is fifty dollars, or more, such person shall be guilty of a felony, punishable by imprisonment for not less than one nor more than five years, or by fine of not less than five hundred nor more than five thousand dollars, or by both such imprisonment and fine.

See secs. 459, 460, Crimes Act, secs. 6724, 6725, *infra*.

See *Ex Parte Rickey*, 31 Nev. 82, 100 P. 134.

**636. Bank to report quarterly or oftener—Sworn report to be published—Special reports, when.**

SEC. 21. Every bank shall make at least four reports each year, and oftener if called upon, to the bank examiner, according to the forms which may be prescribed by him verified by the oath or affirmation of its president, vice-president or cashier, and attested by the signatures of at least two of the directors. Each report shall exhibit in detail and under the appropriate heads, the resources and liabilities of such bank at the close of business on any past day specified by the bank examiner, and shall be transmitted to him within ten days after the receipt of a request or requisition therefor by him, and shall be published in condensed form, according to his requirements, within ten days after same is made, in a newspaper published in the county in which such bank is established, for one insertion at the expense of the bank, and such proof of publication shall be furnished within five days after the

date of publication, as may be required by the bank examiner. The bank examiner shall also have power to call for special reports which need not be published, from any bank, whenever, in his judgment, the same is necessary, in order to gain a full and complete knowledge of its condition; *provided*, the reports authorized and required by this section, to be called for by the bank examiner, shall relate to a date prior to the date of such call to be specified therein; *provided*, that no written report shall be made giving the name or names of the debtor or debtors of such bank.

### 637. Penalties for failure to report—Suit for fines, when.

SEC. 22. Every bank which fails to make and transmit or to publish any report required under this act, shall be subject to a penalty of fifty dollars for each day after the period mentioned in the preceding section, that it delays to make and transmit its report or proof of publication. Whenever any bank delays or refuses to pay the penalty herein imposed for a failure to make and transmit or to publish a report, the bank examiner is hereby authorized to maintain an action, in the name of the state, against the delinquent bank for the recovery of such penalty, and all sums collected by such action shall be paid into the general fund of the state.

### 638. Bank may close voluntarily, how.

SEC. 23. Any bank doing business under this act may place its affairs and assets under the control of the bank examiner by posting a notice on its front door as follows: "This bank is in the hands of the state bank examiner." The posting of such notice or the taking possession of any bank by the bank examiner shall be sufficient to place all of its assets and property of whatever nature in the possession of the bank examiner, and shall operate as a bar to any attachment proceedings, and the said bank shall be liquidated and its property and assets administered as in this act provided.

### 639. Voluntary liquidation, method of.

SEC. 24. Any bank doing business under this act, may voluntarily liquidate by paying off all its depositors in full and upon filing a verified statement with the bank examiner, setting forth the fact that all its liabilities have been paid, and on the surrendering of its certificate of authority to transact a banking business, it shall cease to be subject to the provisions of this act, and may continue to transact a loan and discount business under its charter; *provided*, that the bank examiner shall make an examination of any such bank for the purpose of determining that all its liabilities have been paid.

### 640. Bank insolvent, when.

SEC. 25. A bank shall be deemed to be insolvent:

First—When the actual value of its assets is insufficient to pay its liabilities;

Second—When it is unable to meet the demands of its creditors in the usual and customary manner;

Third—When it shall fail to make good its reserve as required by law.

### 641. Dividends declared, when.

SEC. 26. The directors or owner of any bank doing business under this act, may declare dividends of so much of the net profits as they may judge expedient, but such bank shall, before the declaring of the dividend, carry not less than one-tenth of its net profits since the last preceding dividend to its surplus fund, until the same shall amount to twenty per cent of its capital stock.

**642. Losses, how charged.**

SEC. 27. Any losses sustained by any bank, in excess of its undivided profits, may be charged to its surplus fund; *provided*, that its surplus fund shall thereafter be reimbursed from its earnings, in the same proportion to its earnings, as provided in the preceding section.

**643. Capital not to be withdrawn.**

SEC. 28. No bank or bank officer or director thereof, or individual banker, shall 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 bank equal to, or exceeding its undivided profits, then on hand, no dividend shall be made, and no dividend shall be declared by any bank while it continues its banking business to any amount greater than its profits on hand, deducting therefrom its losses, to be ascertained by a careful estimate of the actual value of its assets at the time of making such dividends. Nothing in this section will prevent the reduction of the capital stock of any bank in the manner prescribed herein.

**644. Interest on time deposits no more than 4 per cent—Penalty.**

SEC. 29. No bank shall pay interest on time deposits directly or indirectly at a greater rate than four per cent per annum. Any banker, or officer, director or employee of a bank who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment in the county jail not exceeding six months, or both at the discretion of the court.

**645. Officers guilty of felony, when.**

SEC. 30. Every banker, officer, employee, director or agent of any bank or trust company, who shall, wilfully or maliciously neglect to perform any duty required by this act, or who shall wilfully or maliciously fail to conform to any material lawful requirement made by the bank examiner, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars, or by imprisonment in the state prison not to exceed five years, or by both such fine and imprisonment.

**646. Bank examiner to offer rewards, when.**

SEC. 31. The bank examiner shall have power to offer, under such conditions as he may deem proper, and not to exceed the sum of \$500 in any one case, rewards for the arrest and conviction of any officer, director, agent or employee of any bank or trust company charged with violating any of the laws of this state relating to banks and banking, for which a criminal penalty is provided, or for the arrest and conviction of any person charged with stealing with or without force, any money, property or thing of value of any bank or trust company, and the state treasurer is hereby authorized, empowered and directed to pay out of the general fund of the state, all rewards so offered, when the same shall be approved by the board of examiners of this state, in the usual manner for allowing other claims against the state.

**647. Unlawful to certify check without funds.**

SEC. 32. It shall be unlawful for any officer, clerk or agent of any bank doing business under this act, to certify any check, draft or order drawn upon such bank, unless the person, firm or corporation drawing such check, draft or order has on deposit with the said bank at the time such check, draft or order is certified, an amount of money equal to the sum specified in said check. Any check, draft or order so certified by a duly authorized officer shall be a

good and valid obligation against such bank, but the owner, officer, clerk or agent of any bank or banker, violating the provisions of this section shall be deemed guilty of a felony and upon conviction shall be punished by a fine not to exceed one thousand dollars, or by imprisonment in the state prison not to exceed five years, or by both such fine and imprisonment.

#### 648. Penalties for various acts.

SEC. 33. Every banker, president, director, cashier, teller, clerk, officer or agent of any bank or banker who embezzles, abstracts, or wilfully applies any moneys, funds, securities or credits of any bank, or who issues or puts forth any certificate of deposit, draws any draft, bill of exchange, mortgage, judgment, or decree, or who makes use of any bank in any manner, with intent in either case to injure or defraud any bank or individual, person, company or corporation, or to deceive any banker, or officer of any bank, and any person who, with like intent, aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not to exceed five thousand dollars or by imprisonment in the state prison not to exceed twenty years, or by both such fine and imprisonment.

#### 649. Overdrafts not permitted.

SEC. 34. Any officer or employee of any bank who shall pay out of the funds thereof upon the check, order or draft of any individual, firm, corporation or association, which has not on deposit with such bank, a sum equal to such check, order or draft, shall be personally liable to such bank for the amount so paid, but any overdraft indebtedness thus created must be converted into a solvent note or actually paid within thirty days.

#### 650. No preference allowed creditors—Pledges when borrowing temporarily—Exception.

SEC. 35. No bank official shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security, or otherwise; *provided*, that any bank may borrow money for temporary purposes, not to exceed the amount of its paid-up capital, and may pledge any of its assets as collateral security therefor; *provided, further*, that when it shall appear that a bank is borrowing habitually for the purpose of conducting its business, the bank examiner may require such bank to pay off such borrowed money. Nothing herein shall prevent any bank from rediscounting in good faith and endorsing any of its negotiable notes.

#### 651. Impaired capital stock to be made good within sixty days, or capital stock may be reduced—Lien on stock of stockholder for assessment.

SEC. 36. Whenever it shall appear that the capital stock of any bank, doing business under this act, has become impaired, the bank examiner shall notify such bank to make such impairment good within sixty days and it shall be the duty of the officers and directors of any bank receiving such notice from the bank examiner immediately to call a special meeting of the stockholders for the purpose of levying an assessment upon its stockholders, sufficient to cover the impairment of its capital stock; *provided*, that such bank, if not insolvent, may reduce its capital stock to the extent of such impairment, if such reduction will not place its capital below the amount required by this act; *and provided further*, that the bank shall have a prior lien upon the stock of each individual shareholder to the extent of such assessment and upon the failure of any such stockholder to pay the assessment authorized by this section within the time fixed by the bank examiner for making good said impairment, the lien may be foreclosed, and the stock of such delin-

quent stockholder sold, by giving public notice of the time and place of such sale, and of the stock to be sold, by advertisement for fifteen days in some newspaper of general circulation, published in the county where such bank is located.

**652. National bank may incorporate as state bank. how.**

**SEC. 37.** Any national bank doing business in this state may incorporate as a state bank as provided herein for the organization of banks; *provided*, that the bank examiner may accept good assets of such national bank, at their actual cash value, in lieu of cash payments for the stock of such state bank.

**653. List of stockholders for public inspection—List sent to bank examiner.**

**SEC. 38.** The president and cashier of every incorporated bank shall cause to be kept at all times a full and correct list of the names and places of residence of its stockholders, and the number of shares held by each, in the office where its business is transacted. Such list shall be subjected to the inspection of all the stockholders and creditors of the corporation, and the officers authorized to assess taxes under state authority, during the business hours of each day in which business may be legally transacted. A copy of such list on the first Monday in January of each year, verified by the oath of such president or cashier, shall be transmitted to the bank examiner and shall be filed in his office for the use of said bank examiner and the Nevada state banking board, but shall not be exhibited to any other person nor its contents made known to any other person while such bank is solvent.

**654. Penalty for refusal to allow examination.**

**SEC. 39.** Whenever any banker or officer of any bank shall refuse to submit the books, papers and effects of such bank to the inspection of the bank examiner or his deputies, or shall in any manner obstruct or interfere with them in the discharge of their duties, or refuse to be examined on oath touching the affairs of the bank, the bank examiner may revoke the authority of such bank to transact a banking business, and proceed to wind up its affairs.

**655. Penalty for receipt of deposits after authority revoked.**

**SEC. 40.** Any banker or officer of any bank whose authority to transact a banking business has been revoked as herein provided who shall receive any deposit of whatsoever nature, after such revocation, shall be subject to the same penalty provided for persons transacting a banking business without authority.

**656. Bank may hold real estate, when—Time of holding real estate in certain instances limited.**

**SEC. 41.** A bank may purchase, hold or convey real estate for the following purposes: First, such as shall be necessary for the convenient transaction of its business, including its furniture and fixtures, but which shall not exceed one-third of its capital and surplus; second, such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business; third, such as it shall purchase at sale under judgment, decree or mortgage foreclosure under securities held by it, but shall not bid at any such sale a larger amount than is necessary to satisfy its debts and costs. Real estate shall be conveyed by an individual banker as in other cases, or under the corporate seal of the bank, and the hand of either its president, vice-president or cashier approved by a resolution of its directors. No real estate acquired in the cases contemplated in the second and third subsections above, shall be held for a longer time than

ten years. It must be sold at a private or public sale within thirty days thereafter.

657. Shares of stock deemed personal property.

SEC. 42. The shares of stock of any incorporated bank shall be deemed personal property, and shall be transferred on the books of the bank in such manner as the by-laws thereof may direct, but no transfer of stock shall be valid against a bank or creditor thereof, so long as the registered holder thereof shall be liable as a principal debtor, surety or otherwise, to the bank for any debt, and no stock shall be transferred on the books of any bank where the registered holder thereof is in debt to the bank for any matured or unpaid obligations.

658. Bank's stock not security for its own loans unless previously contracted.

SEC. 43. It shall be unlawful for any bank to loan its funds to its stockholders upon their stock as collateral security; *provided*, that any bank may hold its stock to secure a debt previously contracted.

659. Forms for reports provided by bank examiner.

SEC. 44. For the purpose of carrying into effect the provisions of this act, the bank examiner shall provide a form for the necessary blanks for such examination and reports, and all reports received by him shall be preserved in his office; *provided*, the information thus secured shall not be given to any person while such bank is solvent, but shall only be used for the benefit of the bank examiner and the Nevada state banking board. All such reports and information shall be deemed and treated as confidential communications.

660. False swearing punished as perjury.

SEC. 45. Every banker, officer or employee of a bank, or banker required by this act to take an oath or affirmation, who shall wilfully swear or affirm falsely shall be deemed guilty of perjury, and upon conviction thereof shall be punished as provided by the laws of this state in cases of perjury.

661. Circulation of false reports regarding solvency of bank a misdemeanor.

SEC. 46. Any person circulating, knowing the same to be false, or instigating others, to circulate either by word of mouth, writing, or print, false, or derogatory stories concerning the credit or solvency of a banking institution shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed five hundred dollars or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

662. License for banking must be obtained—Classes of license.

SEC. 47. No individual, bank, banking firm, trust company, corporation, company or other corporation, incorporated under the laws of this state, or of any other state or territory or foreign country, doing a banking business in this state, except banks doing business under the laws of the United States, shall engage in the banking business in this state without first obtaining from the bank examiner a license in the form presented by him, authorizing such individual, firm, corporation, company or trust company, to use the name and transact the business of a bank; said license to be regulated in proportion to their capitalization as follows: All those having a capitalization of \$25,000 or less shall pay the said bank examiner for such license the sum of \$100; all those having a capitalization of more than \$25,000 and up to and including \$100,000 shall pay a license of \$150; all

those having a capitalization of more than \$100,000 up to and including \$200,000 shall pay a license of \$275; all those having a capital of more than \$200,000 and less than \$500,000 shall pay a license of \$400; all those having a capital of \$500,000 or more shall pay a license of \$500, and shall pay annually thereafter, beginning April 1st of each year, a license equal to the original license provided in this section. All moneys collected as herein provided shall be paid into the general fund of the state treasury, and the state treasurer is hereby required to issue his receipt therefor.

**663. Certain advertising regarding capital stock prohibited.**

SEC. 48. No bank, trust company, banker, officer of any bank or trust company, or corporation doing a banking business, shall advertise in any manner or publish any statement of the capital stock authorized or subscribed, unless the amount of capital stock actually paid up shall be advertised or published therewith.

**664. State banking board—Meetings—Compensation.**

SEC. 49. The Nevada state banking board is continued and shall consist of the governor, who shall be ex officio chairman of the board, and of four other members who shall be appointed by the governor and none of whom shall be a stockholder or employee in any bank in the state; they shall hold office for the term of two years, unless sooner removed by the governor, and shall qualify by taking and subscribing to the constitutional oath of office, which shall be filed in the office of the secretary of state. Said board shall meet at the capital at least four times each year and at such other times as the governor, the examiner, or any two members of the board shall request. The members so appointed shall receive ten dollars per day for their services while engaged in the performance of their duties and shall be entitled also to their traveling and other necessary expenses incurred in the performance of their duties. Said board shall have in connection with the examiner, supervision and control of banks and banking in this state, and no persons, firms, associations or corporations shall be permitted to engage in the banking business in this state save in compliance with this act.

**665. Appointment of bank examiner—Salary—Deputies—Seal.**

SEC. 50. The governor shall appoint a bank examiner who shall be a person who has had practical banking experience; he shall receive a salary of five thousand dollars per year payable in equal monthly installments out of the general fund of the state; he may be removed from office at any time by a majority vote of the whole banking board. During his term of office the examiner shall not be permitted to examine the affairs of any bank in which he has an interest nor in which he is or within one year next preceding his appointment was an officer or employee. Until further action by the banking board the present bank examiner shall be continued in office with all the powers and duties thereby conferred and imposed. The examiner shall have the power to appoint and remove such deputy bank examiners as may be necessary to aid the examiner in carrying out the provisions of this act; the examiner shall fix the salaries of such deputies at the rate of not more than two thousand dollars per year for each deputy, payable in monthly installments out of the general fund of the state. Such deputy or deputies shall perform such duties as the examiner shall direct. The bank examiner shall occupy the offices of the state banking board and shall act as secretary of the board. The seal of the state banking board shall be as heretofore prescribed and all licenses and orders issued by the board and by its authority shall be attested by the seal of the state banking board, and by the signature of the bank examiner.

**666. Powers and duties of bank examiner.**

SEC. 51. In addition to the other powers conferred upon him by this act,

the bank examiner above provided for shall be charged with the enforcement of the provisions of this act, and of the rules and regulations adopted by the board, and shall during the intervals between the meetings of the board, have the powers of the board, including the power to make rules and regulations for the government of banks doing business under the terms of this act; such rules and regulations to remain in force, however, only until the next meeting of the board, and unless approved by the board at such meeting, said rules shall then cease to be of any force and effect. Such bank examiner shall perform such duties, in addition to those imposed by this act, as he may be ordered to perform by the board, and shall be subject to the authority and control of the board.

#### 667. Clearing-houses, how established and conducted.

SEC. 52. Wherever, in any town, whether incorporated or unincorporated, or in any city of this state, there are two or more banks, bankers or trust companies, they may unite into an association or clearing-house and adopt rules and regulations for the government of the banks belonging to such association or clearing-house; and all the banks of the state, or of any district of the state, may unite in a state or clearing-house association, or a district association or district clearing-house association, and any of such associations or clearing-house associations may make rules and regulations governing the members thereof, which said rules and regulations, when approved by the Nevada state banking board, shall be binding upon all the members of such associations or clearing-house associations, and have the full force and effect of rules adopted by the said Nevada state banking board.

#### 668. Bank examiner may take charge of bank—Bank may resume, when.

SEC. 53. Whenever it shall appear to the examiner that any bank to which this act is applicable has violated its charter or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or its capital is impaired, or it shall refuse to make the reports herein provided for, or refuse to permit its affairs to be examined by the examiner or his deputies or agents, or shall refuse to comply with any lawful requests or orders of the examiner or the state banking board; or shall suspend payment of its obligations; or if from any examination or report provided for in this act, the examiner shall have reason to conclude that such bank is in an unsafe or unsound condition to transact the business of banking, or that it is unsafe and inexpedient for such bank to continue in business, the examiner may forthwith take possession of the property and business of such bank and retain such possession until such bank shall resume business or its affairs be finally liquidated as herein provided. No bank, corporation, firm or individual knowing of such taking possession by the examiner, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the examiner shall have taken possession as aforesaid. Such bank may, with the consent of the state banking board, resume business upon such conditions as may be approved by them.

#### 669. Duties of examiner in regard to liquidation—Assistants; expenses— Legal advice.

SEC. 54. Upon taking possession of the property and business of such bank, the examiner is authorized to collect moneys due to such bank and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as hereinafter provided. The examiner shall collect all debts and claims and enforce all liabilities and rights of action accrued to or belonging to such bank, and may institute and prosecute all proper and necessary actions for that purpose, and may sell or compound all bad or doubtful debts, and upon the order of the district court for

the county where the bank carried on business, may sell all the real and personal property of such bank on such terms as the court shall direct; and may, if necessary to pay the debts of such bank, if a corporation, enforce the individual liability of its stockholders. The examiner may employ such clerks and assistants and incur such expenses for rent, office supplies and other proper and reasonable expenses as may be necessary in the preservation and liquidation of the business of such bank, and in special and important cases may employ an attorney, or attorneys at law, as special counsel to assist in the conduct of any particular case, whose compensation shall be fixed by the state banking board at such reasonable and proper sum as may be determined upon by them, for the services rendered. In ordinary cases, and for the usual advice and assistance that the examiner may require in all legal matters, such services shall be rendered by the district attorney of the county where said banking business was carried on, and also upon request of the examiner, by the attorney-general, without additional compensation, except that the state banking board may, in their discretion, allow the district attorney such sum as may be adjudged reasonable by them, not exceeding, however, fifty (\$50) dollars per month, during the period of the rendition of said services.

#### 670. Assistants to give bonds.

SEC. 55. The examiner shall require from the clerks and assistants, including a deputy examiner, if any, employed in the settling up of the affairs of any bank, in accordance with this section, such security for the faithful performance of their duties as he may deem proper.

#### 671. Notice to creditors of closed bank to be advertised and mailed.

SEC. 56. The examiner shall cause notice to be given by advertisement, in one or more newspapers, published in the place where said banking business was carried on, weekly, for two successive months, calling on all persons who may have claims against such bank, to present the same to the examiner, and make legal proof thereof, at a place and within a time not earlier than the last date of publication, to be therein specified. The examiner shall mail a similar notice to all persons whose names appear as creditors, upon the books of such bank. If the examiner doubts the justice and validity of any claim, he may reject the same, and serve notice of such rejection, upon the claimant, either by mail or personally. An affidavit of service of such notice shall be prima facie evidence thereof, and shall be filed in his office. An action upon a claim so rejected, must be brought within three months after such service, and a judgment for such claim shall have the effect only of placing the claim on the same basis as an approved claim, and shall create no lien or preference on the property or assets in the examiner's hands, nor shall any execution be issued in such judgment. Claims presented after the expiration of the time fixed in the notice to creditors, shall be entitled to share in the distribution only to the extent of the assets in the hands of the examiner, equitably applicable thereto. After the posting of the notice provided for in section 24 of this act, or the taking possession of any bank by the examiner, no attachment, execution or other writ shall be levied upon the property or assets of such bank until such possession shall have been surrendered by the examiner in accordance with the provisions of this act.

#### 672. Inventory of closed bank to be filed with board.

SEC. 57. Upon taking possession of the property and assets of such bank, the examiner shall make an inventory of the assets thereof, in duplicate; one to be filed in the office of the state banking board at the capitol, and one to be kept at the place where said banking business was carried on, and upon the expiration of the time fixed for the presentation of claims, the examiner shall make in duplicate a complete list of the claims presented, including

and specifying such claims as have been rejected by him; one to be filed in the office of the state banking board at the capitol, and one to be retained and kept at the place where said banking business was carried on, which inventory and list of claims shall be open at all reasonable times to inspection.

**673. Expenses to be paid from funds of closed bank—Collections to be deposited in solvent banks.**

**SEC. 58.** The compensation of all special counsel, employees, assistants, and the extra compensation allowed to the district attorney, if any, and all expenses of supervision and liquidation, except the salaries of the examiner and deputy examiner, if any, shall be paid by the examiner out of the funds of such bank in his hands. The moneys collected and realized by the examiner shall be from time to time deposited in one or more banks of deposit, organized under the laws of this state, and designated by the state banking board, which bank or banks shall give bonds to secure the payment of such deposits on demand. Such bonds shall be subject to the approval of the examiner.

**674. Dividends of closed bank, how paid.**

**SEC. 59.** At any time after the expiration of the date fixed for the presentation of claims, the examiner may, out of the funds remaining in his hands, after the payment of expenses, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors, he may declare a final dividend; such dividends to be paid to such persons and in such amounts as may be found to be correct.

**675. Closed bank may apply to recover control from examiner.**

**SEC. 60.** Whenever any banker, or banking corporation, or association, of whose property and business the examiner has taken possession, or of which he threatens to take possession, as aforesaid, feels aggrieved thereby, it may, after suit filed, at any time not later than ten days after such taking possession, apply to the district court in the judicial district in which the bank is located, to enjoin further proceedings; and the court, after citing the examiner to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties, and determining the facts, may, upon the merits, dismiss such application, or enjoin the examiner from further proceedings, and direct him to surrender such business and property to such banker, or banking corporation, firm or association. Such suits shall be brought to trial at the earliest time practicable, and shall be entitled to preference over other civil cases.

**676. Closing liquidation, how accomplished.**

**SEC. 61.** Whenever the examiner shall have paid to each and every depositor and creditor of said bank, whose claim or claims shall have been duly proved and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, the examiner shall pay over the surplus remaining in his hands, to the individual, firm, corporation, or association entitled to receive the same.

**677. Examiner to report semiannually on closed banks.**

**SEC. 62.** The examiner shall report to the state banking board, semiannually, the names and locations of banks, so taken possession of and liquidated, and the sums of unclaimed and unpaid deposits or dividends, with respect to each of them, respectively, and such dividends and unclaimed deposits remaining unpaid, in the hands of the examiner, for six months after the final distribution, shall be by him deposited in one or more banks, complying with the provisions of this act, to the credit of the state banking

board, in trust for the several depositors and creditors of the liquidated bank from which they were received, and the said state banking board shall pay over the money so held to the persons respectively entitled thereto, upon being furnished satisfactory evidence of their right to the same.

**678. Voluntary liquidation, proceedings under.**

**SEC. 63.** Whenever any bank shall voluntarily place itself in the hands of the bank examiner, the said bank examiner shall immediately take possession of such bank and of its assets and he shall proceed to administer and liquidate its property and assets as herein provided in case of an involuntary taking possession by the examiner.

**679. How bank may resume business.**

**SEC. 64.** After the bank examiner shall have taken possession of any bank which is subject to the provisions of this act, the owner, in case it is an unincorporated bank, or if a corporation, its stockholders, may repair its credit, restore or substitute its reserves or otherwise place it in a condition so that it is qualified to do a general banking business as before it was taken possession of by the bank examiner, but such bank shall not be permitted to reopen its business until the bank examiner after a careful investigation of its affairs, is of the opinion that the law has been complied with and that its credits and funds are in all respects repaired, and its reserves restored or sufficiently substituted, and that it should be permitted to again reopen for business. Whereupon, the examiner is authorized to issue written permission for the reopening of said bank, in the same manner as herein otherwise provided. Thereupon said bank may be reopened to do a general banking business.

**680. Bond of bank examiner, \$100,000.**

**SEC. 65.** The bank examiner shall, before entering upon the discharge of his duties, take and subscribe the usual oath of office and execute to the State of Nevada a bond in the sum of \$100,000, with sufficient surety for the performance of his duty, to be approved by and filed with the Nevada state banking board.

**681. Bond of deputies, \$50,000.**

**SEC. 66.** The deputy bank examiners, if any, shall before entering upon the discharge of their duties, take and subscribe the same oath of office as their principal, and execute to the State of Nevada a bond in the sum of \$50,000 with sufficient surety for the faithful performance of their duty, to be approved by and filed with the Nevada state banking board.

**682. Every bank examined twice each year.**

**SEC. 67.** It shall be the duty of the bank examiner or one of his deputies to visit each and every bank subject to the provisions of this act, at least twice each year, and oftener, if he deem it advisable, for the purpose of making a full and careful examination and inquiry into the condition of such bank, and for that purpose the bank examiner and his deputies are hereby authorized and empowered to administer oaths, and to examine under oath, the owners, stockholders and directors and all officers and employees and agents of such banks or other persons. The result thereof may be reduced to writing, which shall contain a true statement of the condition of such bank.

**683. Expenses of examiner and deputies.**

**SEC. 68.** The bank examiner and deputy bank examiners shall be allowed all necessary traveling expenses, when away from the capital on official business, subject to the approval of the Nevada state banking board, all such traveling expenses to be paid out of the general fund of the state.

**684. Salaries paid from state funds.**

SEC. 69. The salaries of the said bank examiner, his deputies and the members of the Nevada state banking board, and the traveling expenses and hotel expenses of each, shall be paid by the state treasurer upon warrants drawn by the state controller, when the same shall have been approved by the board of examiners of this state, out of the general fund of the state treasury, in the same manner as other state officers are paid.

**685. Penalties for misconduct of banking board, bank examiner and deputies.**

SEC. 70. The Nevada state banking board or any member thereof, or any bank examiner or deputy bank examiner, who shall neglect to perform any duty provided by this act, or who shall make any false statement or any statement, except in the exercise of his duty concerning any bank, or who shall be guilty of misconduct or corruption in office, shall, upon conviction thereof, be deemed guilty of felony and punished by a fine not exceeding one thousand dollars or imprisonment in the state prison not exceeding five years, and in addition thereto shall be removed from office.

**686. District attorneys to act when notified of violation of this act.**

SEC. 71. It shall be the duty of the bank examiner to inform the district attorney of the county in which the bank is located, of any violation of any of the provisions of this act, which constitutes a misdemeanor or felony, by the officers, owners, or employees of any bank, and upon receipt of such information the district attorney shall institute proceedings to enforce the provisions of this act.

**687. Charters of banks made to conform to this act—Legality of investments not affected—Future transactions must conform to this act.**

SEC. 72. The powers, privileges, duties and restrictions conferred and imposed upon any corporation or individual, existing and doing business under the laws of this state are hereby abridged, enlarged or modified as each particular case may require, to conform to the provisions of this act, notwithstanding anything to the contrary in their respective articles of incorporation or charters. The legality of investments heretofore made, or of transactions heretofore had, pursuant to any provisions of law in force when such investments were made or transactions had, shall not be affected by the provisions of this act, except as the same can be done gradually by the sale or redemption of the securities so invested in, in such manner as to prevent loss or embarrassment in the business of such corporation or individual, or unnecessary loss or injury to the borrowers on such security; *provided*, all investments, transactions, loans, and requirements shall be made to conform to the provisions of this act, within the period of eighteen months from the time of the enactment thereof.

**688. Each section of this act declared independent.**

SEC. 73. Each section of this act, and every part of each section is hereby declared to be independent of every other section and part of section, and the holding of a section or part of section to be void or ineffectual for any cause shall not be deemed to affect any other section or part of section.

**689. General penalty prescribed.**

SEC. 74. Where no other punishment is provided herein, any person violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100), or more than five hundred dollars

(\$500), or by imprisonment in the county jail for not less than thirty days, or both, in the discretion of the court.

#### 690. Terms and words used defined.

SEC. 75. The words "corporation," "banking corporation," "bank," "trust company," or "banker," as used in this act, shall refer to and include banks, savings banks, and trust companies, individuals, firms, associations and corporations of any character conducting the business of receiving money on deposit or otherwise carrying on a banking or trust company business, except as herein specially provided.

#### 691. General corporation act adopted.

SEC. 76. All provisions of an act entitled "An act providing a general incorporation law," approved March 13, 1903, as amended, not in conflict with this act are hereby adopted as a part of this act.

See secs. 1105 to 1215, *infra*.

#### 692. Repeal of conflicting acts.

SEC. 77. All acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect any civil actions or rights of action nor the prosecution of any person or persons for any offenses which may now exist or which have been heretofore committed under existing laws.

#### 693. Appropriation.

SEC. 78. For the purpose of carrying this act into effect and paying the salaries and expenses herein provided for, and incident hereto, the sum of twenty thousand dollars (\$20,000) is hereby appropriated out of the state treasury.

#### 694. Declared unconstitutional.

[Section 79, directing bank examiner to take charge of banks in the hands of receivers, declared unconstitutional. State ex rel. Howell v. Wildes, 33 Nev. —, 116 P. 195.]

The foregoing act supersedes the general corporation law of 1865, sections 1219 to 1241, incl., *infra*, in so far as it authorized the incorporation of banks. As they are covered by the provisions of the foregoing banking act, the following acts are omitted: "An Act to provide for the incorporation of banks, banking institutions and saving societies and the management of the affairs thereof, and other matters relating thereto, providing penalties for the violation of the provisions of this act, and repealing all acts in conflict thereof," approved March 29, 1907, p. 362; and "An Act creating a board of bank commissioners, defining their duties, providing for the appointment of a bank examiner, prescribing his duties, fixing his compensation, providing penalties for the violation of the provisions of this act, and other matters relating thereto," approved March 26, 1907, p. 229; and "An Act to define and regulate the business of banking; creating a state banking board, and defining its duties and powers, and providing for a bank examiner and the examination and supervision of banking corporations; and for the appointment of receivers in certain cases, fixing penalties for the violation thereof, and other matters relating thereto," approved March 24, 1909, p. 251.

As its sections have been superseded and carried to the general act in relation to crimes which become effective January 1, 1912, the following act is omitted: "An Act making it a felony for any banker, or any officer, director, cashier, teller, managing member, manager, clerk, person, party or agent of any bank, banking corporation, association, firm or person engaged in a banking, brokerage, exchange or deposit business to receive, or accept or assent or be accessory to or permit the reception or deposits of money, currency or valuable paper, in banking and other institutions, knowing the same to be insolvent; providing a punishment therefor and establishing a rule of evidence in connection therewith," approved March 13, 1909, p. 95, sections 6724 and 6725, *infra*.

## BONDS AND UNDERTAKINGS

*An Act to facilitate the giving of bonds and undertakings in certain cases and prescribing conditions upon which surety companies may become liable thereon in this state; fixing penalties for the violation thereof, repealing conflicting acts, and other matters relating thereto.*

Approved March 26, 1909, 315

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| <p>695. Surety company may act as sole surety on bonds of public officers and in court proceedings.</p> <p>696. Surety company must appoint controller its attorney.</p> <p>697. Certificate from secretary of state.</p> | <p>698. Justification—Liabilities—Certificate to be evidence.</p> <p>699. Expense of procuring surety may be allowed.</p> <p>700. Company estopped, when.</p> <p>701. Certificate of secretary of state necessary.</p> |
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### 695. Surety company may act as sole surety on bonds of public officers and in court proceedings.

SECTION 1. Any company incorporated and organized under the laws of any state of the United States for the purpose of transacting business as surety on obligations of persons, and which has complied with the provisions of this act, may be accepted as sole surety upon the bond or undertaking of any person or corporation in any civil or criminal action or proceeding in any court of this state, or upon the bond of any state, county or township officer required by the laws of this state to execute a bond or undertaking, for any amount not exceeding ten per centum of the capital and surplus (after excluding all debts, liabilities and property exempt from execution) of such surety company; and such surety company may be released from its liabilities on the same terms and conditions as are by law prescribed for the release of individuals, it being the true intent and meaning of this act to enable corporations created for that purpose to become surety on bonds required, subject to all rights and liabilities of private persons.

### 696. Surety company must appoint controller its attorney.

SEC. 2. No surety company shall directly or indirectly take risks or transact business in this state until it shall first have appointed the state controller of this state to be the true and lawful attorney of such corporation, in and for this state, upon whom all lawful process may be served with the same effect as if the company existed in this state; such power of attorney shall stipulate and agree on the part of the company that any lawful process against the company, which is served on such attorney, shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability shall remain outstanding in this state. A certificate of such appointment shall be filed in the office of the secretary of state, and copies thereof certified by him shall be received in evidence in all the courts of this state. Service of process in actions and proceedings on such attorney shall be deemed service upon the principal, but such principal shall be allowed forty days thereafter within which to appear and plead in all such actions and proceedings. Whenever any process against a surety company shall be served upon the state controller, he shall forthwith forward a copy of the process served upon him, by registered mail, post-paid, to the secretary of the company. For each copy of the process so served the controller shall collect and pay over to the secretary of state the sum of three dollars, which shall be paid by the plaintiff at the time of service, and which may be recovered by him as a part of the taxable costs if he prevail in the action; nor shall any surety company not incorporated under the laws of this state and not heretofore qualified to do business in

this state pursuant to existing laws, directly or indirectly take risks or transact business in this state, unless it shall file with the secretary of state a certified copy of its articles of incorporation, or its charter, or of the statute, or legislative, executive, or governmental act or other instrument or authority by which it was created, and pay the fees therefor, as otherwise required by law.

[Sec. 3, repealed by act of 1911, p. 21.]

#### 697. Certificate from secretary of state.

SEC. 4. Any surety company qualified by this act to transact business in this state may, at any time, apply to the secretary of state, and, upon the payment of a fee of two dollars therefor, obtain a certificate which shall state the name of such company, the state under which it is incorporated or exists, and that such company has fully qualified under the provisions hereof to assume risks and become surety on all bonds and undertakings mentioned in section 1 hereof, stating also the date such company qualified as aforesaid; *provided*, that from and after six months from the date of issuance, said certificate shall be and become null and void and of no effect.

#### 698. Justification—Liabilities—Certificate to be evidence.

SEC. 5. The certificate or any duplicate certificate issued by the secretary of state in accordance with the provisions of this act shall be prima facie evidence in all the courts of this state of all matters herein stated; *provided*, such certificate be not more than six months issued. Any printed copy of a circular issued by the treasury department of the United States known as form No. 356, stating the amount of the capital and surplus of any such surety company, and not more than six months old as appears from the date of issuance thereof, shall be prima facie evidence of the amount of such capital and surplus and of the amount to which such company is entitled to be received as sole surety on any bond in this state, and shall, if accompanied with the certificate of the secretary of state herein mentioned, be a complete justification for any amount not exceeding ten per centum of such capital and surplus, whenever any such company shall be required to justify on any bond or undertaking; *provided*, that the party requiring such justification may produce competent evidence to show that such surety company is not worth such sum over and above all its just debts and liabilities exclusive of property exempt from execution; *provided, further*, that bonds and undertakings on which such company may have become surety shall not be considered as debts or liabilities unless the obligation thereon shall have accrued and the obligee shall have demanded payment from such company.

#### 699. Expense of procuring surety may be allowed.

SEC. 6. Any court or officer whose duty it is to pass upon or approve the account or cost bill of any person or corporation required by law to give a bond or undertaking in any action or proceeding in any court, may, whenever such person or corporation has given any duly qualified surety company as surety on such bond or undertaking, allow in the settlement of such account or cost bill a reasonable amount for the expense of procuring such surety; *provided*, that this section shall not apply to any state, county or municipal officer required by law to give a bond, except as may be otherwise authorized by law.

#### 700. Company estopped, when.

SEC. 7. Any company executing any bond or undertaking as surety thereon under the provisions hereof shall, in proceedings to enforce any liability which it may have assumed, be estopped from denying its corporate power to execute such instrument or to assume such liability.

**701. Certificate of secretary of state necessary.**

SEC. 8. No court or officer having authority so to do shall approve any surety bond or undertaking given by any surety company as surety thereon, unless the person offering the same or some one in his behalf shall exhibit the certificate of the secretary of state showing that such company has duly qualified under this act to become such surety, which certificate shall have been issued within the six months immediately preceding such application.

[Sec. 9, repealed by act of 1911, p. 21.]

## BOUNTIES

Act to encourage artesian wells, approved March 6, 1879, sections 702-706.

Act to encourage the sinking of artesian wells, and an act of similar title, approved March 5, 1887, sections 707-711.

Act to provide bounty for boring wells for oil, natural gas and artesian water, approved March 19, 1901, sections 712-717.

For act approved March 24, 1905, relating to boring of wells in southern Nevada by the county commissioners of Esmeralda, Nye, Lincoln, Eureka, Lander, and White Pine counties, see Statutes 1905, p. 257.

Act to provide for the destruction of noxious animals, approved February 3, 1887, sections 718-722.

Act to provide for the destruction of noxious animals, approved March 13, 1891, sections 723-727.

### ARTESIAN, OIL AND NATURAL GAS WELLS

#### *An Act to encourage the sinking of artesian wells.*

Approved March 6, 1879, 86

702. Bounty for sinking.

703. Statement to be filed.

704. Examination of well—Expense of examination.

705. Warrant for bounty, how obtained and paid.

706. Certain persons entitled to benefit.

**702. Bounty for sinking.**

SECTION 1. Every person, firm, company, corporation or association that shall from and after the passage of this act, commence the sinking of artesian wells, within this state, shall be entitled for sinking said artesian well, after the first five hundred feet shall have been sunk, the sum of two dollars per foot, to be paid in the manner provided for in section 4 of this act.

**703. Statement to be filed.**

SEC. 2. Every person, firm, company, corporation or association that proposes taking the benefit of this act shall, prior to reaching the five hundred feet depth mentioned in section 1, file with the county recorder of the county in which said well is situated a sworn statement, setting forth (if on surveyed land) the range, township, section and subdivision of section, and if on unsurveyed lands, then the statement shall contain such description as will enable the commissioner, hereinafter provided for, to ascertain its locality.

**704. Examination of well—Expense.**

SEC. 3. Whenever any person, firm, company, corporation or association shall report to the board of county commissioners the completion or sinking of a well, at a greater depth than five hundred feet, and demand the bounty provided for in this act, the said board of county commissioners shall authorize and instruct their chairman, or a member of their body, or some other suitable person, to proceed to said well, measure, and report under oath its depth to said board; *provided*, that the expense of said measurement, includ-

ing report and traveling fees, to and from said well, shall not exceed the sum of twenty-five dollars, which amount shall be paid by the party making demand for bounty.

#### 705. Warrant for bounty, how obtained and paid.

SEC. 4. If, upon measurement, the board of county commissioners find said well to exceed in depth five hundred feet, they shall allow, audit and instruct the county auditor to draw his warrant on the general fund of the county, in favor of such person, firm, company, corporation or association, for the sum of two dollars per foot, for each and every foot sunk, after the first five hundred feet; *provided*, said well or wells shall flow water to be used for mining, manufacture, agriculture and domestic purposes.

#### 706. Certain persons entitled to benefit.

SEC. 5. Every person, firm, company, corporation or association, that shall have, prior to the passage of this act, commenced to sink an artesian well, or wells, and shall have reached the depth of three hundred feet or more, shall be entitled to receive the benefit of the provisions of this act for each and every foot sunk thereafter; *provided*, after the completion of said well or wells, they shall flow water as provided in section 4 of this act.

### *An Act to encourage the sinking of artesian wells.*

Approved March 5, 1887, 119

707. Bounty for sinking—Additional bounty.

708. Statement to be filed with county recorder.

709. Commissioners shall authorize examination of well.

710. Clerk shall issue certificate.

711. Controller shall draw warrant.

#### 707. Bounty for sinking—Additional bounty.

SECTION 1. Every person, firm, company, corporation or association that shall, after the passage of this act, commence the sinking of artesian wells, for stock or agricultural purposes, shall be entitled for sinking such artesian well, where flowing water is obtained, the following specific sums: For the first two hundred feet, one dollar and twenty-five cents per foot; for the third one hundred feet, one dollar and fifty cents per foot; for the fourth one hundred feet, two dollars per foot; for the fifth one hundred feet, two dollars and twenty-five cents per foot; for the sixth one hundred feet, two dollars and fifty cents per foot; for the seventh one hundred feet, three dollars per foot; for the eighth one hundred feet, three dollars and fifty cents per foot; for the ninth one hundred feet, four dollars per foot; for the tenth one hundred feet, four dollars and fifty cents per foot; for all depths exceeding one thousand feet, five dollars per foot for each and every foot below the said one thousand feet. And an additional bounty of one thousand dollars for every well sunk to the depth of one thousand feet or more; *provided*, that such well shall furnish twenty thousand gallons of water each twenty-four hours, flowing continuously for thirty days, said sums to be paid in the manner provided for in sections 4 and 5 of this act; *provided*, that no bounty shall be paid on any well which does not furnish seven thousand gallons of water in each twenty-four hours, flowing continuously for thirty days; *and, provided further*, that no two wells shall receive a bounty if located within the same county. Where two or more wells within the prescribed limit apply for a bounty, the well which first furnished the amount of water required by this act shall be entitled to the bounty allowed by this act. *As amended, Stats. 1889, 84.*

In regard to the amendment by Stats. 1889, p. 84 of this section, held that the effect of reenacting this section with amendments incorporated therein was not to repeal and reenact

it, but that it continued uninterruptedly in force, and that the amendatory act was to be construed in connection with it, so that where a well was sunk and a bounty granted for it

under the original act, another bounty would not be granted under the amendatory act for a well sunk within the prescribed limit. The purpose of the legislature in providing for the payment of bounties by the state for sinking artesian wells was to encourage experiments in places where it was uncertain whether water

could be obtained, and it did not contemplate the payment of bounties for wells sunk in places where it had been practically demonstrated by bounties paid by the state that artesian water could be obtained. State ex rel. Blossom v. Horton, 21 Nev. 300-307 (30 P. 876).

### 708. Statement to be filed with county recorder.

SEC. 2. Every person, firm, company, corporation or association that proposes taking the benefit of this act, shall, before commencing to sink such artesian well, file with the county recorder of the county in which said well is situated, a sworn statement setting forth (if on surveyed land) the range, township, section and subdivision of section, and if on unsurveyed land, then the statement shall contain such description as will enable the commissioner herein provided for to ascertain its locality.

### 709. Commissioners shall authorize.

SEC. 3. Whenever any person, firm, company, corporation or association shall report to the board of county commissioners the completion of an artesian well, and demand the bounty provided for in this act, the said board of county commissioners shall authorize and instruct their chairman or a member of their body to proceed to said well and measure its depth and diameter, and the amount of water flowing therefrom, and report said facts, under oath, to the said board of county commissioners; *provided*, that the expenses of said measurements, including report and traveling fees, shall not exceed twenty-five dollars, which amount shall be paid by the party making demand for such bounty.

### 710. Clerk shall issue certificate.

SEC. 4. The board of county commissioners shall, when such report is received, showing the depth, diameter, and the quantity of water flowing from such well, cause the clerk of said board to issue, under his official seal, to the person, firm, company, corporation or association applying for the bounty herein provided for, a certificate setting forth the depth, diameter and the quantity of water flowing from such well, upon which a bounty is demanded.

### 711. Controller shall draw warrant.

SEC. 5. The state controller shall, upon receipt of said certificate, as provided for in section 4 of this act, draw his warrant in favor of the person, firm, company, corporation or association named therein, for the amount due, and the state treasurer is hereby directed to pay the same.

[Sec. 6, making appropriation, omitted.]

*An Act to provide for the payment of a bounty to encourage the boring of wells in searching for oil, natural gas and artesian water in the State of Nevada.*

Approved March 19, 1901, 86

712. Bounty for petroleum, natural gas, artesian water.

715. Action on failure to reimburse.

713. Application for bounty, how filed.

716. Expenses of investigation.

714. State to be reimbursed, when.

717. Bounty, how paid.

### 712. Bounty for petroleum, natural gas, artesian water.

SECTION 1. Any person who first produces five barrels of crude petroleum that is the natural product of the State of Nevada shall receive as a bounty from the state the sum of one thousand (\$1,000) dollars. The person who first discovers natural gas in the State of Nevada to the extent of no less

than one thousand cubic feet shall receive a bounty of one thousand (\$1,000) dollars from the state. The first person to sink a well in the State of Nevada not less than six inches in diameter at the bottom, to the depth of one thousand (1,000) feet shall receive a bounty of twenty-five hundred (\$2,500) dollars from the state; *provided*, that such well shall flow at least sixty gallons of water per minute.

### 713. Application for bounty, how filed.

SEC. 2. The person who applies for any of the bounties under this act shall file the application with the chairman of the board of county commissioners of the county where the well is situated, and the members of the board shall examine and measure the well and quantity of oil, gas, or water mentioned in section 1 of this act, and if all the conditions have been complied with and if they consider the discovery a bona fide discovery, or properly coming under the provisions of this act they shall certify to the same under oath and forward the claim certified and endorsed to the clerk of the state board of examiners, and the claim after being passed upon and audited by the state board, or a majority thereof, shall be paid as other claims are paid. The warrant shall be drawn by the state controller and the treasurer shall pay the same.

### 714. State to be reimbursed, when.

SEC. 3. Any person receiving a bounty under this act shall enter into a contract with the state that he or she will, in case the oil, gas or water found is developed in sufficient quantities to become marketable or is sold in any way or bartered for any valuable consideration, that the party so disposing of it shall reimburse the state to the full extent of the bounty received.

### 715. Action on failure to reimburse.

SEC. 4. A failure on the part of any of the beneficiaries of this act to so reimburse the state, provided the oil, gas or water is sold for a sufficient sum to meet such obligation, shall constitute a valid cause of action against the party or parties in default, and on the authority of the state board of examiners, the attorney-general shall institute suit for the amount due, and any money or valuable consideration received by any of the beneficiaries of this act, even should it be a less sum than the amount of the bounty, shall be considered due the state under this act, with ten per cent interest per annum from the time the money or valuable consideration was received to the time of settlement, allowing thirty days in which to make settlement after the sale of the product or the property.

### 716. Expenses of investigation.

SEC. 5. Should the county commissioners be put to expense in the investigation of the wells, the cost of the same shall be paid by the owner of the well, and be a lien upon the bounty money.

### 717. Bounty, how paid.

SEC. 6. The bounty shall be first paid to the clerk of the board of county commissioners forwarding the claim to the state, and the warrant issued by the controller shall be drawn in his name, and not subject to attachment.

[Sec. 7, making appropriation, omitted.]

## ARTESIAN WELLS

Esmeralda, Nye, Lincoln, Eureka, Lander, and White Pine Counties

See act to provide for the sinking, boring and development of wells in southern Nevada (Stats. 1905. p. 257), relating exclusively to these counties.

## DESTRUCTION OF CERTAIN NOXIOUS ANIMALS

*An Act to provide for the destruction of noxious animals and to repeal an act relating thereto.*

Approved February 3, 1887, 38

718. Bounty for destruction of certain noxious animals.      721. Justice to give certificate—Fees of justice.
719. Scalps to be taken.      722. Amount allowed.
720. Claimant to make oath.

## 718. Bounty for destruction of certain noxious animals.

SECTION 1. If any person shall take and kill within this state any of the following noxious animals, he shall be entitled to receive out of the treasury of the county within which such animals shall have been taken, the following bounties, to wit: For every coyote or prairie wolf, one dollar; for every lynx or wildcat, two dollars; for every mountain lion, five dollars, and for every badger, fifty cents, all of which bounties shall be subject to the provisions of this act; *provided*, that no person shall be entitled to apply for or receive bounty money for any number of scalps less than five at any one time. *As amended, Stats. 1911, 358.*

## 719. Scalps to be taken.

SEC. 2. The person intending to apply for such bounty shall take the scalps with the ears connected thereto of the noxious animals killed by him, to some justice of the peace of the county within which such noxious animals shall have been taken.

## 720. Claimant to make oath.

SEC. 3. The person claiming such bounty shall then be sworn by such justice, and state on oath the time and place when and where said noxious animals for which a bounty is claimed by him, were taken and killed, and shall also submit to such further examination on oath concerning the taking and killing of such noxious animals as the justice may require.

## 721. Justice to give certificate—Fees of justice.

SEC. 4. If it shall appear to the justice that the noxious animals have been taken and killed within the county, he shall cut off the ears from the scalps and give to the person so sworn a certificate stating the number and kind of scalps deposited with said justice. The justice shall within thirty days thereafter send to the sheriff of his county all scalps deposited with him, together with a statement naming the person depositing the same, the time deposited, and the kind of scalps. Upon receipt of said scalps and statement, the sheriff, county clerk and district attorney, as a part of their official duties, shall compare the number and kind of scalps received by the said sheriff with said statement, and immediately thereafter said officials shall destroy said scalps and file the said statement with the clerk of the board of county commissioners. The said justice shall receive for each oath administered twenty-five cents, and for each certificate twenty-five cents, to be paid by the party applying for said bounty, and in no case to be a charge against the county. *As amended, Stats. 1899, 61.*

## 722. Amount allowed.

SEC. 5. Upon the presentation to the board of county commissioners of the proper county of any such certificate, they are hereby authorized and directed to allow the amount due under the provisions of this act, to the person therein named, out of the general fund of the county.

SEC. 6. An act entitled "An act to provide for the destruction of noxious animals within this state," is hereby repealed.

*An Act to provide for the destruction of certain noxious animals.*

Approved March 13, 1891, 37

723. Bounty for aestruction of gophers.

726. Duties of justice of the peace.

724. When bounty may be claimed.

727. Bounties allowed, how.

725. Claimant to be sworn by justice.

**723. Bounty for destruction of gophers.**

SECTION 1. If any person shall take and kill within this state any pocket gophers he shall be entitled to receive out of the treasury of the county within which such pocket gophers shall have been taken the following bounty, to wit: For every pocket gopher, one and one-half cents; *provided*, no person shall be entitled to apply for or receive bounty money for any number of scalps less than one hundred at any one time, and all bounties to be paid for the object herein set forth shall be subject to the provisions of this act; *and, further provided*, that the term pocket gophers herein shall not include squirrels or chipmunks. *As amended, Stats. 1893, 20.*

**724. When bounty may be claimed.**

SEC. 2. The person intending to apply for such bounty shall take the heads, or skin of the heads, with pockets attached, with the ears connected thereto, of the pocket gophers killed by him to some justice of the peace of the county wherein which such pocket gophers shall have been taken.

**725. Claimant to be sworn by justice.**

SEC. 3. The person claiming such bounty shall then be sworn by such justice of the peace, and state on oath the time and place when and where said pocket gophers for which a bounty is claimed by him, when taken and killed, and shall also submit to such further examination, on oath, concerning the killing and taking of such pocket gophers, as the justice of the peace may require. *As amended, Stats. 1893, 21.*

**726. Duties of justice of the peace.**

SEC. 4. If it shall appear to the justice of the peace that the pocket gopher or pocket gophers have been taken and killed within the county, he shall cut off the ears from the scalp and destroy the said ears, and give to the person so sworn a certificate stating the number of scalps deposited with and destroyed by him. The said justice of the peace shall receive for each oath administered, twenty-five cents, and for each certificate, twenty-five cents, to be paid by the party applying for such bounty, and in no case to be a charge against the county. *As amended, Stats. 1893, 21.*

**727. Bounties allowed, how.**

SEC. 5. Upon the presentation to the board of county commissioners of the proper county of any such certificate, they are hereby authorized and directed to allow the amount due under the provisions of this act to the person therein named, out of the general fund of such county.

## CHILDREN

Dependent, neglected or delinquent children, sections 728-756.

Contributory dependency and contributory delinquency, sections 757-764.

Illegitimate children, sections 765-766.

For act in relation to apprentices, see sections 482-497, 2919.

Employment of, under certain conditions, misdemeanor, see sections 6823-6824.

*An Act relating to children who are now or who may hereafter become dependent, neglected or delinquent, to define these terms and to provide for the treatment, control, maintenance, protection, adoption, and guardianship of the person of such child or children.*

Approved March 24, 1909, 229

728. Terms defined.

729. Jurisdiction.

730. Juvenile department.

731. Petition to the court, contains what.

732. Summons for—Publication—Contempt, when.

733. Probation officers—How appointed—Powers—Salary—Duties.

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735. Superintendent of institution guardian.

736. Who are delinquent children.

737. May be proceeded against, when and how.

738. Child sent to hospital, when.

739. Guardianship, how perfected.

740. Guardian to report to judge.

741. Transfers from justice and police magistrate.

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744. Incorporation of association prohibited.

745. State to defray expenses.

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748. Religious preference.

749. Officers not to collect fees.

750. Construction of act.

751. Parents contribute to support.

752. Guardian appointed only for custody of child.

753. Appeals.

754. Interference with child contempt of court.

755. Invalidity of part not affect balance.

756. Contracts with other states for care of delinquents.

### 728. Terms defined.

SECTION 1. This act shall be known as the "Juvenile Court Law" and shall apply only to children under the age of eighteen years not now or hereafter inmates of a state institution, except as otherwise herein provided.

For the purpose of this act the words "dependent child" and "neglected child" shall mean any child who, while under the age of eighteen years, for any reason is destitute, homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or habitually begs or receives alms; or is found living in any house of ill-fame, or with any vicious or disreputable person, or has a home which by reason of neglect, cruelty or depravity on the part of its parents, guardian or any other person in whose care it may be, is an unfit place for such child, or who, while under the age of ten years, is found begging, peddling or selling any article or articles, or singing or playing any musical instrument for gain or giving any public entertainments upon the street, or accompanies or is used in the aid of any person so doing; or is incorrigible, or knowingly associates with thieves, vicious or immoral persons; or without just cause, and without the consent of the parents, guardian or custodian absents itself from its home or place of abode, or is growing up in idleness or crime; or knowingly frequents or visits a house of ill-fame or ill-repute; or knowingly frequents or visits any policy shop or place where any gaming device is operated; or patronizes, visits or frequents any saloon or dram shop where intoxicating liquors are sold; or patronizes any public poolroom where the game of billiards or pool is being carried on for pay or hire; or who wanders about the streets in the night time without being on any lawful business or any lawful occupation; or habitually wanders about any railroad yards or tracks, or jumps or attempts to jump onto any moving train; or enters any car or engine without lawful

authority, or writes or uses vile, obscene, profane or indecent language, or smokes cigarettes in any public place or about any schoolhouse; or is guilty of indecent, immoral or lascivious conduct; any child committing any of these acts shall be deemed a delinquent child, and when proceeded against, such proceedings shall be on behalf of the state in the interest of the child and the state, with due regard for the rights and duties of parents and others, by petition to be filed by any reputable person, and to that end it shall be dealt with, protected and cared for in the district court as a ward of the state in the manner hereinafter provided.

The words "delinquent person" shall include any person under the age of eighteen years who violates any law of this state or any ordinances of any town, city, county, or city and county of this state, defining crime.

A deposition of any child under this act or any evidence given in such cause shall not, in any civil, criminal or other cause or proceeding whatever in any court, be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases against the same child under this act; nor shall the name of any such child in connection with any proceedings under this act be published in any newspaper without a written order of the court. The word "child" or "children" may be held to mean one or more children, and the word "parent" or "parents" may be held to mean one or both parents, when consistent with the intent of this act. The word "association" shall include any association, institution or corporation which includes in their purposes the care, or disposition of children, coming within the meaning of this act. *As amended, Stats. 1911, 382.*

#### 729. Jurisdiction.

**SEC. 2. Jurisdiction.** The district courts of the several judicial districts in this state shall have original jurisdiction in all cases coming within the terms of this act. In all trials under this act, any person interested therein may demand a jury of six or twelve persons, or the judge of his own motion may order a jury of the same number to try the case.

#### 730. Juvenile department.

**SEC. 3. Juvenile Department.** The findings of the court shall be entered in a book or books to be kept for that purpose, and known as the "Juvenile Department," and the court may for convenience be called the "Juvenile Department of the District Court."

#### 731. Petition to the court, contains what.

**SEC. 4. Petition to the Court.** Any reputable person, being a resident of the county, may file with the clerk of the court having jurisdiction of the matter, a petition in writing setting forth that a certain child, naming it, within his county, is either dependent, neglected or delinquent as defined in section 1 hereof; and that it is for the interest of the child and this state that the child be taken from its parent, parents, custodian or guardian and placed under the guardianship of some suitable person to be appointed by the court; and that the parent, parents, custodian or guardian of such child, are unfit or improper guardians, or are unable or unwilling to care for, protect, train, educate, correct, control or discipline such child, or that the parent, parents, guardian or custodian consent that such child shall be taken from them.

The petition shall also set forth either the name, or that the name is unknown to petitioner (a) of the person having the custody of such child; and (b) of each of the parents or the surviving parent of a legitimate child; or of the mother of an illegitimate child; or (c) if it allege that both such parents are or such mother is dead, then of the guardian, if any, of such child; or (d) if it allege that both such parents are or that such mother is dead and that no guardian of such child is known to petitioner. All persons so named in such petition shall be made defendants by name and shall be notified of such pro-

ceedings by summons if residents of this state in the same manner as is now or may hereafter be required in court proceedings by the laws of this state except only as herein otherwise provided.

All persons, if any, who or whose names are stated in the petition to be unknown to petitioner, shall be deemed and taken as defendants by the name or designation of "all whom it may concern." The petition shall be verified by affidavit, which affidavit shall be sufficient upon information and belief. Process shall be issued against all persons made parties by the designation of "all whom it may concern" by such description, and notice given by publication as is required in this act shall be sufficient to authorize the court to hear and determine the suit as though the parties had been sued by their proper names.

### 732. Summons for—Publication of—Contempt, when.

SEC. 5. *Summons.* The summons shall require the person alleged to have the custody of the child to appear with the child at the time and place stated in the summons; and shall also require all defendants to be and appear and answer the petition on the return day of the summons. The summons shall be made returnable at any time within twenty days after the date thereof and may be served by the sheriff, or by any duly appointed probation officer, even though such officer be the petitioner. The return of such summons with indorsement of service by the sheriff or by such probation officer in accordance herewith shall be sufficient proof thereof.

Whenever it shall appear from the petition or from affidavit filed in the cause that any named defendant resides or hath gone out of the state, or on due inquiry cannot be found, or is concealed within this state or that his place of residence is unknown so that process cannot be served upon him, or whenever any person is made defendant under the name or designation of "all whom it may concern," the clerk shall cause publication to be made once in some newspaper of general circulation published in his county, and if there be none published in his county, then in a newspaper published in the nearest place to his county in this state, which shall be substantially as follows:

A, B, C, D, etc. (here giving the names of such named defendants, if any), and to "all to whom it may concern" (if there be any defendant under such designation):

Take notice that on the \_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_, a petition was filed by \_\_\_\_\_ in the \_\_\_\_\_ court of \_\_\_\_\_ county to have a certain child named \_\_\_\_\_ declared a (dependent or delinquent) and to take from you the custody and guardianship of said child (and if the petition prays for the appointment of a guardian with power to consent to adoption, add and to give said child out for adoption).

Now, unless you appear within ten days after the date of this notice and show cause against such application, the petition shall be taken for confessed and a decree granted.

Dated (the date of publication) \_\_\_\_\_, Clerk.

And he shall also within ten days after the publication of such notice send a copy thereof by mail, addressed to such defendants whose place of residence is stated in the petition, and who shall not have been served with summons. Notice given by publications as is required by this act shall be the only publication notice required either in the case of residents, nonresidents or otherwise. The certificate of a clerk that he has sent such notice in pursuance of this section shall be evidence thereof. Every defendant who shall be duly summoned shall be held to appear and answer either in writing or orally in open court on return day of the summons or if such summons shall be served less than one day prior to the return day then on the following day. Every defendant who shall be notified by publication as herein provided

shall be held to appear and answer either in writing or orally in open court within twenty days after the date of the publication notice. The answer shall have no greater weight as evidence than the petition. In default of an answer at the time or times herein specified or at such further time as by order of court may be granted to a defendant, the petition may be taken as confessed.

If the person having the custody or control of the child shall fail without reasonable cause to bring the child into court, he may be proceeded against as in case of contempt of court. In case the summons shall be returned and not served upon the person having the custody or control of such child or such person fails to obey the same and in any case when it shall be made to appear to the court by affidavit, which may be on information and belief that such summons will be ineffectual to secure the presence of the child, a warrant may be issued on the order of the court either against the parents or either of them, or guardian, or the person having the custody or control of the child or with whom the child may be or against the child itself to bring such person into court. On default of the custodian of the child or on his appearance or answer, or on the appearance in person of the child in court with or without the summons or other process and on the answer, default or appearance or written consent to the proceedings of the other defendants thereto, or as soon thereafter as may be, the court shall proceed to hear evidence. The court may, in any case when the child is not represented by any person, appoint some suitable person to act on behalf of the child. At any time after the filing of the petition and pending the final disposition of the case, the court may continue the hearing from time to time and may allow such child to remain in the possession of his custodian or in its own home subject to the friendly visitation of a probation officer, or it may order such child to be placed in the custody of a probation officer of the court, or of any suitable person appointed by the court, or to be kept in some suitable place provided by the city or county authorities.

### 733. Probation officers, how appointed—Powers—Salary—Duties.

SEC. 6. *Probation Officers.* The district courts in this state shall have authority to appoint any number of discreet persons of good moral character to serve as probation officers during the pleasure of the court; said probation officers shall receive no compensation from the county treasury except as herein provided. It shall be the duty of the clerk of the court, if practicable, to notify the said probation officer when any child is to be brought before the court; it shall be the duty of such probation officer to make investigation of such case; to be present in the court to represent the interests of the child when the case is heard; to furnish such court such information and assistance as the court or judge may require, and to take charge of any child before and after the trial as may be directed by the court. The number of probation officers to receive compensation from the county, named and designated by the district court, shall be as follows:

In all counties in this state the district judge may appoint one probation officer, whenever in the opinion of the district judge, the district superintendent of schools, in which such county may be located, or be a part thereof, and a majority of the board of county commissioners of said county shall deem such appointment necessary to care for the dependent and delinquent children of the county; *provided*, such probation officer can be removed from office at any time by the said district judge. The salary of said probation officers shall be as follows:

In counties having over fifteen thousand population, there shall be one probation officer, and one assistant probation officer receiving a salary. The salary of the probation officer shall be one hundred and fifty dollars per month, and the salary of an assistant shall be seventy-five dollars per month.

The expenses of such probation officers for probation work shall not exceed seven hundred and fifty dollars per year.

In counties having less than fifteen thousand population it shall be within the discretion of the district judge or county commissioners of each of said counties to determine as to the necessity of appointing a probation officer; *provided*, that in counties having eight thousand population and under fifteen thousand there shall be no more than one probation officer receiving a salary and such salary shall be one hundred and twenty-five dollars per month; *provided, further*, that in counties of five thousand and under eight thousand there shall be no more than one probation officer receiving a salary, and such salary shall be one hundred dollars per month; *and provided further*, that in counties of under five thousand there shall be no more than one probation officer receiving a salary, and such salary shall be seventy-five dollars per month.

All probation officers whose expenses are not herein provided shall be allowed such necessary incidental expenses as may be authorized by the judge or judges of the district court of said county; *provided*, that the said probation officers can be appointed for any portion or part of a year as the said district judge or judges may determine, and can be paid for the time and periods said probation officer serves under such appointment. The salary and expenses of the probation officer shall be paid out of the county funds in the county treasury in monthly installments, in the same manner as other claims against the county.

Any district judge or judges appointing such probation officer to receive a salary or other compensation from the county provided for under this act, shall transmit such appointment to the district superintendent of schools of the district of which the county in which said appointment is made is a part, the state superintendent of public instruction, and the governor of this state, who shall constitute a board to investigate the competency of such person so appointed to act as probation officer, and it shall be the duty of a majority of said board to approve or disapprove of such appointee, within thirty days after submission thereof by the said district court, and a failure to act thereon within such time shall constitute an approval of such appointment. If a majority of such board are of the opinion that such appointee does not possess the qualifications for a probation officer, they shall notify the court of their conclusions within thirty days of such appointment to the respective members thereof, whereupon it shall be the duty of the district judge or judges to withdraw such appointment and appoint some one who shall receive the approval of said board.

Probation officers receiving a salary or other compensation from the county, provided for by this act, are hereby vested with all the power and authority of police or sheriffs to make arrests and perform any other duties ordinarily required by policemen and sheriffs which may be incident to their office or necessary or convenient to the performance of their duties; *provided*, that other probation officers may be vested with like power and authority upon a written certificate from the district judge or judges that they are persons of discretion and good character, and that it is the desire of the court to vest them with all the power and authority conferred by law upon probation officers receiving compensation from the county.

The appointment of probation officers and the approval thereof as to the qualifications of such officers by the board herein designated, shall be filed in the office of the clerk of the court. Probation officers shall take an oath such as may be required of other county officers to perform their duties and file in the office of the clerk of the district court. *As amended, Stats. 1911, 384.*

**734. Probation committee, powers, duties.**

**SEC. 7. Probation Committee.** The judge or judges of the district court in and for each county or city and county of the state, and in counties where there is more than one judge of the said court shall, by an order entered in the minutes of the court, appoint five discreet citizens of good moral character and of either sex, to be known as "Probation Committee," and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed upon said committee, and thereupon said person shall appear before the judge of the district court to whom has been assigned all proceedings under this act, and qualify by taking an oath, which shall be entered in said juvenile court record, to faithfully perform the duties of a member of said probation committee.

The members of such probation committee shall hold office for two years, and until their successors are appointed and qualified. When any vacancy occurs in any probation committee by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the unexpired term.

Members of the probation committee shall serve without compensation, and shall choose from their members a chairman and secretary.

The district court or any judge thereof may at any time require of said probation committee or probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, receiving or applying for any child or children under this act, and to report thereon to the court.

It shall be the duty of each probation committee prior to the first day of December in each year, to prepare a report in writing on the qualifications and management of all societies, associations and corporations, except state institutions, applying for or receiving any child under this act from the courts of their respective counties, and in such reports said committee may make such suggestions or comments as to them may seem fit, such report to be filed in the office of the clerk of the court appointing such committee for the information of the county commissioners thereof. The probation committee shall also have the control and management of the internal affairs of any detention home, heretofore or hereafter established by the board of county commissioners of their county, such control and management at all times to be subject to the approval of the district court or judge or judges thereof, and it shall be the duty of the board of county commissioners to provide for the payment of such employees as may be needed in the efficient management of such detention home.

*Dependent and Neglected Children.* If the court shall find any child under the age of eighteen years to be dependent or neglected within the meaning of this act, the court may allow such child to remain at its home subject to the friendly visitation of a probation officer, or to report to the court or probation officer from its home or school at such times as the court may require. And if parent, parents, guardian or custodian consent thereto, or if the court shall further find that the parent, parents, guardian or custodian of such child are unfit or improper guardians or are unable or unwilling to care for, protect, train, educate, correct or discipline such child and that it is for the interest of such child and other people of this state that such child be taken from the custody of its parents, custodian or guardian, the court may make an order appointing as guardian of the person of such child, some reputable citizen of good moral character, and order such guardian to place such child in some suitable family, home or other suitable place which such guardian may provide for such child, or the court may enter an order committing such child to some suitable state institution, of this or any other state organized for the care of dependent or neglected children, or to some training or

industrial school or childrens' home-finding society of this or any other state, or to some association embracing in its objects the purpose of caring for or obtaining homes for neglected or dependent children, which association shall have been accredited as heretofore provided. *As amended, Stats. 1911, 387.*

### 735. Superintendent of institution to be guardian.

SEC. 8. *Guardianship.* In every case where such child is committed to an institution, or association, the court shall appoint the president, secretary, or superintendent of such institution or association, guardian over the person of such child and shall order such guardian to place such child in such institution or with such association, whereof he is such officer, and to hold such child, care for, train and educate it subject to the rules and laws that may be in force from time to time governing such institution or association.

### 736. Who are delinquent children.

SEC. 9. *Delinquent Children.* If the court shall find any child under the age of eighteen years to be delinquent within the meaning of this act, the court may allow such child to remain at its own home subject to the friendly visitation of a probation officer, such child to report to the court or probation officer with such record of its conduct in its home or school as the court may require as often as may be required, and if the parents, parent, guardian or custodian consent thereto or if the court shall further find either that the parent, parents, guardian or custodian are unfit or improper guardians or are unable or unwilling to care for, protect, educate, or discipline such child, and shall further find that the parent, parents, guardian or custodian are unfit or improper guardians or are unable or unwilling to care for, protect, educate or discipline such child, and shall further find that it is for the interest of such child, and other people of this state that such child be taken from the custody of its parents, parent, custodian or guardian, the court may appoint some proper person or probation officer, guardian over the person of such child and permit it to remain at its home or order such guardian to cause such child to be placed in a suitable family home, or cause it to be boarded out in some suitable home, in case provision is made by voluntary contribution or otherwise for the payment of the board; or the court may commit such child to any institution incorporated under the laws of this or any other state to care for delinquent children, or to any institution that has been or may be provided by the state, county, city, town or village suitable for the care of delinquent children, including a detention home or school, or to some association that will receive it, embracing in its objects the care of neglected, dependent or delinquent children and which has been duly accredited as hereinbefore provided. In every case where such child is committed to an institution or association, the court shall appoint the president, secretary or superintendent of such institution or association, guardian over the person of such child, and shall order such guardian to place such child in such institution or with such association, whereof he is such officer, and to hold such child, care for, train and educate it subject to the rules and laws that may be in force, from time to time governing such institution or association. *As amended, Stats. 1911, 387.*

### 737. May be proceeded against, when and how.

SEC. 10. The court may, in its discretion, in any case of a delinquent child permit such child to be proceeded against in accordance with the laws that may be enforced in the state governing the commission of crimes or violation of city, village or town ordinances; in such case the petition filed under this act shall be dismissed.

Whenever any person over the age of eighteen years and under the age of twenty-one years is accused of felony, and the indictment or information has been filed in the district court of the county wherein the crime was com-

mitted, charging said person with the commission of said felony, the judge may, in his discretion, with the consent of the accused, or upon his request, arrest said proceeding at the time of the arraignment or at any time previous to the impanelment of the jury, except where the crime charged is a capital offense or an attempt to commit a capital offense, and may proceed to investigate the charge against the defendant, and all the facts and circumstances necessary to determine the proper disposition to be made of said person, and shall determine whether said person shall be dealt with as a delinquent under the provisions of this act.

If the court is satisfied upon such investigation that said person should be declared a delinquent and should be dealt with under this act, it may make such order as herein provided for the disposition of delinquent children. If such person thereafter proves not to be amenable to the discipline of the school to which he may be committed, and the trustees thereof shall determine that said person should be committed to a state penitentiary, such person should be returned to the custody of the sheriff of the county in which such crime was committed, and thereafter proceedings shall be had upon the indictment or information commencing at the point at which proceedings were arrested; and said person shall be tried for the offense alleged in the information, and if convicted shall be sent to the penitentiary for such time as the court may determine, or otherwise dealt with in accordance with the law for dealing with persons convicted of a felony. If no request is made by the defendant for proceedings under this statute, or if the defendant desires a trial by jury, or if the judge declines to consent to the application of the defendant for proceedings under this statute, said cause shall proceed in the ordinary manner up to the verdict of guilty or not guilty, as the case may be. If said person is convicted, the court may thereafter receive such evidence as may be offered, touching the question as to whether or not said person shall be dealt with as a delinquent in the manner hereinbefore provided in the case of the application and consent of the accused before trial, and may make such order of probation or commitment to said state schools, and may from time to time modify said probation order, as is herein provided in the case of children adjudged delinquent. If such person during the period of his commitment to said state institution proves to be incorrigible or not amenable to the discipline of such institution, and it shall be deemed advisable in the judgment of the trustees of such institution that said person be sent to the penitentiary, then said person shall be returned to the district court in which the verdict was rendered, for sentence, and thereupon the court shall pronounce judgment. *As amended, Stats. 1911, 389.*

### 738. Child sent to hospital, when.

SEC. 11. The court may when the health or condition of any child found to be dependent, neglected or delinquent, requires it, order the guardian to cause such child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution, which will receive it for like purposes, without charge to the public authorities.

### 739. Guardianship, how perfected.

SEC. 12. Any child found to be dependent, neglected or delinquent as defined in this act, and awarded by the court to a guardian, institution or association, shall be held by such guardian, institution or association, as the case may be, by virtue of the order entered of record in such case, and the clerk of the court shall issue and cause to be delivered to such guardian or association a certified copy of such order of the court, which certified copy of such order shall be proof of the authority of such guardian, institution or association in behalf of such child, and no other process need issue to warrant the keeping of such child. The guardianship under this act shall con-

tinue until the court shall by further order otherwise direct, but not after such child shall have reached the age of twenty-one (21) years.

#### 740. Guardian to report to judge.

SEC. 13. The court may, from time to time, cite into court the guardian, institution or association to whose care any dependent, neglected or delinquent child has been awarded, and require him or it to make a full, true and perfect report as to his or its doings in behalf of such child; and it shall be the duty of such guardian, institution or association, within ten days after such citation, to make such report either in writing verified by affidavit, or verbally under oath in open court, or otherwise as the court shall direct, and upon the hearing of such report, with or without further evidence, the court may, if it sees fit, remove such guardian and appoint another in his stead, or take such child away from such institution or association and place it in another, or restore such child to the custody of its parents or former guardian or custodian.

#### 741. Transfers from justice and police magistrates.

SEC. 14. *Transfers from Justice and Police Magistrates.* When in any county where a court is held as provided in section 2 of this act, any child under the age of eighteen years is arrested with or without warrant, such child may, instead of being taken before a justice of the peace or police magistrate, be taken directly before such court; or if the child is taken before the justice of the peace or police magistrate, such justice or magistrate shall inquire into such case, and unless he be of the opinion that no sufficient foundation exists for the charge of dependency or delinquency, it shall be the duty of such justice of the peace or police magistrate to transfer the case to the district court, and the officer having the child in charge take the child before such court, and in any case the district court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon petition as herein provided. In any case the court shall require notice to be given and investigation shall be made as in other cases under this act, and may adjourn the hearing from time to time for that purpose. *As amended, Stats. 1911, 389.*

#### 742. Rules as to detention.

SEC. 15. *Children Under Twelve Years Not to be Committed to Jail.* No court or magistrate shall commit a child under twelve years of age to a jail or police station, but if such child is unable to give bail it may be committed to the care of the sheriff, police officer, or probation officer, who shall keep such child in some suitable place provided by the city or county outside of the enclosure of any jail or police station. When any child shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child within the same building with such adult convict, or to confine such child in the same yard or enclosure with such adult convicts, or to bring such child into any yard or building in which adult convicts may be present.

In counties of over ten thousand population the county commissioners of each of said counties are authorized and required without unreasonable delay to provide, furnish and maintain at public expense a building suitable and adequate for the purpose of a detention home located at the county-seat of each of said counties, for the detention of the dependent and delinquent children and wherein all children within the provisions of this act shall, when necessary, before or after trial, be detained, either for securing the attendance of such children at any hearing or trial or when under order of probation for the best interests of said child and of the state. Such detention home shall be under the supervision of a matron who with other necessary employees shall be appointed by the judge or judges of the district court on

the nomination of the probation committee, and their salaries shall be fixed by the judge or judges of the district court of the county, and such employees shall hold their positions during the pleasure of the judge or judges of their county. Such detention home shall be conducted as nearly like a home as possible, and shall not be deemed to be, or treated as a penal institution.

Whenever, in the discretion of the district judge or judges and probation officer, it becomes necessary to provide a superintendent or other male attendant at such detention home, the district judge or judges shall make such appointment, which appointee shall be deputized as, and clothed with the authority of, a probation officer, and it shall be the duty of the county commissioners to provide for the payment of all salaries and expenses occasioned thereby.

Any child within the provisions of this act, informed against or regarding which a petition had been filed, or for any purpose taken into custody, shall, at any time before it is tried and adjudged to be delinquent, be entitled, by any friend or parent offering sufficient surety, to give bond or other security for its appearance at any hearing or trial of such case as such right is given to persons informed against the crime; and the court may in any case, upon the request of said child, or parent representing it, appoint counsel to appear on behalf of any such child, such counsel to receive no pay from the county. *As amended, Stats. 1911, 389.*

#### 743. Agents of juvenile reformatories.

SEC. 16. *Agents of Juvenile Reformatories.* It shall be the duty of the board of managers, trustees or such authorities as may be vested by law with the control or management of any state institution now or hereafter established to which juvenile delinquents may be committed by the courts of this state, to maintain an agent of such institution, whose duty it shall be to examine the homes of children paroled from such institution, for the purpose of ascertaining and reporting to said institutions where they have suitable homes; to assist children paroled or discharged from such institutions in finding employment and to maintain a friendly supervision over paroled inmates during the continuance of their parole; such agent shall hold office subject to the pleasure of the board or other authority having charge of said institution, making the appointment, and shall receive such compensation as such board or authorities controlling such institution may determine out of any funds appropriated for such institution which may be applicable thereto.

#### 744. Incorporation of association prohibited.

SEC. 17. *Incorporation of Association.* No association whose objects embrace the caring for dependent, neglected or delinquent children shall hereafter be incorporated in this state.

#### 745. State to defray expenses.

SEC. 18. The State of Nevada shall be chargeable with and defray all expenses incurred for the support, maintenance, education, care, custody and control of each and every child after its commitment under the terms and provisions of this act.

#### 746. Order relating to adoption—Proviso.

SEC. 19. *Order Relating to Adoption.* Whenever the petition filed, as is provided in section 4 hereof, or a supplemental petition filed at any time after the appointment of the guardian, shall pray that the guardian appointed or to be appointed shall be authorized to consent to the legal adoption of the child, and the court upon the hearing shall find that it is to the best interests of such child that the guardian be given such authority, the court may, in its order appointing such guardian, empower him to appear in court where any

proceedings for the adoption of such child may be pending, and to consent to such adoption; and such consent shall be sufficient to authorize the court where the adoption proceedings are pending to enter a proper order or decree of adoption without further notice to or consent by the parents or relatives of such child; *provided, however*, that before entering such order the court shall find from the evidence that (1) the parents or surviving parent of a legitimate child or the mother of an illegitimate child, or if the child has no parents living, the guardian of the child, if any, or if there is no parent living and the child has no guardian or the guardian is not known to petitioner, then a known, near relative of the child, if any there be, consents to such order; or (2) that one parent consents and the other is unfit for any of the reasons hereinafter specified to have the child, or that both parents are or that the surviving parent or the mother of an illegitimate child is so unfit for such reasons—the grounds of unfitness being (a) depravity, (b) open and notorious adultery or fornication, (c) habitual drunkenness for the space of one year prior to the filing of petition, (d) extreme and repeated cruelty to the child, (e) abandonment of the child or (f) desertion of the child for more than six (6) months next preceding the filing of the petition, and (3) that such child, if of the age of fourteen years or over, consents to such order.

#### 747. Regarding certain foreign corporations.

SEC. 20. *Foreign Corporations.* No association which is incorporated under the laws of any other state than the State of Nevada, shall place any child in any family home within the boundaries of the State of Nevada, either with or without indenture or for adoption, unless the said association shall have furnished the attorney-general with such guaranty as he may require that no child shall be brought into the State of Nevada by such society or its agents, having any contagious or incurable disease, or having any deformity or being feeble minded, or of vicious character, and that said association shall promptly receive and remove from the state any child brought into the State of Nevada by its agent, which shall become a public charge within the period of five (5) years after being brought into the state. Any person who shall receive, to be placed in a home, or shall place in a home, any child in behalf of any association incorporated in any other state than the State of Nevada, which shall not have complied with the provisions of this act, shall be imprisoned in the county jail not more than thirty days, or fined no less than \$5 or more than one hundred (\$100) dollars, or both, in the discretion of the court.

#### 748. Religious preference.

SEC. 21. *Religious Preference.* The court in committing children shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of the said child, or with some association or institution which is controlled by persons of like religious faith of the parents of said child.

#### 749. Officers not to collect fees.

SEC. 22. *Officers of Courts.* It shall be unlawful for any court clerk or other person to tax or collect, or for any county to pay any fees whatever which may be permitted by any law to be taxed or collected for the benefit of any court officer or person for any case concerning any child coming within the provisions of this act for violating any law of this state unless such child shall be proceeded against under the provisions and in accordance with the purpose of this act, except in capital cases or where the courts shall direct a proceeding under the criminal code, as provided in section 10 of this act, or where a case has been instituted before a justice of the peace or police magistrate, who shall duly comply with the terms of section 14 of this act.

**750. Construction of act.**

**SEC. 23. *Construction of Act.*** This act shall be liberally construed to the end that its purpose may be carried out, to wit, that the care, custody and discipline of the child shall approximate as nearly as may be that which should be given by its parents, and in all cases of dependency where it can be properly done, that the child shall be placed in an approved family home, and become a member of a home and family by legal adoption or otherwise, and in cases of delinquency, that, as far as possible, or practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided and needing aid, encouragement and assistance, and if such child cannot be handled, properly cared for, and corrected in its own home, or with the assistance and help of the probation officers, then that it may be placed in a suitable institution where it may be helped and educated and equipped for industrial efficiency and useful citizenship.

**751. Parents contribute to support.**

**SEC. 24. *Support of Children.*** If it shall appear, upon the hearing of the cause, that the parent, parents, or any person or persons named in such petition who are in law liable for the support of such child, are able to contribute to the support of such child, the court shall enter an order requiring such parent, parents or other persons to pay to the guardian so appointed, or to the institution to which such child may be committed, or to the state, a reasonable sum from time to time for the support, maintenance or education of such child, and the court may order such parent, parents or other persons to give reasonable security for the payment of such sum or sums, and, upon failure to pay, the court may enforce obedience to such order as for contempt of court. The court may, on application and on such notice as the court may direct from time to time, make such alterations in the allowance as may appear reasonable and proper.

**752. Guardian appointed only for custody of child.**

**SEC. 25. *Guardianship of Person.*** Nothing in this act shall be construed to give the guardian appointed under this act the guardianship of the estate of the child or to change the age of minority for any other purpose except the custody of the child.

**753. Appeals.**

**SEC. 26. *Appeals.*** Cases under this act may be reviewed by appeal to the supreme court.

**754. Interference with child contempt of court.**

**SEC. 27. *Contempt of Court.*** Any person who shall interfere with the direction or disposition of any child under any order of the court concerning any child made in pursuance of the provisions of this act, or with any probation or other officer of the court in carrying out the directions of the court under any such order, shall be held to be in contempt of court and subject to punishment as for contempt of court.

**755. Invalidity of part not to affect balance.**

**SEC. 28. *Validity of Acts.*** The invalidity of any portion of this act shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

**756. Contracts with other states for care of delinquents.**

**SEC. 29.** Up to and including July 1, 1913, the governor and the superintendent of public instruction of this state are hereby authorized and directed to make such contracts for and in behalf of this state, with the states of California, Oregon, Idaho or Utah, for the care, maintenance, and training

of juvenile delinquents of this state, in the industrial or training schools for juvenile delinquents of such states of California, Oregon, Idaho or Utah as, and upon such terms as the said governor and superintendent of public instruction may deem necessary for the proper care, maintenance and training of such delinquents. *Added, Stats. 1911, 391.*

*An Act to define contributory dependency and contributory delinquency, and to make the same a misdemeanor, and to provide for the punishment of persons guilty thereof.*

Approved March 23, 1909, 203

757. Definitions.

758. Suspension of sentence.

759. Conditions of suspended sentence.

760. Conditions of bond.

761. Violation of conditions of.

762. Limitation of sentence.

763. Powers of officers.

764. Construction.

## 757. Definitions.

SECTION 1. *Definition.* Any person who shall by any act cause, encourage, or contribute to the dependency or delinquency of a child, as these terms with reference to children are defined by the statutes of this state, or who shall for any cause be responsible therefor, shall be guilty of a misdemeanor, and upon trial and conviction thereof, shall be fined in a sum not to exceed five hundred dollars or imprisoned in the county jail for a period not exceeding six months, or by both such fine and imprisonment. When the charge against any person under this act concerns the dependency of a child or children, the offense, for convenience, may be termed "contributory dependency," and when it concerns the delinquency of a child or children, for convenience it may be termed "contributory delinquency." All offenses under the provisions of this act shall be prosecuted in the juvenile department of the district court of the county in which said offense may be committed. *As amended, Stats. 1911, 382.*

## 758. Suspension of sentence.

SEC. 2. *Suspension of Sentence.* The court may suspend any sentence, stay or postpone the enforcement of execution, or release from custody any person found guilty in any case under this act upon such conditions as shall be imposed by the court in accordance with the provisions of this act.

## 759. Conditions of suspended sentence.

SEC. 3. *Conditions of Suspended Sentence.* (a) Such conditions may include the following: Any person found guilty under this act of contributory dependency may be required to furnish a good and sufficient bond to the people of the State of Nevada in such sum as the court shall determine, not exceeding one thousand dollars, conditioned for the payment of such amount as the court may order not exceeding twenty dollars per month for the support, care and maintenance of the child to whose dependency such person has contributed; such sum to be expended under the directions and orders of the court for the purposes mentioned.

(b) The court may permit any child to remain in the custody of the person found guilty by this act of contributing to its dependency, under such suspended sentence, upon such conditions for the treatment and care of such child as may seem to the court to be for its best welfare, or as may be calculated to secure obedience to the law or to remove the cause of such dependency or neglect, and while such conditions are accepted and complied with by any such person, such sentence may remain suspended subject to be enforced upon the violation of any of the conditions imposed by the court; and such bond may be forfeited upon a failure to comply with any such conditions, as well as upon the failure to pay any amount required for the maintenance of such child.

### 760. Conditions of bond.

SEC. 4. *Conditions of Bond.* As a part of the conditions of any such bond mentioned in section 3 hereof, it shall be understood that it shall not be necessary to bring a separate suit to recover the penalty of any such bond which has become forfeited, but the court may cause a citation or a summons to issue to the surety or sureties thereon, requiring that he or they appear at a time named by the court, which time shall be not less than ten or more than twenty days from the issue thereof and show cause, if any there be, why a judgment should not be entered for the penalty of such bond and execution issued for the amount thereof against the property of the surety or sureties thereon, as in civil cases, and upon failure to appear or failure to show any such sufficient cause, the court shall enter such judgment in behalf of the people of the State of Nevada, against the principal and such surety or sureties on such bond not to exceed the sum of one thousand dollars (\$1,000) including the cost. Any moneys collected or paid upon any such execution or in any case upon any such bond, shall be turned over to the clerk of the court (juvenile department) of the county in which such bond is given, to be applied first to the payment of all court costs and then to the care or maintenance of the child or children for whose dependency such conviction was had, in such manner and upon such terms as the court may direct. If any such moneys so collected be unnecessary for the purposes last mentioned, it shall be turned over within one year to the treasurer of the county.

### 761. Violations of conditions of.

SEC. 5. *Violation of Conditions of Suspended Sentence.* In the case of any person found guilty of contributory dependency or contributory delinquency where the court has suspended the execution of the sentence during the good behavior and satisfactory conduct of the defendant or upon any other terms and conditions which may have been imposed by the court, it shall be made to appear to the satisfaction of the court at any time during such suspended sentence or stay of execution that it ought to be enforced, the court may thereupon enforce the same, and any jail sentence thereunder shall commence from the date upon which such sentence is ordered.

### 762. Limitation of sentence.

SEC. 6. *Limitation of Sentence Two Years.* No sentence shall be suspended or final judgment or execution shall be stayed in the case of any person found guilty under this act, to exceed a period of two years. If at any time prior thereto it shall appear to the satisfaction of the court that such person has complied faithfully with the conditions of any suspended sentence, judgment, or execution, or is for any cause, in the opinion of the court, entitled to be released therefrom, the court may suspend such sentence indefinitely, in which case such person shall be finally released and discharged, as he shall be in any event at the end of two years from imposition of any such sentence; *provided*, that if any defendant be actually serving a jail sentence imposed under this act and enforced before the expiration of said two years in accordance with the provisions of this act, then in such case the defendant shall not be finally discharged until the expiration of any such sentence.

### 763. Powers of officers.

SEC. 7. *Officers to File Complaints.* Probation officers having the powers of sheriffs or police officers, as well as county prosecuting attorneys, shall have the right and be vested with all power necessary to file complaints against any person under this act and to prosecute any such case. In all such cases it shall be the duty of the county prosecuting officer representing the people to prepare any such complaints and prosecute any such cases for

such probation officer when so requested by such officer or judge of the juvenile department of the district court; but nothing herein shall be construed to interfere with any county prosecutor representing the people prosecuting such cases under this or any other act as in other criminal cases.

#### 764. Construction.

SEC. 8. (a) *Construction.* In order to find any person guilty of violating this act it shall not be necessary to prove that the child has actually become dependent or delinquent, provided it appears from the evidence that through any act of neglect or omission of duty or by any improper act or conduct on the part of any such person the dependency or delinquency of any child may have been caused or merely encouraged.

8. (b) This act shall always be liberally construed in favor of the state for the purpose of the protection of the child from neglect or omission of parental duty toward the child by the parents, as well as also to protect the children of the state from the effects of the improper conduct, acts, or the bad example of any person or persons whomsoever, which may be calculated to cause, encourage or contribute to the dependency or delinquency of the children, although such persons are in no way related to the child.

8. (c) Nothing in this act shall be construed to be in conflict with or to repeal or prevent proceedings under any act or statute of this state which may have otherwise defined any specific act of any person as a crime of any character, which act might also constitute contributory delinquency, or contributory dependency, or to prevent or interfere with proceedings under any such acts, nor shall it be construed to be inconsistent with or to repeal any act providing for the support by parents or parent of their minor children, or any act providing for the punishment of cruelty to children, or the taking of indecent liberties with, or selling liquor, tobacco or firearms to children, or permitting them in evil or disreputable places, and nothing in any such acts or similar acts shall be construed to be inconsistent with or to repeal this act or prevent proceedings hereunder, but in all cases where there shall be more than one prosecution for the same offense, under whatever acts of the character herein described, the fact may be given in evidence to the judge of the court, and may be in the discretion of the court considered in mitigation of any sentence in any such cases.

8. (d) Invalidity of any portion of this act shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

*An Act to provide support for illegitimate children, and other matters relating thereto.*

Approved March 1, 1883. 98

#### 765. Paternity, how established—Complaint.

SECTION 1. Under this act the paternity of any illegitimate child shall be established by mutual agreement of the mother and any person whose relations have been sufficiently intimate with her to warrant the conclusion. It may also be established by the confession or admission of the father, when not denied by the mother; and when not so established it shall be susceptible of proof in such manner and of such character as the court before whom an action for that purpose is brought may determine. The mother of the child shall be admitted as a witness in support of the complaint, and may be compelled to testify. No complaint shall be withdrawn, dismissed, or settled by agreement of the mother and putative father.

#### 766. Parent guilty of misdemeanor, when—Punishment—Custody of child.

SEC. 2. The parent of any illegitimate child who abandons, refuses, or neglects to support such child shall be guilty of a misdemeanor, and on con-

viction shall be fined not less than fifty (\$50) dollars, nor more than three hundred (\$300) dollars, and in default of the payment of such fine, shall be imprisoned in the county jail until such fine shall be paid, at the rate of two dollars per day for the term of such imprisonment. The court may also adjudge that the putative father stands charged with the maintenance of said child, with the assistance of the mother; but nothing in this act shall be so construed as to take from the mother the custody of her child. Whenever the court shall make such order, any refusal or neglect of said putative father to comply with the order of the court shall be deemed a contempt of court, and punished as other cases are for contempt.

## CITIES AND TOWNS

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Disincorporation of cities and towns incorporated under laws of territory, sections 967-974.

Relating to government and limiting tax rate, sections 975-983.

Issuance of bonds for construction of sewerage systems, sections 984-990.

To issue bonds for municipal improvements for which special assessments are levied, sections 991-998.

To exempt from payment of costs in certain cases, section 999.

*An Act providing for the incorporation of cities, their classification, the establishment and alteration of their boundaries, the government and disincorporation thereof, and repealing all acts and parts of acts in conflict therewith.*

Approved March 27, 1907, 241

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## 767. Home rule guaranteed.

SECTION 1. The right of home rule and self-government is hereby granted to the people of any city or town incorporated under the provisions of this act.

This act held not unconstitutional as delegating legislative powers to the judicial department. State ex rel. Williams v. District Court, 30 Nev. 225-227, 234 (94 P. 70).

## 768. Proceedings to incorporate.

SEC. 2. Whenever a majority of the qualified electors who are taxpayers within the limits of the city or town proposed to be incorporated, as shown by the last official registration lists and assessment roll, not embraced within the limits of any city or incorporated town [shall desire to be organized into a city or incorporated town], they may apply in writing to the district court of the proper county, which application shall describe the territory to be embraced in such city or incorporated town, and shall have annexed thereto an accurate map or plat thereof, duly surveyed and containing the streets and alleys, and state the name proposed for such city or incorporated town, and shall be accompanied with satisfactory proof of the number of inhabitants within the territory embraced in said limits, for purposes of classification under the provisions of this act.

## 769. Decree of court—Election of officers.

SEC. 3. When such application shall be made as aforesaid the court, being satisfied of its legal sufficiency, shall thereupon enter a decree declaring said

city or town duly incorporated under the provisions of this act and shall designate its classification and shall forthwith appoint five commissioners, who shall at once call an election of all the qualified electors residing within the territory embraced within said limits, as described and platted, to be held at some convenient place within said limits, and shall give notice, for thirty days, of the time and place of holding the first election of officers for said city or town, by publication in a newspaper, or, if none be published within the limits of such city or town, by posting in five public places within the limits of the same. At such election the qualified electors of such city or town residing within the limits of such city or town shall choose officers therefor, to hold until the first annual election of officers according to its grade, as hereafter in this act prescribed. Said commissioners shall act as judges and clerks of the election, and otherwise it shall be conducted, and the officers elected thereat shall be qualified, in the manner prescribed by law for the election and qualification of precinct officers. Upon ascertaining the result of said election the said commissioners shall forthwith make report of said result to said district court, and the clerk of said court shall thereupon forthwith certify to each officer of said city or town, appearing by said report to have been elected, the fact of his said election. Thereafter all municipal elections in cities incorporated under this act shall be held on the first Tuesday after the first Monday in May of each odd-numbered year. The conduct and holding of all general and special municipal elections shall be under the control of the council, and they shall by ordinance provide for the holding of the same, appoint the necessary officers therefor, canvass the returns thereof, and do all other and further things required to carry the same into effect.

#### 770. Organization, how effected.

SEC. 4. The said commissioners after making their report to said district court shall file in the office of the clerk of such city or town the ballots used at said election, a copy of the notice with the proper proof of its publication, and a certified copy of all papers and record entries relating to the incorporation of such city or town, or to said election, on file in the clerk's office of said district court. And thereupon said officers so elected shall organize under the provisions of this act, of which said organization notice shall be taken in all judicial proceedings.

#### 771. Compensation of commissioners:

SEC. 5. That the commissioners heretofore appointed under the preceding sections, when they shall have performed their duties and made report to the court under the provisions of this act, shall receive such compensation as the court shall decree and the same to be paid by such city or town.

#### 772. Certificates of incorporation, where filed—Publication.

SEC. 6. Upon the canvass of the returns of such election being completed, certificates of election shall be issued to the persons elected to the respective offices, who shall thereupon qualify, and the clerk of the district court shall prepare and transmit to the secretary of state duly certified copies of all papers in his office relating to the incorporation of said city, and of all minutes of proceedings had in that connection. The secretary of state shall file such certified copies in his office and thereupon make publication for a period of one week in some newspaper having general circulation within the state, of the incorporation of said city, and shall procure and file in his office the affidavit of the publisher of such newspaper, showing that such publication has been duly made. Thereupon the incorporation of said city shall be complete, and the secretary of state shall issue and forward to the city clerk of said city his certificate to that effect, and all courts in this state shall take judicial notice of the existence of such city.

**773. Classification of cities.**

SEC. 7. Municipal incorporations organized under the provisions of this act, shall be, and the same are hereby, divided into three classes. Those cities having twenty thousand or more inhabitants shall be known as cities of the first class; those cities having more than five thousand and less than twenty thousand inhabitants shall be known as cities of the second class; and all other cities shall be known as cities of the third class.

**774. Higher class attained—Governor's proclamation.**

SEC. 8. Whenever any city of the second class shall have attained the population of twenty thousand or more, or any city of the third class shall have attained the population of five thousand or more, and such fact shall have been duly ascertained, by actual census taken, and certified to the governor by the mayor, he (the governor) shall declare, by public proclamation, such city to be of the first or second class, as the case may be, and such cities thus changed shall be governed by the provisions of this act, applicable to cities of the higher class. An authenticated copy of such proclamation shall be filed in the office of the secretary of state.

**775. Courts take judicial notice.**

SEC. 9. All courts in this state shall take judicial notice of the change in class and organization of any city.

**776. Original rights to continue—Proviso.**

SEC. 10. 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 or changing class under the provisions of this act; but no rights or liabilities either in favor of or against such incorporation existing at the time of becoming incorporated or changing class under this act, and no action or prosecution shall be affected by such change; but the same shall stand and progress as if no change had been made; *provided*, that whenever a different remedy is given by this act, which may properly be made applicable to any right existing at the time of such city so becoming incorporated or changing class under this act, the same shall be deemed cumulative to the remedy before provided, and used accordingly.

**777. Previous ordinances to govern—Proviso.**

SEC. 11. All ordinances and resolutions in force in any city, when it shall become organized or change its class under the provisions of this act, shall continue in full force and effect until repealed or amended, notwithstanding such organization or change of class; and such organization or the making of such change of class shall not be construed to effect any change in the legal identity of such city; *provided*, such ordinances and resolutions do not conflict with the provisions of this act.

**778. Officers to hold in change of class.**

SEC. 12. When any city now existing under special charter shall be organized under the provisions of this act, or shall, by proclamation of the governor, become a city of the second class, or any city of the second class shall in like manner, become a city of the first class, the officers then in office shall continue to be officers of the city until the next municipal election, and until their successors shall be duly elected and qualified. When new territory is organized as a city, by petition and election of officers, the officers first elected shall serve until the next municipal election, and until their successors be duly elected and qualified.

**779. Shall be bodies politic and corporate.**

SEC. 13. Cities incorporated under this act shall be bodies politic and corporate and shall be known and designated by the name and style adopted, 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 may change the same at pleasure, have perpetual succession, and exercise all the powers herein conferred.

**780. Wards, number for each class.**

SEC. 14. Each incorporated city of the first class shall be divided into eight municipal wards; each incorporated city of the second class shall be divided into five municipal wards, and each incorporated city of the third class shall be divided into three municipal wards. The division of said cities into wards shall, during the incorporation thereof, be made by the board of county commissioners, but the boundaries of said wards may be thereafter changed and prescribed by ordinance of the city council; *provided*, that the wards shall as nearly as practicable be of equal population and in compact form.

**781. Mayors and city councils.**

SEC. 15. The municipal government of all incorporated cities under this act is hereby vested in a mayor and city council. In cities of the first class, the city council shall be composed of nine councilmen, one from each ward and one elected by the electors of the city at large; in cities of the second class of five councilmen, one from each ward; and in cities of the third class of three councilmen, one from each ward.

**782. Qualifications.**

SEC. 16. Mayors and councilmen shall be qualified electors and taxpayers within their respective cities and shall have been actually bona fide residents thereof for a period of at least one year next preceding their election; and councilmen shall be qualified electors and taxpayers within their respective wards.

**783. Officers, how chosen.**

SEC. 17. Mayors shall be chosen by the qualified electors of their respective cities, and councilmen by the qualified electors of their respective wards.

**784. Mayors pro tem—Duties of mayors.**

SEC. 18. The chief executive of a city shall be the mayor, and during his temporary absence or disability the city council shall elect one of its number to act as mayor pro tem who, during such absence or disability, shall possess the power and duties of mayor; *provided*, that in cities of the first class the councilman-at-large shall act as mayor pro tem. The mayor must exercise a careful supervision over the general affairs of the city. He shall vigilantly observe the official conduct of all public officers and note the fidelity and exactitude or the absence thereof with which they execute their official duties, and especially in respect to the collection, administration and distribution of the public funds, and all books, papers, records and documents of said city shall at all times be open to his inspection, and any official misconduct or wilful neglect of duty shall be reported by him to the council. He shall, from time to time, give the council information in writing relative to the state of the city, and recommend such measures as he may deem beneficial to the city. He shall see that all the general laws and ordinances of the city are observed and enforced, and shall take all proper measures for the preservation of public peace and order, and the suppression of riots, tumults and all forms of public disturbances, for

which purpose he is authorized to appoint extra policemen temporarily, and to use and command the police force, or if the same be inadequate it shall be his duty to call upon the governor for military aid in the manner provided by law. He shall, with the city clerk, or some member of the city council, at least once each month, count the cash in the city treasury and see that such cash corresponds with the books of the treasurer, and report the result to the council. He shall see that all contracts are fully kept and faithfully performed, and to that end and in any such case where necessary or proper to protect the interests of the city, shall cause legal proceedings to be instituted or defended at the expense of the city. He shall have the power to suspend any appointive officer for misfeasance, nonfeasance or malfeasance in office, and report such action and cause therefor to the council at the first subsequent regular meeting, and if the council by a majority vote of the members present at such meeting approve the suspension, such office shall be declared vacant. If a majority vote be against such approval, such suspension shall thereby be revoked. He shall preside over the city council when in session, and shall preserve order and decorum among the members and enforce the rules of the council and determine the order of business, subject to such rules and to appeal to the council. He shall not be entitled to a vote except in case of a tie, when he shall have a casting vote, except as in this act otherwise expressly provided. He may exercise the right of veto upon all matters passed by the council, and it shall require a seven-ninths vote of the whole council in cities of the first class; a four-fifths vote of the whole council in cities of the second class and the unanimous vote of the whole council in cities of the third class to pass any matter receiving the mayor's veto. No resolution or contract requiring the payment of money, nor any ordinance shall go into force, or have any effect until approved in writing, by the mayor, unless passed over the mayor's veto; *provided*, that, if the mayor do not approve such resolution, contract or ordinance so submitted, he must within five days from the receipt thereof, return the same to the city clerk with his reasons in writing for not approving it, and if the mayor do not so return it, such resolution or contract shall thereupon go into effect and such ordinance become a law, in like manner and with the same effect as if the same had been approved by the mayor. The mayor shall, in addition to the duties herein provided for, sign all licenses and warrants and claims against the city and perform such other duties as the council shall prescribe by ordinance. He shall, subject to the confirmation of the council, appoint all officers of the city whose election or appointment is not otherwise provided for by law. He must nominate such appointments to the council at the first subsequent meeting. He may remit fines and forfeitures and release any person imprisoned for violation of any city ordinance, and shall report such remittance or release, with the cause thereof, to the city council at its next session.

#### 785. Vacancies, how filled.

SEC. 19. Any vacancy occurring in the office of councilman by death, resignation, removal or otherwise, shall be filled by the mayor and city council at the first regular meeting after such vacancy, when the council and the mayor, who shall have the same voting power thereon as a councilman, shall by a majority vote elect some person possessing the requisite qualifications, who shall hold said office until the election and qualification of his successor at the next general city election.

#### 786. Quorum of council.

SEC. 20. A majority of all members of the council shall constitute a quorum to do business, but a less number may meet and adjourn from time to time

and may compel the attendance of absentees under such penalties as may be prescribed by ordinance.

#### 787. Rules.

SEC. 21. The council shall determine its own rules of procedure, may punish its members for disorderly conduct, and, with the concurrence of two-thirds of the members of the council, may expel a member for cause. The right of all persons to any elective office created by this act may be contested in like manner as provided by law for contesting the election of county officers.

#### 788. Meetings, special—Proviso.

SEC. 22. The city council shall prescribe by ordinance the time and place of holding its meetings; *provided*, that at least one meeting shall be held each month. Special meetings may also be held on a call of the mayor or a majority of the council, by giving six hours' written notice of such special meetings to each member of the council, served personally or left at his usual place of abode; *provided*, no ordinance shall be passed nor any claim allowed at such special meeting; *and provided further*, that no business shall be transacted at any such special meeting except such as shall be stated in the call therefor.

#### 789. Meetings public.

SEC. 23. The council's deliberations, sessions and proceedings must be public. It shall keep a journal of its own proceedings. The yeas and nays shall be taken upon the passage of all ordinances, and all propositions to create any liability against the city, or to grant, deny, increase, decrease, abolish, or revoke licenses, and in all other cases at the request of any member or of the mayor, which yeas and nays shall be entered upon the journal of its proceedings. The concurrence of a majority of the members elected to the city council shall be necessary to pass any such ordinance or proposition.

#### 790. Special meetings, restriction.

SEC. 24. No vote of the city council shall be reconsidered or rescinded at a special meeting, unless there be present at such special meeting as large a number of councilmen as were present when said vote was taken.

#### 791. Final action deferred, when.

SEC. 25. On request of any two members of the council in cities of the first and second class, or by one member in cities of the third class, final action on any report of a committee of the council shall be deferred to the next regular meeting of the council after the report is made.

#### 792. Ordinances passed, how.

SEC. 26. No ordinance shall be passed except by bill, and when any ordinance is amended, the section or sections thereof shall be reenacted as amended, and no ordinance shall be revised or amended by reference only to its title. Every ordinance, except those revising the city ordinances, shall embrace but one subject and matters necessarily connected therewith and pertaining thereto, and the subject shall be clearly indicated in the title and in all cases where the subject of the ordinance is not so expressed in the title, the ordinance shall be void as to the matter not expressed in the title.

#### 793. Style of ordinances—Publication.

SEC. 27. The style of ordinances shall be as follows: "The City Council of the City of \_\_\_\_\_ do ordain," and all proposed ordinances when first proposed, shall be read aloud in full to the council, and final action

thereon shall be deferred until the next regular meeting of the council, except that in cases of emergency, by unanimous consent of the whole council such final action may be taken immediately or at a special meeting called for that purpose. All ordinances shall be signed by the mayor, attested by the city clerk and be published in full, together with the names of the councilmen voting for or against their passage, in a newspaper published in such city, if any there be, otherwise some newspaper published in the county and having a general circulation in such city, for the period of at least one week before the same shall go into effect; *provided*, that whenever a revision is made and the revised ordinances are published in book or pamphlet form by authority of the city council, no further publication shall be deemed necessary. The city clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publisher, and said book, or a certified copy of the ordinances therein recorded, under the seal of the city, shall be received as prima facie evidence in all courts and places without further proof, or if published in book or pamphlet form, by authority of the city council, they shall be so received.

#### 794. Powers of city council.

SEC. 28. The city council shall have the following powers:

1. To make and pass all ordinances, resolutions and orders, not repugnant to the constitution of the United States or of the State of Nevada, or to the provisions of this act, necessary for the municipal government and the management of the city affairs, for the execution of all powers vested in the city, and for making effective the provisions of this act; and to enforce obedience to such ordinances with such fines or penalties as the city council may deem proper; *provided*, that the punishment of any offense shall be by a fine in any sum less than three hundred dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment.

2. To control the finances and property of the corporation.

3. To appropriate money for corporate purposes only, and to provide for payment of debts and expenses of the corporation.

4. To levy and collect taxes within the city for general and special purposes on real and personal property, as provided by law.

5. To borrow money on the credit of the city for corporate purposes, in the manner and to the extent allowed by the constitution and the laws, and to issue warrants and bonds therefor, in such amounts and forms and on such conditions as the council shall determine; and the council may secure the payment of any bonds of the city by making them a preferred lien against the real or other property of the city; *provided*, that no city shall issue or have outstanding at any time bonds to an amount in excess of thirty per cent of the total assessed valuation of the taxable property within such city as shown by the last preceding tax list or assessment roll, nor warrants, certificates, scrip or other evidences of indebtedness, excepting the bonded indebtedness, in excess of twenty per cent of said assessed valuation; *and provided further*, that nothing herein contained shall be construed to restrict the power of cities as to taxation, assessment, borrowing money, contracting debts, or loaning their credit for procuring supplies of water. The council shall provide for the payment of the interest on such bonds as the same shall become due, and for a sinking fund for the payment of the principal thereof within thirty years after issuing the same. The council shall have the power to acquire or establish any public utility only in the manner herein provided. The council shall enact an ordinance which shall set forth fully and in detail the public utility proposed to be acquired or established; the estimated cost thereof as shown by the report, approved by the council and mayor, of an engineer or body theretofore appointed by the council for that purpose; the proposed bonded indebtedness to be

incurred therefor, the terms, amount, rate of interest and time within which redeemable and on what fund. Such ordinance shall be published in full at least once a week for four successive weeks in some newspaper of general circulation, published in the city. At the first regular meeting of the council, or any adjournment thereof, after the completion of said publication, the council may proceed to enact an ordinance for such purpose which shall conform in all respects to the terms and conditions of the previously published ordinance, unless a petition shall be presented to it, signed by not less than fifteen per cent of the qualified electors of said city, as shown by the last preceding registration list, and representing not less than ten per cent of the taxable property of said city as shown by the last preceding tax list or assessment roll, praying for a special election in said city upon the question of whether or not the proposed ordinance shall be passed. Thereupon, no such proposed ordinance shall be enacted or be valid or effective for any purpose whatsoever, unless at a special election called and held for the purpose, a majority of the votes cast are for the ordinance.

6. To issue bonds in place of or to supply means to meet maturing bonds or for the consolidation or refunding of the same.

7. To divide the city into districts for the purpose of local taxation, or to create districts for that purpose, as occasion may require.

8. To raise revenue by levying and collecting a license fee or tax on any private corporation or business within the limits of the city, and to regulate the same by ordinance. All such license fees and taxes shall be uniform in respect to the class upon which they are imposed.

9. To fix the amount of licenses and the terms and manner of their issuance.

10. To fix, impose and collect a license tax on and to regulate all character of lawful trades, callings, industries, occupations, professions and business, conducted in whole or part within the city, including all theaters, theatrical or melodeon performances and performances of any, every and all kinds for which an admission fee is charged, or which may be held in any house, place or enclosure where wines, spirituous, malt, vinous or intoxicating liquors are sold or given away; circuses, shows, billiard tables, pool tables, bowling alleys and all exhibitions and amusements. To fix, impose and collect a license tax on and regulate all taverns, hotels, restaurants, chop houses, cafes, saloons, eating houses, lunch counters, bar-rooms, games and gaming houses, lodging houses accommodating four or more lodgers, manufacturers, laundries, livery stables, sale stables, cattle or horse corrals, express companies, telegraph and telephone companies, oil wells or tanks, oil refineries; tanneries, foundries, brick yards, pressed-brick yards, street railway companies operating in whole or in part within the city. To fix, impose and collect a license tax on and regulate auctioneers and stock brokers. To fix, impose and collect a license tax on, regulate, prohibit or suppress all tippling houses, dram shops, saloons, bars, bar-rooms, raffles, hawkers, peddlers, except those dealing in their own agricultural products of this state. To fix, impose and collect a license tax on, regulate, prescribe the location of or suppress, all saloons, bar-rooms, tippling houses, dram shops, any and all places where intoxicating drinks are sold or given away, street fakers, street peddlers, except as above stated, fortune tellers, mediums, astrologers, palmists, clairvoyants, phrenologists, pawn shops, pawn brokers, oil wells, oil tanks, oil refineries, soap manufacturers, brick yards, livery, feed or sale stables, cattle or horse corrals, foundries and machine shops. To prohibit and suppress all dog fights, prize fights, cock fights, bear, bull or badger baits, sparring and sparring contests. To regulate, prohibit the location of, and suppress, all houses of ill-fame, hurdy-gurdy houses, bawd houses, and any and all places to which per-

sons resort for lewd or lascivious purposes, or purposes of lewdness or prostitution, including dance houses and saloons having special attractions, such as music or otherwise. To fix, impose and collect a license tax on and regulate all lawful professions, trades, callings and business whatsoever, including grocers, merchants of any, every and all kinds, trades and traders of all kinds, hotels, butcher shops, slaughter houses, wood and fuel dealers, coal dealers, sewing machine agents, marble or stone dealers, saddle or harness makers or shops, cigar stores, stationery stores, confectionery stores, newspaper stands, plumbing shops, tin shops when separate from hardware stores, paint or oil stores, bicycle shops, repair shops, cycleries, garages, warehouses, cold storage plants, daily, weekly, semi-weekly, monthly and semimonthly newspapers or publications, ice peddlers, insurance companies, fire, life, and accident, and agents or solicitors for the same, surety companies and agents or solicitors for the same, shooting galleries, upholsterers, soap factories, barber shops, collection agencies and collectors, carpet cleaners, photographers, wagon makers, wheelwrights, blacksmith shops, horseshoeing shops, tailor and tailor shops, shoe shops, cobblers, tinkers, cloth-cleaning and dyeing establishments, all billard or pool games, or other or any table games played with cue and balls, or other mechanical device, bakeries, milliners, gunsmith shops, steam renovating works, dressmaking establishments, telephone companies, electric light, water and power companies, bankers, brokers of any, every and all kinds, electric supply houses, job printers, manufacturers of soda water or other or any soft drinks, or of beer, malt, spirituous or vinous liquors or other or any alcoholic beverages, brewing companies, brewing agencies, patent medicine agencies, agencies of any and all kinds, wholesale liquor houses, ore purchasers or brokers, sampling works, flour mills, city express and job wagons, draymen, second-hand stores, messenger service establishments, contractors, contracting mechanics or builders, sash and door factories, planing mills, machine shops, car shops, building and loan companies and agents and solicitors for the same, real estate agents, real estate solicitors, pop-corn, peanut, delicatessen, fruit and lemonade stands, refreshment or coffee stands, booths and sheds, dry goods stores of every, any and all kinds, boot and shoe stores, furniture stores, drug stores, undertakers, glass and crockery stores, tamale stands or shops, abstract of title companies or persons furnishing abstracts of title, iron works, notions and notion stores, pipe and tobacco stores, advertising by billboards, placards and the like, bootblacks and bootblack stands, gun stores, sporting, hunting and fishing tackle stores, jewelry stores, resorts for amusements of all kinds, and all and singular each, every and any business, and all trades and professions, including attorneys, doctors, physicians, and dentists, and all character of lawful business or callings not herein specifically named; *provided*, that in fixing licenses the council must make the same uniform as to each trade, calling, business, occupation or profession.

11. To fix, impose and collect an annual per capita tax on all dogs and to provide for the capture and destruction of all dogs on which said tax shall not be paid. To fix, impose and collect a license tax on and regulate hacks, hackney coaches, cabs, omnibuses, express wagons, drays, job wagons and other public vehicles and to regulate their charges, and to require schedules of charges to be posted in or upon such public vehicles. To fix, impose and collect a license tax on, regulate; prohibit or suppress runners for hotels, taverns or other businesses.

12. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks and public grounds; and to vacate the same.

13. To plant or direct and regulate the planting of ornamental shade trees in, along and upon streets, avenues, sidewalks, parks and public grounds.

14. To regulate and control the use of streets, alleys, avenues, sidewalks, crosswalks, parks and public grounds.

15. To prevent and remove obstructions and encroachments upon the same.

16. To provide for and regulate crosswalks, curbs and gutters.

17. To name streets, avenues or other public places, and to change the names thereof.

18. To regulate or prohibit traffic and sales upon the streets, and sidewalks, and in public places.

19. To regulate the use of sidewalks and all structures thereunder or thereover, and to require the owner or occupant of any property to keep the sidewalks in front of or along the same free from snow and other obstructions.

20. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage, or any offensive matter in, and to prevent injury or obstruction to, any street, avenue, alley, park or public ground.

21. To regulate or prohibit the use of streets, avenues, alleys, sidewalks, public buildings and grounds, for signs, sign posts, awnings, poles for the support of wires or cables, horse troughs or racks, or for posting hand bills or advertisements.

22. To regulate or prevent the flying of flags, banners, or signs across the street or from buildings.

23. To regulate or prohibit the exhibition, distribution or carrying of placards or hand bills in the streets, avenues, alleys, public grounds or upon the sidewalks.

24. To regulate the speed of horses, and other animals, bicycles, automobiles, and other conveyances and vehicles, and cars and locomotives within the limits of the corporation, and to prescribe the length of time any street may be obstructed by trains being made, or cars standing thereon; and to prevent horse racing, immoderate driving or riding in the streets, alleys, avenues and public places.

25. To regulate or prohibit any public demonstrations and processions.

26. To compel persons to fasten animals attached to vehicles standing or remaining in the streets, alleys, avenues and public places.

27. To prevent or regulate the rolling of hoops, playing of ball, flying of kites, riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets, or on the sidewalks, or to frighten teams or horses.

28. To regulate the ringing of bells, blowing of horns and bugles, crying of goods by auctioneers and others, and the making of other noises, for the purpose of business, amusements or otherwise, and to prevent all orations, harangues, loud outcries, performances and devices tending to the collection of persons on the streets or sidewalks.

29. To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.

30. To permit, regulate or prohibit the locating, constructing or laying of the tracks of any railroad or tramway in any street, avenue, alley or public place; and to grant franchises to persons or corporations to lay, maintain and operate in, upon, along, through or across any street, alley, avenue, or any part or parts thereof, of said cities or other public places therein, railroad tracks and connecting and terminal tracks.

31. To declare a nuisance and to take up and remove, or to cause to be taken up and removed, the tracks of any railway, which shall have been laid upon, in, along, through or across any of the streets, alleys, avenues or public places of the city and which shall not have been operated with cars for public use for a period of one year after the laying thereof.

32. To require railroad companies to fence their respective railroads or any portion of the same, and to construct cattle guards, crossings of streets, alleys, avenues and public places, and keep the same in repair within the limits of the city.

33. To require railroad companies to provide protection against injury to persons or property; to compel such companies to raise or lower their tracks to conform to any grade which may at any time be established by such city, so that such tracks may be crossed at any place on any street, alley, or avenue; to compel railroad companies to make and keep open and to keep in repair ditches, drains, sewers and culverts along and under their railroad tracks so that the natural or artificial drainage of adjacent property shall not be impaired.

34. To provide for the lighting, sprinkling and cleansing of the streets, alleys, avenues, sidewalks, crosswalks, parks and public grounds.

35. To regulate the opening and use thereof for the laying of conduits, gas or water mains or pipes, and the building and repairing of sewers, tunnels and drains.

36. To contract with, authorize or grant any person, company or association a franchise to construct, maintain and operate, gas, electric or other lighting works in the city, and to give such persons, company or association, the privilege of furnishing light for the public buildings, streets, sidewalks and alleys of said city.

37. To provide for the lighting of streets, laying down of gas pipes and erecting of lamp posts; to regulate the use of gas, natural gas and electric and other lights, and electric power, and to regulate the inspection thereof.

38. To construct and maintain water-works, gas-works, electric-light works, street railways, or bath houses, or to authorize the construction and maintenance of the same by others, or to purchase or lease any or all of said works from any person or corporation.

39. To construct or authorize the construction of water-works without the city limits for the supply of said city; and for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works, and over all reservoirs, streams, canals, ditches, pipes, flumes and drains used in or necessary for the construction, maintenance and operation of the same, and over the stream or source from which the water is taken, above the point from which it is taken; and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

40. To regulate and control the water and watercourses, ditches and flumes, within or leading to the city, and to regulate and control mill privileges within the city.

41. To construct, purchase or lease, and maintain canals, ditches, flumes, artesian wells and reservoirs; and to purchase or lease springs, streams or sources of water supply for the purpose of providing water for irrigation, domestic or other public purposes; and to prevent all waste of water flowing from artesian wells; and, if necessary to secure said sources of water supply, to purchase or lease the land from or upon which said water has been appropriated or applied. Also to purchase, acquire or lease stock in ditch, canal, reservoir or water companies for the purpose of providing water for such city and the inhabitants thereof.

42. To fix the rate to be paid for the use of water furnished by the city.

43. To purchase, construct, lease, rent, manage and maintain any system or part of any system of water-works, hydrants and supplies of water, telegraphic fire signals, or fire apparatus, 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 constructed.

44. To regulate the construction, repair and use of vaults, cisterns, areas,

hydrants, pumps, sewers, gutters and plumbing, and to provide for a board of examiners to examine into the fitness and qualifications of persons following the plumbing trade; and to prescribe what qualifications shall be had by persons following said trade.

46. To establish markets and market houses, and to provide for the regulation and use thereof.

47. 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.

48. To provide for and regulate the inspection of meats, fruits, poultry, fish, butter, cheese, lard, vegetables, flour, meal, and all other provisions.

49. To provide for the inspection, measurement, or graduation of any merchandise, manufacture or commodity, and to appoint the necessary officers therefor.

50. To provide for the inspection and sealing of weights and measures.

51. To enforce the keeping and use of proper weights and measures, by vendors.

52. To provide for and regulate the inspection of malt, vinous, fermented and spirituous liquors.

53. To declare what shall be a nuisance and to abate the same, and to impose fines upon parties who may create, continue or suffer nuisances to exist.

54. To provide for and regulate the location, management and construction of packing houses, tanneries, canneries, renderies, bone factories, slaughter houses, butcher shops, soap factories, foundries, breweries, distilleries, livery stables and blacksmith shops, in or within one mile of the limits of the corporation.

55. To prohibit any offensive or unwholesome business or establishment in or within one mile of the limits of the corporation; to compel the owner of any pigsty, privy, barn, corral, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

56. To make regulations to secure the general health of the city, to prevent the introduction of contagious, infectious or malignant diseases into the city, and to make quarantine laws and regulations and enforce the same within the corporate limits, and within twelve miles thereof. To create a board of health and prescribe the powers and duties of the same.

57. To purchase, hold and pay for lands within or without the city limits for the burial of the dead and all necessary grounds for hospitals, and to erect, maintain and manage suitable buildings thereon, and to have and exercise police jurisdiction over the same, and over any cemetery used by the inhabitants of such city; and to survey, plat, map, fence, ornament and otherwise improve all public burial and cemetery grounds; and to convey cemetery lots owned by the city, and pass rules and ordinances for the protection and governing of said grounds; to vacate public burial and cemetery grounds, to prohibit subsequent burials therein, and to provide for the removal therefrom of all bodies which may have been interred therein.

58. To regulate the burial of the dead and the registration of births and deaths; to direct the return and keeping of bills of mortality, and to impose penalties on physicians, sextons and others for default therein.

59. To provide for the burial of the indigent dead and to pay the expenses thereof.

60. To authorize the taking and to provide for safe keeping and education, for such periods of time as may be expedient, of all children who are destitute of proper parental care.

61. To establish, maintain and regulate free public libraries, and reading

rooms as is or may be provided by law, and to perpetuate free libraries and reading rooms as may have been heretofore established in such cities.

62. To define fire limits, and prescribe limits within which no building shall be constructed, except it be of brick, stone or other incombustible material, without permission, and to cause the destruction or removal of any building constructed or repaired in violation of any ordinance, and to cause all buildings and enclosures which may be in a dangerous state to be put in a safe condition or removed.

63. To prescribe the manner of constructing stone, brick and other buildings, and the construction of fire escapes; and to cause all buildings used for public purposes to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fire, to prevent the overcrowding thereof and to regulate the placing and use of seats, chairs, benches, scenery, curtains, blinds, screens or other appliances therein.

64. To prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, heaters, ovens, furnaces, boilers and appurtenances used in and about buildings and manufactories, and cause the same to be removed or placed in a safe condition.

65. To regulate and prevent the carrying on of manufacturing likely to cause fires, and to prevent the deposit of ashes in unsafe places.

66. 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.

67. To regulate or prevent the storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, nitro-glycerine, petroleum, or any of the products thereof, and other combustibles or explosive material, and the use of lights in stables, and other places, and the building of bonfires.

68. Except as otherwise provided by law, to provide for the organization and support of a fire department; to procure fire engines, hooks, ladders, buckets and other appurtenances; and to organize fire engine and hook and ladder companies and to prescribe rules, duties and government therein, with such penalty as the council may deem proper, and to make all necessary appropriations therefor; and to establish regulations for the prevention and extinguishment of fires.

69. To provide for the inspection and to regulate the use of steam boilers; to provide for the examination, regulation and licensing of stationary engineers and others having charge or control of stationary engines, boilers or steam-generating apparatus, or elevators within the corporate limits of the city.

70. To prohibit cruelty to animals.

71. To regulate or prohibit the running at large within the limits of the city of horses, mules, asses, cattle, swine, sheep, goats, geese, and all kinds of poultry; to establish a pound and appoint a poundkeeper, and prescribe his duties, and to distrain and impound animals running at large, and to provide for the sale of the same in the same manner provided by laws of the state for sale of estrays and trespassing animals. The proceeds arising from the sale of such animals, after the payment of all costs, shall go into the city treasury to be disposed of according to law.

72. To provide for the punishment of persons disturbing the peace and good order of the city or any lawful assembly, by clamor or noise or by intoxication, fighting or using obscene or profane language, or otherwise violating the public peace by indecent or disorderly conduct, or by lewd or lascivious behavior and to punish the interference with any city officer in the discharge of his duty. Also to provide for the punishment of trespass, and such other petty offenses as the city council may deem proper.

73. To provide for the punishment of tramps, common street-beggars,

common prostitutes; habitual disturbers of the peace, pickpockets, gamblers, thieves, or persons who practice any game, trick or device, with intent to swindle.

74. To arrest, fine or set to work on the streets or elsewhere all vagrants, mendicants, and persons found in said city without visible means of support or some legitimate business.

75. To prevent intoxication, fighting, quarreling, dog fights, cock fights, prize fights, bull fights and all disorderly conduct, and to provide against and to prevent the offenses of assault and battery and petit larceny; to restrain riots, routs, noises, disturbances, or disorderly assemblies in any street, house or place in the city; to regulate and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous or combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of public buildings. To provide against or prevent the offense of obtaining money or property under false pretenses, or the offense of embezzling money or property, in all cases where the money or property embezzled or obtained by false pretense does not exceed in value the sum of fifty dollars.

76. To regulate and prohibit the carrying of concealed weapons.

77. To establish, erect and maintain city jails, houses of correction and detention and workhouses for the confinement of persons convicted of violating any city ordinance, and to make rules and regulations for the government of the same, and to appoint necessary jailers and keepers; and 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 board of county commissioners.

78. To punish and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquors to any minor, insane or idiotic person, habitual drunkard, or person in the habit of becoming intoxicated; and also to punish for keeping, maintaining or becoming an inmate of, visiting or in any way contributing to the support of, any place, house or room where persons assemble for the purpose of smoking opium, or inhaling the fumes of opium, or where opium is sold for such purposes.

79. To provide for and regulate the numbering of houses and lots.

80. To purchase, receive, hold, sell, lease, convey and dispose of property, real and personal, for the benefit of the city, both within and without the city boundaries; to improve and protect such property, and to do all other things in relation thereto which natural persons might do; *provided*, that the council shall not have power to mortgage, hypothecate or pledge any property of the city for any purpose.

81. To erect and maintain all needful buildings for the use of the city.

82. To require all municipal officers and agents, elected or appointed, to give bond and security for the faithful performance of their duties, and to require from every officer of the city at any time a report in detail of all transactions in his office, or any matters connected therewith.

83. To create any office that may be deemed necessary for the good government of the city; and to provide for filling all vacancies in elective and appointive offices; to regulate and prescribe the powers, duties and compensation of all officers of the city, except as otherwise provided by law.

84. The city council shall grant no franchise for a longer period of time than fifty years, and no franchise for any purpose shall be granted within any city incorporated under the provisions of this act except as herein provided; *provided*, that nothing herein contained shall be construed to impair any franchises granted in any city prior to its incorporation hereunder.

Franchises for furnishing light, heat and power, see sec. 1261.

Power to issue street improvement bonds, secs. 991-998.

Rights of gas companies, sec. 1265.

85. The city council shall have the power to condemn property for public uses.

**795. Provisions for execution of powers.**

SEC. 29. When 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 manner and details necessary for the full exercise of such power.

**796. Actions in corporate name of city.**

SEC. 30. 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 a justice of the peace.

**797. All fines paid to city treasury.**

SEC. 31. All fines and forfeitures for the violation of ordinances and all money collected for licenses or otherwise, shall be paid into the treasury of the city at such times and in such manner as may be prescribed by ordinance.

**798. Punishment of offenders.**

SEC. 32. In all actions for the violation of any ordinance, it shall be sufficient if the complaint refer to the title and section of the ordinance under which such action is brought. 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 or the city prison, or to such other place as may be provided by the city for the incarceration of offenders, until such fine, penalty and costs shall be fully paid.

**799. Chain-gang.**

SEC. 33. The city council shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding eight hours each working day; and for such work the person so employed shall be allowed two dollars for each day's work on account of such fine and costs. The council may provide for the formation of a chain-gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

**800. Concurrent jurisdiction.**

SEC. 34. Any constable or sheriff may serve any process or make any arrest authorized to be made by any officer of a city.

**801. Elections—Voters—Returns—Contests.**

SEC. 35. The conduct and carrying on of all city elections shall be under the control of the council, which shall by ordinance provide for the holding of the same, appoint the necessary officers thereof and do all other and further things required to carry the same into effect.

1. Every person who resides within the exterior boundaries of said city at the time of holding any city election, and whose name appears upon the official register of voters in and for said city, shall have the right to vote at each city election, whether regular or special, and for all officers to be voted for and on all questions that may be submitted to the people at any such general or special city elections, except as herein otherwise provided; and nothing herein shall be so construed as to deny or abridge the power of the council to provide for a supplemental registration as in this charter hereinbefore provided.

2. The election returns from any city or special city election shall be filed with the city clerk, who shall immediately place the same in a safe or vault and no person shall be permitted to handle, inspect or in any manner interfere with the same until canvassed by the mayor and council. The mayor and council shall meet within five days after any election and canvass the returns and declare the result. The election returns shall then be sealed up and kept by the city clerk for six months and no person shall have access thereto except on order of a court of competent jurisdiction, or by order of the council. The city clerk, under his hand and official seal, shall issue to each person declared to be elected, a certificate of election. \* The officers so elected shall qualify and enter upon the discharge of their respective duties on the first regular meeting of the council next succeeding that in which canvass of returns was made as above provided.

3. A contested election for any city office must be determined according to the law of the state regulating proceedings in contested elections in county offices.

### 802. City officers.

SEC. 36. In addition to the mayor and city council, there may be elected in each city a city clerk, a city treasurer and a judge of the municipal court; and, also, in cities of the first and second class, a city attorney and city auditor. In cities of the third class the mayor may, at his discretion, by and with the consent of the city council, appoint a city marshal, who shall hold office at the pleasure of the mayor and council. All elective officers shall hold their respective offices for two years and until their successors are elected and qualified. *As amended, Stats. 1911, 374.*

### 803. Mayors may appoint certain.

SEC. 37. The mayor, by and with the advice and consent of the council, may appoint all such officers and agents as may be provided for by law or ordinance.

### 804. Terms of office.

SEC. 38. Except as otherwise provided by law, the term of office of all appointive officers shall be until the municipal election next following their appointment and until their successors are duly appointed and qualified, unless sooner removed by the mayor, with the concurrence of a majority of the members of the city council.

### 805. Official oath—Bond—Provisos.

SEC. 39. All officers of any city, whether elected or appointed, shall, before they enter upon the duties of their respective offices, take and subscribe to the constitutional oath of office; and every such officer shall before entering upon the duties of his office execute a bond with good and sufficient sureties, to be approved by the mayor, 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 his office, and the payment of all moneys received by such officer according to law and the ordinances of said city; *provided*, that the bond of the mayor shall be approved by the city council; *provided further*, that the treasurer's bond shall be fixed at a sum not less than the amount of the whole tax for the last preceding year.

### 806. Bonds fixed.

SEC. 40. Whenever the inhabitants of any territory become incorporated under this title, the officers first elected shall give bonds as mentioned in the preceding section, in the penal sum of not less than five hundred dollars, such bonds to remain in force until the passage of ordinances or resolutions by the city council providing for the giving of bonds by said officers.

**807. Council may require additional bonds.**

SEC. 41. The city council may at any time require further and additional bonds of all officers elected and appointed. All bonds given by the officers of any city shall be filed with the city clerk, except the bond of the city clerk, which shall be filed with the treasurer.

**808. Malconduct or misfeasance.**

SEC. 42. In case the mayor or any municipal officer shall, at any time, wilfully omit or neglect the performance of any duty, or wilfully and corruptly be guilty of oppression, malconduct or misfeasance in office, he shall be liable to indictment; and on conviction thereof, 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; nor shall he be eligible to any municipal office thereafter.

**809. Property delivered to successors.**

SEC. 43. Every officer of the city shall, within five days after notification and request, deliver to his successor in office all properties, books and effects of every description in his possession belonging to the city or appertaining to his said office; and upon his failure, refusal or neglect to do so shall be liable for all damages caused thereby, and to such penalty as may be by ordinance prescribed.

**810. Defaulters ineligible.**

SEC. 44. No person shall be eligible to any office who is not a qualified elector of the city; nor shall any person be eligible to any such office who is a defaulter to the city.

**811. Officers not to be pecuniarily interested.**

SEC. 45. No officer shall be directly or indirectly interested in any contract, work or business of the city, or in the sale of any articles 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 any other property belonging to the city, or which shall be held for taxes or assessments or by virtue of legal process, at the suit of said corporation, mayor or other officer of said city.

**812. Penalty.**

SEC. 46. 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 another, accept or receive any valuable consideration or promise for his influence or vote, shall be fined in any sum not exceeding one thousand dollars.

**813. To hold but one office.**

SEC. 47. In cities of the first and second class, no mayor, councilman, clerk, auditor, attorney, or treasurer shall hold any other office under the city government during his term of office.

**814. Compensation; restriction.**

SEC. 48. All officers of any city shall receive such compensation as may be fixed by ordinance, but the compensation of any such officers shall not be increased or diminished to take effect during the time for which said officer was elected or appointed.

**815. Deputies.**

SEC. 49. The city officers, except the mayor, councilmen and police judge may, after being first duly authorized by ordinance of the city council, appoint

a deputy or deputies who shall have the same powers as their principals and whose compensation may be prescribed by the city council; *provided*, that the city council may, in its discretion, authorize the appointment of a deputy on condition that no charge shall be made against the city for his services.

#### 816. Not to hold office subsequently, when.

SEC. 50. No member of any city council shall, during the term for which he was elected and for one year after the expiration of such term, hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was such member.

#### 817. Additional duties may be imposed.

SEC. 51. The duties, powers and privileges of all officers in any way connected with the city government, not herein defined, shall be defined by the city council; and the defining by this act of the duties of city officers, shall not preclude the city council from defining by ordinance further and additional duties to be performed by any such officer.

#### 818. Office of clerks—Seal.

SEC. 52. The city clerk 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 papers and records of the city and keep a record of the proceedings of the city council, whose meetings it shall be his duty to attend. Copies of all papers filed in his office, and transcripts from all records of the city council certified by him, under the corporate seal, shall be evidence in all courts, to the same effect as if the original were produced.

#### 819. Duties of clerks.

SEC. 53. He shall countersign all contracts made in behalf of the city, and every such contract or contracts to which the city is a party shall be void unless signed by the city clerk.

#### 820. City attorney—Legal adviser of all city officers—Duties—Additional counsel, when.

SEC. 54. No person, not a licensed and practicing attorney of the supreme court of this state in good standing at the bar and a bona fide resident of the city for at least one year preceding his election or appointment shall be eligible to the office of city attorney. In cities of the third class the mayor may, at his discretion, by and with the consent of the council, appoint a city attorney.

1. The city attorney shall be the legal adviser of the council and all officers of the city, in all matters respecting the affairs of the city. He shall act as the attorney for the city in any and all legal proceedings in any and all courts in which the city is a party or interested. He shall prosecute in the proper courts for all offenses against the provisions of this charter, the ordinances of said city and shall perform such other and further duties as may be required of him by the council or prescribed by ordinance. He shall be present at all meetings of the council, draw all ordinances, orders, rules and resolutions required by the council. He shall verify and file for record all claims of the city for liens for assessments imposed for street improvements which remain unpaid, and shall preserve, protect, and enforce the rights of the city by prosecuting suits for the foreclosure of the same in the proper courts, and shall receive all moneys paid in by delinquents or otherwise realized in such proceedings, and shall, without delay, pay over all such moneys to the city clerk.

2. The council may, in the exercise of its sound discretion, employ counsel to aid the city attorney whenever in its judgment the public interests shall

require such employment, and the expense thereof shall be allowed and paid in the same manner as other claims against the city.

### 821. Auditors, duties of.

SEC. 55. The city auditor, in cities having an auditor, and in all other cases the city clerk, shall draw and countersign all orders upon 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; shall make to the city council from time to time, upon the order of the council, reports of the financial condition of the city; shall make and keep a list of outstanding 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 shall secure the payment of the principal and interest of such bonds; shall report annually on or before the first day of June, to the city council, an estimate of the expenses of the city and of the revenue necessary to be raised for the current year; 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; shall keep accounts with all receiving and disbursing officers of the city, showing the amounts they have received from the different sources of revenue and the amounts which they have disbursed under the direction of the city council; shall examine all reports, books, papers, vouchers and accounts of the city treasurer; shall audit all claims and demands against the city before they are allowed by the city council; and shall keep a record of claims presented and the action of the council thereon; shall keep a book properly indexed in which he shall enter all contracts, which book shall be open to the inspection of all persons interested; and shall perform such other duties as the city council may provide by ordinance.

### 822. Statement of finances, what shall contain.

SEC. 56. The city auditor, in cities having an auditor, and in all other cities the city clerk, shall prepare, on or before the first Monday in March of each year, and thereafter keep on file in his office, subject to public inspection, a detailed statement of the financial condition of the city and of all receipts and expenditures for the previous year, ending December thirty-first, showing:

1. The total receipts of the city, stating particularly the source of each portion of revenue.
2. The amount of cash on hand at the date of the last report.
3. The amount of sinking fund and how invested.
4. The number, date and amount of every bond issued or redeemed, and the amount received or paid therefor.
5. The indebtedness of the city, funded and floating, stating the amount of each class and the rate of interest borne by such indebtedness or any part thereof.
6. Each warrant issued, to whom, and on what account.
7. The amount of cash in the city treasury and in its several funds. He shall publish on or before the first Monday in March of each year, in some newspaper having a general circulation in the city, a notice that such a detailed statement has been prepared, is on file in his office, and open to public inspection at all times.

### 823. Treasurers, duties of.

SEC. 57. The city treasurer shall receive all money belonging to the city, including all taxes, licenses and fines, and keep an accurate and detailed account thereof, in such a manner as provided in this act, or as the city

council from time to time may by ordinance direct, and he shall collect special taxes and assessments as provided by law and ordinance. He shall make a settlement with the city clerk or auditor as the council may direct, at the end of every month, and turn over all warrants, interest coupons, bonds or other evidence of the indebtedness of the city, which may have been redeemed by him during the month, taking the receipts of the city clerk or auditor therefor, and all such warrants, orders or other evidence of indebtedness shall be canceled by him, and have written or stamped thereon the date of their payment or redemption.

#### 824. Further duties.

SEC. 58. He shall pay no money out save upon lawful warrant, except on account of bonds and interest coupons, which when due may be paid upon presentation, or, in case the same are payable at some other place, then the money for their redemption shall be sent to the place where they are payable in time to meet such payment when due.

#### 825. Warrants.

SEC. 59. All warrants shall be paid out of their respective funds in the order in which they shall be issued.

#### 826. Receipts for payments.

SEC. 60. The treasurer shall give to every person paying money into the city treasury a receipt therefor, specifying the date of payment and upon what account paid; and he shall also file the duplicate of such receipt with the auditor or city clerk, as the city council may direct, at the date of his monthly report.

#### 827. City moneys kept intact.

SEC. 61. The treasurer shall keep all money belonging to the city separate and distinct from his own money.

#### 828. Reports of.

SEC. 62. The treasurer shall report to the city council at such times as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures since his last report, and of the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, and describing such warrants, their date, amount, number, the fund from which paid, and the person to whom paid, specifying also the time of payment. And all such warrants shall be examined by the city council at the time of receiving such report.

#### 829. Special funds.

SEC. 63. All moneys received from any special assessment shall be held by the treasurer as a special fund, to be applied to payment for the improvement for which the assessment was made, and said money shall be used for no other purpose whatever.

#### 830. Courts.

SEC. 64. There shall be in each city a municipal court; the papers, pleadings filed therein and process issuing therefrom shall be entitled "In the Municipal Court of the City of \_\_\_\_\_."

#### 831. Police judges.

SEC. 65. The municipal court shall be presided over by a police judge, who shall be a citizen of the state, and shall have been a bona fide resident of the city for not less than one year next preceding his election, and he shall be an elector and taxpayer in the city. He shall be elected at the regular election for city officers.

**832. Powers and jurisdiction of.**

SEC. 66. The municipal court shall have such powers and jurisdiction in the city as are now provided by law for justices of the peace, wherein any person or persons are charged with the breach or violation of the provisions of any ordinance of such city or of this act, of a police or municipal nature; *provided*, that the trial and proceedings in such cases shall be summary and without a jury. The said court shall have jurisdiction to hear, try and determine all cases, whether civil or criminal, for the breach or violation of any city ordinance or any provision of this act of a police or municipal nature, and shall hear, try and determine such cases in accordance with the provisions of such ordinances or of this act. The practice and proceedings in said court shall conform, as nearly as practicable, to the practice and proceedings of justice courts in similar cases. Fines imposed by the court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail of such city, at the rate of one day for every one dollar of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of said city, at the rate of two dollars for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied.

**833. Idem.**

SEC. 67. Said court shall have jurisdiction of any action for the collection of taxes or assessments levied for city purposes, when the principal sum thereof does not exceed three hundred dollars; also of actions to foreclose liens in the name of the city for the nonpayment of such taxes or assessments when the principal sum claimed does not exceed three hundred dollars; also for the breach of any bond given by any officer or person to or for the use or benefit of the city, and of any action for damages to which the city is a party, and upon all forfeited recognizances given to or for the use or benefit of the city, and upon all appeal bonds given on appeals from said court in any of the cases above named, when the principal sum claimed does not exceed three hundred dollars; also, for the recovery of personal property belonging to the city, when the value thereof does not exceed three hundred dollars; *provided*, that nothing herein contained shall be so construed as to give such court jurisdiction to determine any such cause when it shall be made to appear by the pleadings or the verified answer, that the validity of any tax, assessment or levy, or title to real property shall necessarily be an issue in such cause, in which case the court shall certify such cause to the district court in like manner and with the same effect as provided by law for certification of causes by justice courts.

**834. Idem.**

SEC. 68. The said court shall have jurisdiction of offenses committed within the city, which violate the peace and good order of the city or which invade any of the police powers of the city, or endanger the health of the inhabitants thereof, such as breaches of the peace, drunkenness, intoxication, fighting, quarreling, dog fights, cock fights, routs, riots, affrays, violent injury to property, malicious mischief, vagrancy, indecent conduct, lewd or lascivious cohabitation, or behavior, and all disorderly, offensive or opprobrious conduct, and of all offenses under ordinances of the city.

**835. Same as justice courts.**

SEC. 69. The said court shall be treated and considered as a justice court whenever the proceedings thereof are called into question. The court shall have power to issue all warrants, writs and process necessary to a complete and effective exercise of its powers and jurisdiction, and may punish for con-

tempts in like manner and with the same effect as is provided by general law for justices of the peace. The police judge shall keep a docket in which shall be entered all official business in like manner as in justice courts. He shall render monthly or oftener, as the council may require, an exact and detailed statement in writing, under oath, of the business done and of all fines collected, as well as fines imposed but uncollected, since his last report, and shall at the same time render and pay into the city treasury all fines collected and moneys received on behalf of the city since his last report.

### 836. Disqualification of judge.

SEC. 70. In all cases in which the police judge shall, by reason of being a party, or being interested therein, to any proceeding pending in the municipal court, or related to either defendant or plaintiff or complaining witness therein as the case may be, by consanguinity or affinity within the third degree, or in case of his sickness, absence or inability to act, any justice of the peace of said county, on the written request of the mayor, shall act in place and stead of said police judge; and the council shall have power to apportion ratably the salary of such police judge to such justice of the peace so serving, and deduct the sum so apportioned from the salary of such police judge.

### 837. Appeals.

SEC. 71. Appeals to the district court may be taken from any final judgment of said municipal court in the same manner and with the same effect as appeals from justice courts in civil or criminal cases, as the case may be.

### 838. Warrants.

SEC. 72. All warrants issued by the municipal court shall run to any sheriff or constable of the county, or to the marshal or any policeman of the city.

### 839. Chief of police.

SEC. 73. There shall be a chief of police in each city. In cities of the first and second class he shall be appointed by the mayor, subject to confirmation by the council; in cities of the third class the marshal shall be ex officio chief of police and shall perform the duties and exercise the authority thereof. He shall have power to appoint an assistant chief of police, by and with the consent and subject to the confirmation of the city council, and also, to appoint the necessary number of policemen required by the council, such appointees to be subject to approval and confirmation of, and to receive such salaries and compensation as shall be fixed by the council.

### 840. Duties of chief of police.

SEC. 74. The chief of police shall have command and control of the police force of the city, and may suspend any police officer for cause pending investigation by the city council. He shall be vigilant in the detection of crimes and offenders, and shall diligently see that all ordinances of the city of a police nature, the general laws and the provisions of this act, are rigidly enforced and observed.

### 841. Levy of taxes—Equalization.

SEC. 75. The council shall annually, at the time prescribed by law for levying taxes for state and county purposes, levy a tax not exceeding three per cent upon the assessed value of all real estate and personal property within the city made taxable by law; and the tax so levied shall be collected at the same time and in the same manner and by the same officers, exercising the same functions, as prescribed and provided in the revenue laws of the state for collection of state and county taxes; and the revenue laws of the

state shall, in every respect not inconsistent with the provisions of this act, be deemed applicable and so held to the levying, assessing and collecting of the city taxes; *provided*, that in the matter of the equalization of assessments, the rights of the city and the inhabitants thereof shall be protected in the same manner and to the same extent by the action of the county board of equalization, as are the state and county. And whenever or wherever practicable and expedient, all forms and blanks used in levying, assessing and collecting the state and county revenues, shall, with such alterations or additions as may be necessary, be used in levying, assessing and collecting the revenue of the city. The council shall enact all such ordinances as it may deem necessary and not inconsistent with this act and the laws of the state, for the prompt, convenient and economical collecting of the city revenue.

#### 842. County commissioners to apportion road funds.

SEC. 76. The several boards of county commissioners in this state shall from time to time, upon request of the city council, apportion to each incorporated city within the respective counties, such proportion of the general road fund of the county as the value of the whole property within the corporate limits of such city, as shown by the assessment roll, shall bear to the whole property of the county, inclusive of the property within incorporated cities, and all such moneys so apportioned shall be expended upon the streets, alleys and public highways of such city under the direction and control of the council.

#### 843. Revenue ordinances.

SEC. 77. The council shall have full power to pass and enact all ordinances necessary or required to carry into effect the revenue laws in the city and to enlarge, fix and determine the powers and duties of all officers in relation thereto.

#### 844. Expenses of improving streets, how prorated.

SEC. 78. Such part of the expenses of improving any streets, lanes, avenues or alleys by grading, paving, graveling, curbing, parking, constructing sidewalks or crosswalks, or otherwise improving the same, as the council shall determine, may be paid from the general fund or district street fund, from the proper street district, or the said cost or a portion thereof, as the council shall determine, may be defrayed by special assessments upon lots and premises abutting upon that part of the street or alley so improved or proposed so to be, or the lands abutting upon such improvement and such other lands as in the opinion of the council may be benefited by the improvement. When the city council shall determine to make any public improvement, such as laying pavements, constructing sewers, drains, sidewalks and crosswalks, curbing, macadamizing, oiling, graveling or grading any streets, avenues or alleys or in any way improving the same, and shall determine to defray the whole or any part of the costs or expenses thereof by special assessment, they shall so declare by ordinance, stating the improvements and what part or portion of the expenses thereof shall be paid by special assessments and what amount shall be paid out of the general fund, street fund, district street fund or any other fund.

#### 845. When portion paid from city funds.

SEC. 79. When expenses for such improvements or repairs shall be assessed, and there shall be lands belonging to the city, or public ground not taxable, abutting on such improvements, such part of the expenses of such improvements, as, in the opinion of the council or assessor making such special assessment, would be justly apportionable to such public grounds, and city property, and to any interior squares or spaces formed by the intersection of streets where the abutting property is taxable, shall be paid from

the general fund or from the proper street or district street fund or partly from each, as the council shall determine to be just, and the balance of such expense shall be assessed upon the taxable lots and premises abutting upon such improvement or improved streets in proportion to their number of feet frontage; or, if the special assessment shall include other lands not abutting upon the improvement, then upon all the land included in such special assessment, in proportion to the estimated benefits resulting thereto from the improvement. When such assessment is to be made upon the lots in proportion to their frontage upon the improvement, if, from the shape or size of any lot, the assessment thereon in proportion to its frontage would be unjust and disproportionate to the assessment upon other lots, the council or assessor making the assessment, may assess such lots or such number of feet frontage as in their opinion would be just.

#### 846. Municipal buildings.

SEC. 80. The cost and expense of a city hall and other buildings for the use of the city, and its officers, engine houses and structures of the fire department, water-works, city prison, levees and embankments, including the necessary land for said purposes, shall be paid for from the proper general fund of the city; except that, in case of lands appropriated for streets and rights of way, the cost thereof may be paid in whole or in part from the proceeds of a special assessment levied therefor in the manner herein prescribed. Whenever, in the opinion of the city council, the benefits thereof are special, rather than general or public, the cost and expense of any local improvements may be defrayed in whole or in part by special assessment upon the lands abutting upon and adjacent to or otherwise benefited by such improvement. Such special assessment may be made in the manner herein-after specified.

#### 847. Special assessments, ordinance for.

SEC. 81. When the city council shall determine to make any public improvements or repairs, in the laying of pavements or constructing sidewalks or in any way improving the streets in the city, and shall determine to defray the whole or any part of the cost and expenses thereof by special assessment, they shall so declare by ordinance, stating the improvement and what part or portion of the expense thereof shall be paid by special assessment, and what part, if any, has been or is proposed to be appropriated from the general fund of the city, or from the street fund or district street fund, and whether the assessment is to be made according to benefits or frontage, and, in case the assessment is to be made according to benefits, they shall by apt description designate the district including the lands to be so assessed; or in case there is no district so set apart they shall describe definitely the location of the improvement and state that the assessment is to be made upon all the lands benefited thereby proportionately to the benefits received; but in case the assessment is to be upon the property upon a frontage basis, it shall be sufficient for said ordinance to so state and to define the location of the improvements to be made. It shall not be necessary in any case to describe minutely in the ordinance each particular lot to be assessed, but simply to so designate the property, district or the location that the various parts to be assessed can be ascertained and described by the city assessor.

#### 848. Estimates first to be had—Notice of, how given.

SEC. 82. Before ordering any public improvement or repairs as provided in the last preceding section, any part of the expense of which is to be defrayed by special assessment, the council shall cause estimates of the expense thereof to be made, and also plats and diagrams, when practicable, of the work and of the locality to be improved, and shall file such plats and

diagrams with the city clerk for public examination; and they shall give notice thereof and of the proposed improvement, or work, of the location of the improvement and of the district to be assessed, by publication for at least two weeks in some newspaper published in said city and by posting notices of the same in at least three public places in each ward, and also by posting a notice in or near the postoffice of said city, and by posting notices in three public places near the site of said proposed work. Said notices shall state the time when the council will meet and consider any suggestions and objections that may be made by parties in interest with respect to the proposed improvements. Unless the owners of more than one-half of the frontage to be assessed shall file written objections thereto, no such improvement or work shall be ordered. *As amended, Stats. 1909, 61.*

#### 849. Special assessments.

SEC. 83. In all cases where the board of health, or other officials of the city, or the city council are authorized to do, or cause to be done, certain things, the whole or any part of the cost of which may be properly defrayed by a special assessment, and where special provisions for making the levy are not herein made, the council may cause sworn statements of the cost and location thereof to be made as provided in section 86 hereof, and may refer the same to the city assessor and have the same assessed against such property.

#### 850. Limitation of cost to property owner.

SEC. 84. The cost and expense of any improvement which may be defrayed by special assessments shall include the cost of surveys, plans, assessments, and cost of construction. In no case shall the amount of any special assessment upon any lot or premises for any one improvement exceed twenty per cent of the value of such lot or premises as shown upon the latest tax list or assessment roll for state and county taxation. Any cost exceeding twenty per cent, which would otherwise be chargeable upon said lot or premises, shall be paid from the general funds of the city. The council shall provide that the fees and compensation properly charged in the work of making any special assessment shall be included as a part of such assessment.

#### 851. Must be advertised.

SEC. 85. No contract for doing the work or making the improvement contemplated herein shall be made or awarded, nor shall the council incur any expense or liability in relation thereto, except for plats, diagrams, estimates and notices, until after the notice and hearing provided for herein shall have been given and had. But nothing herein contained shall be construed as preventing the council from advertising for proposals for doing the work whenever they see fit, provided the contract shall not be made or awarded before the time herein stated.

#### 852. Pro rata assessments.

SEC. 86. When a special assessment is to be made pro rata upon the lots or premises in any special assessment district, according to frontage or benefits, the council shall, by ordinance, direct such special assessment to be made by the city assessor, and shall state therein the amount to be assessed, and whether according to frontage or benefits, and describe or designate the lots and premises or the locality constituting the district to be assessed; in fixing the amount or sum of money that may be required to pay the costs of any improvement, the council need not necessarily be governed by the estimates of the costs of such improvement provided for herein, but the council may fix such other sum, within the limits prescribed, as they may deem necessary to cover the cost of such improvement.

**853. Assessment roll.**

SEC. 87. Upon the passage of such ordinance, the city assessor shall prepare an assessment roll, entering and describing therein all lots, premises and portions of land to be assessed, with the names of the persons, if known, chargeable with the assessments thereon, and shall levy thereon the amount to be assessed in the manner directed by the council and the provisions of this act applicable to the assessment; *provided*, in all cases where the ownership thereof is unknown to the assessor, he shall, in lieu of the name of the owner, insert the word "unknown"; *provided, also*, if by mistake or otherwise any person shall be improperly designated as the owner of any lot or premises, or if the same shall be assessed without the name of the owner, or in the name of a person other than the owner, such assessment shall not for that reason be vitiated, but shall, in all respects, be as valid upon and against such lot, parcel of land or premises as though assessed in the name of the owner thereof, and when the assessment roll shall have been approved, such assessment shall become a lien on such lot, parcel of land or premises, and collected as provided by law.

**854. Frontage assessment.**

SEC. 88. If the assessment be made upon the basis of frontage, the city assessor shall assess each lot or parcel of land with such relative portion of the whole amount to be levied as the length of front of such premises abutting upon the improvement bears to the whole frontage of all the lots to be assessed; unless on account of the shape or size of any lot or lots an assessment for a different number of feet would be more equitable; and the frontage of all lots to be assessed shall be deemed to be the aggregate number of feet as determined upon for assessment by the city assessor. If the assessment is directed to be according to benefits, the city assessor shall assess upon each lot such relative portion of the whole sum to be levied as shall be proportionate to the estimated benefit resulting to such lot from the improvement.

**855. Assessor's certificate, form:**

SEC. 89. When the assessor shall have completed the assessment he shall report the same to the council. Such report shall be signed by him and made in the form of a certificate endorsed on the assessment roll, as follows:

State of Nevada,                    )  
           City of \_\_\_\_\_ ) ss.

To the City Council of the City of \_\_\_\_\_: I hereby certify and report that the foregoing is the assessment roll, and assessment made by me pursuant to an ordinance of the council of said city, adopted (give date), for the purpose of paying that part of the cost which the council decided should be paid and borne by special assessment for paving \_\_\_\_\_ Street from \_\_\_\_\_ Street to \_\_\_\_\_ Street in said city (as the case may be), (or constructing a sewer on \_\_\_\_\_ Street), (or as the case may be). That in making such assessment, I have as near as may be and according to my best judgment conformed in all things to the directions contained in the ordinance of the council hereinbefore referred to.

Dated \_\_\_\_\_, Nevada, A.D. 190 \_\_\_\_\_

\_\_\_\_\_, City Assessor.

**856. Certain special assessments.**

SEC. 90. When any expense shall be incurred by the city upon or in respect to any separate or single lot, parcel of land or premises which by the provisions of this act, the council is authorized to charge and collect as a special assessment against the same, and not being of that class of special assessments required to be made pro rata upon several lots or parcels of land,

an account of the labor or services for which such expense was incurred, verified by the officer or person performing the services, or causing the same to be done, with a description of the lot or premises upon or in respect to which the expense was incurred, and the name of the owner or person, if known, chargeable therewith, shall be reported to the council. And the provisions of the previous sections hereof, with reference to special assessments generally and the proceedings necessary to be had before making the improvement, shall not apply to the assessments to cover the expense incurred, in respect to the class of improvements contemplated in this section.

### 857. Council to determine proportion.

SEC. 91. The council shall determine what amount or part of every expense shall be charged as a special assessment and the premises upon which the same shall be levied; and as often as the council shall deem it expedient they shall require all of the several amounts so reported and determined, and the several lots or premises chargeable therewith respectively to be reported by the city clerk to the city assessor for assessment.

### 858. Notice to be published—Objection, how made—Form of notice.

SEC. 92. Upon receiving the report mentioned in the preceding section the city assessor shall make a special assessment roll and levy a special assessment therein upon each lot or parcel of land so reported to him, the whole amount or amounts of all the charges so directed as aforesaid to be levied upon each of such lots or premises, respectively, and when completed he shall report the assessment roll to the council. When any special assessment shall be reported by the city assessor to the council, as in this section directed, the same shall be filed in the office of the city clerk and numbered. Before adopting the assessment the city council shall cause notice to be published for at least two weeks in some newspaper published in such city of the filing of the same with the city clerk, and appointing a time when the council and assessor will meet to review the assessments. Any person objecting to the assessment may file his objections thereto in writing with the city clerk. The notice provided for in this section may be addressed to the persons whose names appear upon the assessment roll and to all others interested therein, and may be in the following form:

#### NOTICE OF SPECIAL ASSESSMENT

To (insert the names of the persons against whom the assessment appears) and to all persons interested, take notice:

That the roll of special assessment heretofore made by the city assessor for the purpose of defraying that part of the costs which the council decided should be paid and borne by special assessment for the (e. g., paving  
----- Street to ----- Street in said city) or (constructing a sewer on  
----- Street between ----- Street and ----- Street) or (as the case may be) is now on file at my office for public inspection. Notice is hereby given that the council and city assessor of the City of ----- will meet in the council room in said city on (insert the date fixed upon) to review said assessment, at which time and place opportunity will be given all persons interested to be heard.

Date -----, City Clerk.

### 859. Assessment corrected, how.

SEC. 93. At the time appointed for the purpose aforesaid the council and city assessor shall meet and then or at some adjourned meeting review the assessment, and shall hear any objection to said assessments which may be made by any person deeming himself aggrieved thereby, and shall decide upon the same; and the council may correct the same as to any assessment or description of the premises appearing therein, and may confirm it as

reported or as corrected, or they may refer the assessment back to the city assessor for revision, or annul it and direct a new assessment, in which case the assessment shall be made anew. When a special assessment shall be confirmed the city clerk shall make an endorsement upon the roll showing the date of confirmation, which shall be in the following words:

Special assessment roll for the (describing fully what the assessment is for) approved by the council the \_\_\_\_\_ day of \_\_\_\_\_ (month), 19\_\_\_\_\_.

Dated \_\_\_\_\_, City Clerk.

### 860. Assessment roll.

SEC. 94. When any special assessment roll is approved by the council it shall be final and conclusive. Said roll when so endorsed by the city clerk shall be prima facie evidence in all courts and tribunals of the regularity of all proceedings preliminary to the making thereof and of the validity of said assessment and assessment roll.

### 861. Special assessments a lien on property.

SEC. 95. All special assessments shall from the date of the approval thereof constitute a lien upon the respective lots or parcels of land assessed. Upon the approval of any assessment, the amount thereof may be divided into not more than four installments to be collected quarter yearly, or one of such installments may be collected each year, at such time as the council may determine, with annual interest at a rate not exceeding seven per cent.

### 862. Special assessments due on approval.

SEC. 96. All special assessments, except such installments thereof as the city council shall make payable at a future time, as provided in the preceding section, shall be due and payable on approval.

### 863. On divided property, how apportioned.

SEC. 97. Should any lots or lands be divided after a special assessment thereon shall have been approved and divided into installments and before the collection of the installments, the city council may require the city assessor to apportion the uncollected amounts upon the several parts of land so divided. The report of such apportionment when approved shall be conclusive on all the parties, and all assessments thereafter made upon such lots or lands shall be according to such subdivision.

### 864. When insufficient, deficit paid by city.

SEC. 98. Should any special assessment prove insufficient to pay for the improvement or work for which it is levied and the expenses incident thereto, the amount of such deficiency shall be paid from the general fund in the treasury of the city; and in case a greater amount shall have been collected than was necessary, the excess shall be refunded ratably to those by whom it was paid.

### 865. New assessment, when.

SEC. 99. Whenever any special assessment shall, in the opinion of the city council, be invalid by reason of any irregularity or informality in the proceedings, or if any court of competent jurisdiction shall adjudge such assessments to be illegal, the city council shall, whether the improvement has been made or not or whether any part of the assessments have been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. All the proceedings for such reassessment and for the collecting thereof shall be conducted in the same manner as provided for the special assessment in this act.

### 866. Previous payments, how applied.

SEC. 100. Whenever any sum or part thereof levied upon any premises in

the assessment so set aside has been paid and not refunded the payment so made shall be applied upon the reassessment on said premises.

### 867. Special assessment, how enforced.

SEC. 101. When any special assessment shall be approved and payable the city council may direct the city clerk to report to the city assessor a description of such lots and premises as are contained in said roll, with the amount of the assessment levied upon each and the name of the owner or occupant against whom the assessment was made, and to require the city assessor to levy the several sums so assessed as a tax upon the several lots or premises to which they were assessed respectively. Upon receiving such report, the city assessor shall levy the sums therein mentioned upon the respective lots and premises to which they were assessed as a tax in the general assessment roll next thereafter, to be made in a column for special assessments, and thereupon the amount so levied in said assessment roll shall be collected and enforced with the other taxes in the assessment roll, and in the same manner, and shall continue to be a lien upon the premises assessed until paid, and when collected shall be credited to the proper funds; *provided*, that at any time after the special assessment has become payable the same may be collected by suit in the name of the city in any court of competent jurisdiction. The special assessment roll and the certified ordinance or resolution approving the same shall be prima facie evidence of the regularity of the proceedings in making the assessment and of the right of the city to recover judgment therefor.

### 868. Irregularities, how remedied.

SEC. 102. If in such action provided for in the preceding section it shall appear by reason of any irregularity or informality the assessment has not been properly made against the defendant, or the lot or the premises sought to be charged, the court may, nevertheless, on satisfactory proof that the expense has been incurred by the city which is a proper charge against the defendant, or the lot or premises in question, render judgment for the amount properly chargeable against such defendant or upon such lot or premises.

### 869. Cities under special charter may surrender same.

SEC. 103. Any city now or hereafter organized under a special charter, may surrender such charter and become organized under this act in the following manner: Whenever a petition signed by fifteen per cent of the qualified electors of said city, as the same appears from the registration list of qualified electors at the last preceding municipal election for city officers shall be presented to the legislative body of such city, praying that such special charter may be surrendered, and that such city shall become organized under the provisions of this act, it shall be the duty of the city council to submit such question at a special election, and to appoint a time and place or places at which such vote may be taken. Notice thereof shall be given and such special election shall be held and conducted in all respects as nearly as may be as herein provided for the holding of other special municipal elections. If a majority of the votes cast at such special election shall be for city organization under this act, such city shall thenceforth be deemed to have surrendered its charter and to be organized under this act.

### 870. Annexation, method of.

SEC. 104. Whenever the owners of a majority in value of real property of any territory lying contiguous to the corporate limits of any city shall desire to annex such territory to such city, they shall cause an accurate plat or map of said territory to be made under the supervision of a competent surveyor, and a copy of said plat or map, certified by said surveyor, shall be filed in the office of the clerk of the city, together with a petition in writing signed

by the owners of a majority in value of the real property of the territory described in said plat; and the city council, at the next regular meeting thereof, shall vote upon the question of such annexation. If a majority of all the members of the council vote for such annexation an ordinance shall be enacted declaring the annexation of said territory and the extension of the limits of said city accordingly. A copy of the map or plat last herein referred to, duly certified and acknowledged as provided by law in such cases, shall at once be filed in the office of the recorder of the proper county, together with a certified copy of the ordinance declaring such annexation, and thereupon such annexation shall be deemed complete and the said territory shall be deemed and held to be a part of said original city, and the inhabitants thereof shall thereafter enjoy the privileges and benefits of such annexation and be subject to the ordinances and regulations of said city.

#### 871. Petition for disincorporation—Popular vote.

SEC. 105. Whenever one-fourth of the legal voters of any city shall petition the district court in and for the county wherein such corporation is situated for the disincorporation of the said city, it shall cause to be published for at least thirty days a notice stating the question of disincorporating such corporation will be submitted to the legal voters of the same at the next municipal election, and the form of the ballot shall be "for disincorporation," or "against disincorporation." Not more than one of such elections shall be held in two years.

#### 872. Election on disincorporation.

SEC. 106. The vote shall be taken and canvassed in the same manner as in other municipal elections, and return thereof made to the district court. If it finds that a majority of the legal votes are cast "for disincorporation," then a judgment shall be entered disincorporating the same, and upon the entry of said judgment its corporate powers shall cease, and the court shall cause notice to be given in a manner to be prescribed by it, requiring all claims against the corporation to be filed in said court within a time fixed in the notice, not exceeding six months, and all claims not so filed shall be forever barred. At the expiration of the time so fixed, the court shall adjudicate said claims which shall be treated as denied, and any one, a citizen of such city at the time the vote was taken, may appear and defend against any claim so filed, or the court may in its discretion appoint some person for this purpose.

#### 873. Court to wind up affairs.

SEC. 107. The court shall have power to wind up the affairs of the corporation, to dispose of its property and to make provision for the payment of all indebtedness thereof, and for the performance of its contracts and obligations, and shall order such taxes levied from time to time as may be requisite therefor, which the board of county commissioners shall levy against the property within the corporation. Said taxes shall be collected by the county or city treasurer like other taxes and paid out under the orders of the court, and any surplus shall be paid into the school fund for the district where the same is levied; and all property remaining after the winding up of the corporate affairs of such corporation, both real and personal, shall revert to such school district, which is empowered to enforce all claims for the same and to have the use of all property so vesting.

#### 874. Records deposited with county clerk.

SEC. 108. The books, documents, records, papers and corporate seal of any city so disincorporated shall be deposited with the county clerk of the county in which the council last held its sessions, for safe-keeping and reference in future. All court records of any officer shall be deposited with the nearest

justice of the county, who shall have authority to execute and complete all unfinished business standing on the same.

### 875. Notice of disincorporation.

SEC. 109. When any city shall have been disincorporated, the clerk of the court shall cause a notice thereof to be published for four consecutive weeks in a newspaper published in said county, but if none is published therein, he shall give such notice as the court may prescribe, and shall also certify the fact to the secretary of state and to the recorder of the county.

### 876. Expenses, how paid.

SEC. 110. All expenses of the election and of winding up the affairs of the corporation shall be paid by it.

## *An Act providing for the government of the towns and cities of this state.*

Approved February 26, 1881, 68

877. Powers of commissioners.

878. Levy of taxes—How collected.

879. Taxes, fines, forfeitures, paid to treasurer.

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885. Duties of officers relative to acceptance of bids.

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889. County treasurer's liability and duties.

890. Clerk's liability and duties—Other officers.

891. Commissioners to hold meetings—Special meetings—Quorum.

892. Petition to be filed for application of this act.

893. Act repealed.

### 877. Powers of commissioners.

SECTION 1. In addition to the powers and jurisdiction conferred by other laws, the boards of county commissioners of this state shall have the following with regard to the management of the affairs and business of any town or city in their respective counties:

First—To fix and define the boundary of such town or city within which the jurisdiction herein conferred shall be exercised; *provided*, that in case of any disincorporated town or city the boundaries shall be fixed at the time of such disincorporation, but any change of such boundaries may be made by the board upon petition of a majority of the taxpayers thereof.

Second—To institute and maintain any suit or suits in any court or courts necessary, in their judgment, to enforce and maintain any right or rights of said town or cities. All such suits shall be instituted and prosecuted in the name of the board of county commissioners for the use and benefit of the inhabitants of said town or city, and shall be entitled accordingly in all pleadings or proceedings.

Third—To levy a tax not exceeding one and one-half per cent per annum upon the assessed value of all real and personal property (including proceeds of mines), situated in said town or city, made taxable by law for state and county purposes.

Fourth—To lay out, extend and alter the streets and alleys in said town or city, and provide for the grading, draining, cleaning, widening, lighting or otherwise improving the same; also, to provide for the construction, repair and preservation of sidewalks, bridges, drains, and sewers, and for the prevention and removal of obstructions from the streets and sidewalks of said town or city; *provided*, that said board may, in its discretion, assess the cost of improving any street or building, or repairing a sidewalk, to the owner or owners of the property in front of which said street, or sidewalk, or proposed sidewalk may be, and may make such cost of improvement, repairs or building, a lien upon such property.

Fifth—To condemn property for the use of the inhabitants of said town or city in the manner hereinafter provided.

Sixth—To provide for the prevention and extinguishment of fires, and organize, regulate, establish and disband fire companies or fire departments in said city or town, and to provide for the payment thereof and appointment and payment of officers thereto; *provided*, that all such payments shall be made from the separate fund of the city or town where service is performed or required; *and provided further*, that the chief engineer of the fire department shall receive compensation in a sum not to exceed one hundred and fifty (\$150) dollars per month; the assistant chief engineer of the fire department not to exceed one hundred and twenty-five (\$125) per month, and all other employees of the fire department not to exceed one hundred (\$100) per month; *and further provided*, that a majority of the board of county commissioners shall name and appoint two-thirds of all such officers and employees, and the minority thereof shall name and appoint one-third.

Seventh—To regulate the storage of gunpowder and other explosive or combustible materials within said town or city.

Eighth—To determine what shall be deemed nuisances in such town or city, and to provide for the punishment, prevention and removal of the same.

Ninth—To fix and collect a license tax upon and regulate all places of business and amusement so licensed as follows, to wit: Artisans, artists, assayers, auctioneers, bakers, bankers, barbers, billiard tables, boiler makers, boot and shoe makers, bowling alleys, brokers, factors and general agents, commission merchants, circus, caravan or menagerie, concerts and other exhibitions, dance houses, saloons or cellars, express and freight companies, foundries, gaming, hawkers and peddlers, hay yards, wagon yards and corrals, hotels, boarding houses and lodging houses, illuminating gas, electric light, insurance agents, job wagons, carts and drays, laundries, livery and sale stables, lumber yards, manufacturing of liquors and other beverages, manufacturers of soap, soda, borax, or glue, markets, merchants and traders, newspaper publishers, pawnbrokers, restaurants and refreshment saloons, bar-rooms, shooting galleries, skating rinks, solicitors, drummers, mercantile agents, stage and omnibuses, stock brokers, telegraph companies, theaters and melodeons, undertakers, wood and coal dealers, having due regard to the amount of business done by each person or firm so licensed; to license, tax and regulate, prohibit and suppress all tipping houses, dram shops, public card tables, raffles, hawkers, peddlers and pawnbrokers, gambling houses, disorderly houses and houses of ill-fame; *provided*, that in all unincorporated cities or towns in this state the boards of county commissioners shall have power to fix and collect a license tax upon the following places of business and amusements, and none other, as follows, to wit: Circus, caravan or menagerie, concerts, theatrical performances, melodeons and other exhibitions, dance houses, wholesale liquor merchants, brewers, manufacturers of liquors and beer, saloons, bars, bar-rooms, or cellars, gaming and gambling houses, hawkers and peddlers, junk shops, pawnbrokers, auctioneers, solicitors, drummers, mercantile agents, telegraph companies, electric light companies, power companies, telephone companies, water companies, express companies, banker and banks, having due regard to the amount of business done by each firm, company or person so licensed; to levy and collect an annual tax on all dogs owned or kept within the limits of said town or city, and to provide for the extermination of all dogs for which tax shall not have been paid, and to prohibit the keeping of hogs or the running at large of goats, cows or other animals within the limits of said town or city; to fix and collect a license tax upon all professions, trades or business within said town or city not heretofore specified.

Tenth—To provide for the issuance of all licenses in this act mentioned, or

authorized to be issued, and to fix the terms on which and the sums for which the same shall be issued.

Eleventh—To prevent, punish and restrain any disorderly conduct within said town or city; to establish and maintain a board of health.

Twelfth—To hold, manage, use and dispose of the real and personal property of said town or city, and collect all dues and demands belonging to or coming to the same, but no sale of any such property shall be made until after it be appraised by three appraisers, taxpayers of said city or town, at the actual market value, nor shall it be sold for less than three-fourths of such appraised value.

Thirteenth—To fix and prescribe the punishment for the breach of any ordinance made or adopted by said board of county commissioners, to be enforced within said town or city, but no fines shall be imposed for one offense in a sum greater than five hundred (\$500) dollars, and no term of imprisonment shall be more than six months, but in lieu of imprisonment any person committed for punishment may be made to work on any public work in said town or city, and to that end a chain-gang may be formed, continued and operated.

Fourteenth—To pass or adopt all ordinances, rules and regulations, and do and perform all other acts and things necessary for the execution of the powers and jurisdiction by this act conferred; *provided*, that all ordinances of said town or city in force at the date of the assumption by said board of county commissioners of the powers and duties by this act conferred or imposed, and not inconsistent therewith, shall remain in full force and be enforced until changed or repealed by such board; *and provided further*, that no ordinance passed by said board shall be in force or effect until published for one week.

Fifteenth—To audit and allow all claims properly payable out of the funds of said town or city. Any property, real or personal, necessary for the public use of said town or city, or the inhabitants thereof, may be condemned and appropriated in the following manner: The board of county commissioners shall appoint one referee, and the claimant or claimants, or owner or owners, of the property sought to be condemned shall appoint one referee, and in the event the two referees so appointed shall not agree in the valuation of the property, or the interest or interests claimed therein, then the two so appointed shall select a third referee, and the decision of the majority of such three, as to the valuation of the property, or the interest or interests therein, by them appraised, shall be reported to said board of county commissioners, and shall by them be regarded as final and binding, unless the party deeming himself aggrieved by the decision of such referees shall appeal therefrom to the district court of the proper county, within thirty days after notice of such decision shall have been served upon him; and upon the tender in gold coin of the sum named as the value of such property, interest or interests to the claimant or claimants, owner or owners thereof, or his or their attorney or agent, such property, or the interest or interests therein appraised, shall become and be the property of said town or city, and said board of county commissioners may, at any time after twenty days' notice, cause the sheriff of the county to remove all persons and obstructions from such property, in case the same be real, and may take immediate possession of the condemned property, whether the same be real or personal. In case the claimant or claimants, owner or owners, of property sought to be condemned as herein provided, shall refuse or neglect when required by the board of county commissioners, to appoint a referee to value such property, then said board of county commissioners shall constitute a board of appraisers of such property, and their valuation of the same shall be final and binding, subject to right of appeal as hereinbefore provided; but no act of condemnation of property, or of any claim or interest therein, as herein provided,

shall be deemed or held as an admission on the part of said town or city, or the inhabitants thereof, of the legality of the asserted claim thereto or right therein; and in the condemnation of property, as in this act provided, the referees or county commissioners, as the case may be, shall consider whether the proposed improvement, for which said property is so condemned, will be of any benefit to the person or persons owning or claiming the said property or some interest therein, and if they find that the same will be a benefit to such person or persons, they shall estimate the value of such benefit to him or them, and deduct the amount thereof from the estimated value of the property, or interest therein, condemned. *As amended, Stats. 1903, 55.*

Authority to issue bonds for sewerage systems, 984-990.

Limitations on tax rate, 975-983.

Land plats, acceptance of dedication of public streets and grounds, 955-966.

Power to acquire public utilities, 940-953.

See act relative to improvement of streets and alleys, 922-939.

Act providing for policemen, 908-918.

Power to levy tax for fire purposes, 895-902.

May transfer surplus money, 894.

Gas companies may erect buildings and use streets and alleys, 1265.

Franchises for furnishing light, heat and power, 1261, et seq.

Licenses may be revoked or discontinued for cause, 3867-3871.

All the powers and jurisdiction exercised and all the duties performed by the boards of county commissioners under this act are exercised and performed by them as such boards, and not as boards of trustees or aldermen of the town or cities. *State ex rel. Norcross v. Shearer, 23 Nev. 76, 80 (42 P. 582).*

This act applies to towns which were incorporated at the time of its passage, but which have since become unincorporated,

as soon as they became so. *State v. Alta S. M. Co., 24 Nev. 230, 236 (51 P. 982).*

This section applies only to unincorporated towns, and the fact that the proviso introduced by the amendment of 1889, p. 43, is in terms confined to that class of towns, does not make any part of the act applicable to any other class of towns. *Commissioners of Washoe Co. v. Griswold, 23 Nev. 183-187 (44 P. 926).*

Cited *State ex rel. Osburn v. Beck, 25 Nev. 68, 82 (56 P. 1008).*

## 878. Levy of taxes—How collected.

SEC. 2. Annually, at the time of assessing or fixing the amount of taxes for county purposes, said board of county commissioners shall (subject to restrictions of subdivision third, of section 1 of this act), assess, fix, and designate the amount of taxes that should be levied and collected for city or town purposes on all real and personal property (including the proceeds of mines) assessable for state or county purposes within any town or city in their county, which said taxes shall be collected at the same time, in the same manner, and by the same officers as provided in the revenue laws of this state for the levying and collecting of state and county taxes, and said revenue laws shall, in every respect not inconsistent with the provisions of this act, be deemed and held applicable to the levying and collecting of the taxes hereinbefore mentioned; and in all cases where said commissioners, or the county assessor, or district attorney of said county, or any other officer, or any judge, or justice of the peace of said county, is required or authorized by law to adopt or use any form appertaining to the assessment or collection of county taxes, he or they shall also adopt or use a similar form in relation to assessing, levying and collecting the taxes herein provided for, and may use the same in any book, paper or document in which he or they have used the first named form, and in filling up the blanks of said last named form there shall be inserted the name of said town or city, using the name by which it is commonly designated, or such name as will enable the inhabitants thereof to know that their town or city, as the case may be, is intended to be named in said book, paper or document; and all suits instituted to collect state or county taxes on real or personal property (including the proceeds of mines) assessed in said town or city, shall include the unpaid taxes herein authorized to be levied, and judgments therein rendered shall also include such taxes.

## 879. Taxes, fines, forfeitures, paid to treasurer.

SEC. 3. All taxes, fines, forfeiture or other moneys collected or received by any officer or person, under or by virtue of any of the provisions of this act, shall be paid by the officer or person collecting or receiving the same to the county treasurer of the county in which said taxes or moneys were collected or received, and said county treasurer shall set the same apart as a fund to be used solely for the benefit of the town or city in which they were collected or received. He shall also enter the same upon his books to the credit of said town or city, and shall divide said fund into two equal portions, one to be designated as the general fund and the other as a redemption fund; and he shall not pay any money out of said general fund except upon warrants drawn upon him by the county auditor of his county, nor pay any money out of said redemption fund except in the manner specified in this act; and when all claims payable from said redemption fund shall have been satisfied, then said fund shall cease, and any money therein remaining shall be transferred to the general fund. If at any time after creating a redemption fund there shall be more money in the general fund than is necessary to meet current or anticipated expenses, said board of commissioners shall direct the treasurer to transfer such surplus to the redemption fund, and the same shall thereafter be used as other moneys belonging to that fund. *As amended, Stats. 1883, 51.*

## 880. Salaries, how paid—Form of warrant—Notice to be posted.

SEC. 4. All salaries of officers mentioned in this act, and all expenses incurred in carrying on any government herein provided for, shall be paid out of the general fund of the town or city, to the affairs of which said government relates. All claims for such salaries and expenses shall be presented to the board of county commissioners, who shall consider and allow or reject the same, in whole or in part, and a record of their action shall be entered upon their minutes. If allowed in whole or in part by a majority vote of all the members composing said board, the clerk thereof shall certify the claims to the auditor, who shall thereupon issue his warrant to the holder, substantially in the following form:

No. \_\_\_\_\_, 18\_\_\_\_.  
 The County Treasurer of \_\_\_\_\_ County will pay to \_\_\_\_\_  
 the sum of \_\_\_\_\_ dollars, in gold coin, for (stating in general terms the  
 nature of the claim), and charge the same to the general fund of the (town  
 or city of) \_\_\_\_\_.  
 \$ \_\_\_\_\_, County Auditor.

He shall appropriately fill all blanks. Upon presentation of any warrant, the county treasurer shall immediately pay the same if he has money in his hands sufficient therefor belonging to the fund upon which it is drawn; but, if he has not, he shall indorse on said warrant, "Not paid for want of funds," adding thereto the date of the indorsement and signing his name officially to the same; and thereafter he shall pay said warrant out of the first money applicable thereto coming into his hands. Before twelve o'clock on the first Monday in each month, the county treasurer shall post a notice in a conspicuous place in his office, showing the number and amount of each outstanding warrant, if any, which there is money in the treasury to pay. On paying any warrant the treasurer shall write across the face thereof, in red ink, "Paid," with the date of payment, and sign his name officially thereto, and said warrant, thus canceled, shall be sufficient voucher for the treasurer for his official settlement, which settlement shall be made in time and manner as provided for settlement for county funds. The chairman of the board of county commissioners shall, in addition to such settlement, once a month examine the books and vouchers of the county treasurer concerning the state of the finances in his hands in this act mentioned, and report the result to the board, which report shall be spread upon the minutes of said board.

**881. Action for recovery of rejected claims.**

SEC. 5. The holder of any claim or demand in this act mentioned, which has been rejected in whole or in part, may, within six months after the same has been so rejected, commence an action in any court of competent jurisdiction of the county for the amount of his claim, or the rejected part thereof, as the case may be. The board of county commissioners shall be the defendant named in said action, and the service of summons shall be made upon the chairman or clerk thereof. In case of final recovery by the plaintiff, the board of commissioners shall audit and allow his claim for the amount of the judgment recovered.

**882. Funded debt, payment of—Form of evidence of indebtedness—Funds, how used.**

SEC. 6. In all cases where a town or city in any county of this state has been incorporated by an act of the legislature thereof, or of the late Territory of Nevada, or otherwise, or may be incorporated, and the same has been or may hereafter be disincorporated, and where at the time of such disincorporation there exists any funded debt or outstanding bonds, the board of county commissioners shall provide for the payment of the principal and interest of the same substantially in time, manner, and form as provided by law or ordinance existing touching the same at the time of disincorporation. If there be no such law or ordinance, all such claims shall be paid out of the redemption fund of such town or city, as hereinafter provided for the payment of other indebtedness. The board of county commissioners of such county shall take possession of all the books, papers, documents, money, credits, claims, demands, and other property of said town or city, and collect, hold, or dispose of the same for the use and benefit of the inhabitants thereof; and in case said town or city shall have been at the time of disincorporation involved in debt other than as above specified, said board of commissioners shall ascertain the amount thereof, and cause evidence of indebtedness bearing interest on the principal sum thereof from date, at the legal rate of interest per annum, to be issued to the holder of said indebtedness, which said evidences of indebtedness shall be in the following form, to wit:

No. .... 18... \$..... This is to certify that the (designating the town or city by its name) is indebted to ..... in the sum of ..... dollars principal and ..... dollars interest, payable out of the redemption fund of said .....; said principal sum of ..... dollars to bear interest from this date at the legal rate per annum, principal, interest, and accruing interest payable in gold coin of the United States. ...., Chairman of the Board of County Commissioners of ..... county, Nevada. ...., Clerk of ..... county, Nevada.

All blanks to be appropriately filled; but no such evidence of indebtedness shall be issued upon any account, claim, demand, bond, warrant, scrip or other instrument, unless the same be filed with the clerk of the board of county commissioners within three months after the disincorporation of said town or city; and simultaneously upon issuance the account, claim, demand on which the same is issued shall be receipted, and the bond, warrant, scrip, or other instrument shall be canceled. The county treasurer shall only use the money of said redemption fund for the payment of the preexisting bonds or funded debt not otherwise provided for, as hereinbefore mentioned, and such evidences as shall be issued as last hereinbefore mentioned, and the interest thereon as in this act provided. *As amended, Stats. 1883, 52.*

**883. Coupon bonds—Interest—Notice.**

SEC. 7. In all cases where towns or cities have issued interest-bearing coupon bonds, prior to the passage of the act of which this is amendatory, and the same have matured and are now outstanding and unpaid, the county

treasurer shall, upon the presentation of said bonds and a demand made for the payment of the interest accrued thereon, pay the same; *provided*, that there is sufficient money in the redemption fund to do so. The treasurer shall indorse the amount so paid upon the back of the bond, in red ink, as so much interest paid. He shall also take a receipt from the holder of said bond or bonds, which shall show the date that said money was paid, the amount so paid, the number of the bond, the date of issue and to whom issued. Said receipt shall be sufficient voucher for the county treasurer in the settlement of his accounts. The interest on said bonds shall be due and payable at the same periods of time of the year that the coupons attached to said bonds were due and payable. Whenever at any time after the payment of the accrued interest on said outstanding bonds there shall be in said redemption fund the sum of five hundred dollars or more, it shall be the duty of said treasurer to give ten days' public notice that sealed proposals, directed to him, will be received for the surrender of indebtedness payable from said fund, which sealed proposals shall be received by him at any time before the next regular meeting of the board of county commissioners held after the giving of said notice. Said notice shall be given by publication thereof in some newspaper published in the county, if there be one; if not, then by posting such notice in five public places of the town or city, the funds of which it is proposed to use in making the redemption mentioned in such notice. *As amended, Stats. 1883, 111.*

#### 884. Treasurer to deliver proposals to board of commissioners.

SEC. 8. At the first regular meeting of the board of county commissioners after expiration of such notice, the said county treasurer shall deliver to the board all of the sealed proposals received by him up to that date. Said board of county commissioners shall thereupon open all of said sealed proposals, examine the same, and cause copies thereof to be entered in the record of their proceedings, and shall accept the lowest bid or bids for the surrender of the indebtedness offered, to the extent of the sum mentioned in such notice; *provided*, that no bid shall be considered which is not accompanied with the evidence of indebtedness proposed to be surrendered. No bid for more than par value shall be accepted, nor shall any proposal be withdrawn after it has been delivered to the treasurer.

#### 885. Duties of officers relative to acceptance of bids.

SEC. 9. When any bid or bids are accepted as provided in the last section, the clerk of the board of county commissioners and county treasurer shall each take a description of the evidences of the indebtedness to be redeemed, specifying the amount to be paid for each of the same, date, number and amount thereof, and make a record of the same in their respective offices, and thereupon the board of county commissioners shall direct said treasurer to pay the indebtedness designated in the accepted bid or bids, and said treasurer shall pay the same, and shall immediately cancel the evidences of indebtedness so paid by him by writing across the face thereof, in red ink, "Redeemed," adding thereto the time when the same was redeemed and the amount paid therefor; and shall sign the same officially. Such canceled evidences of indebtedness shall be sufficient vouchers for the county treasurer in the settlement of his accounts. But, in case that any of the bonds that are offered for redemption shall be of a greater denomination than the amount of money in the redemption fund, the treasurer shall, upon the presentation of said bond or bonds, pay over to the holder of the same the amount of money so advertised, and for which he shall take his receipt. He shall also indorse upon the back of said bond, in red ink, the amount of money so paid as being for so much on the principal of said bond, after which time said bond shall only bear interest upon the amount of the principal due thereon.

Said receipts shall be sufficient vouchers for the county treasurer in the settlement of his accounts, and shall show the date that said money was paid, the amount, and to whom paid; also the number of the bond, the date of its issue, and to whom issued. The bid or bids specified in section 8 being equal, preference shall be given to those in which the greatest percentage is principal. That shall be deemed the lowest bid which offers the largest amount of indebtedness, including principal and interest, for the smallest percentage in amount of money. When two or more bids shall be equal in every respect, each shall be accepted, pro rata, as near as possible. The county treasurer shall return, on demand, to the proper parties, all unaccepted bids, with the evidences of indebtedness which accompanied the same. This act shall be in force and effect from and after its passage. *As amended, Stats. 1883, 112.*

### 886. Jurisdiction of justices of the peace.

SEC. 10. Any justice of the peace within said town or city shall have jurisdiction of all violations of ordinances applicable thereto under the provisions of this act, and may render final judgment, hold to bail, fine, or commit to prison any offender, in accordance with the provisions thereof. All commitments of imprisonment shall be directed to the sheriff of the county, and all fees or fines collected be paid to the county treasurer of the proper county, to be by him distributed to the proper fund of said town or city.

This act so far supersedes the act incorporating the city of Virginia (Stats. 1881, p. 79) that the office of city jailer in said

city was abolished and the board of county commissioners had no authority to create the office. *State ex rel. Fredericks v. Canavan, 17 Nev. 422 (30 P. 1079).*

### 887. Duties of district attorney.

SEC. 11. All prosecutions arising under the provisions of this act shall be conducted by the district attorney of the county, who shall collect such fees as may be provided by law or ordinance and pay the same to the county treasurer, to be by him distributed to the proper fund. He shall also prosecute and defend all suits brought by or against the board of county commissioners under the provisions of this act.

### 888. Chief of police—Salaries limited.

SEC. 12. The board of county commissioners for the purpose of carrying out the provisions of this act, may appoint from the residents thereof, for each said town or city in their county, one chief of police and as many other peace officers as may be necessary, not exceeding seven. Said officers shall be ex officio collectors of all licenses and taxes, other than property taxes, to be collected for the use of said town or city; and shall exercise such other powers and perform such other duties, including police duties, as may be authorized, directed, or required by the board of county commissioners. Every such officer shall give bond, in ordinary form of official bonds, in such amount as may be designated by the board of county commissioners, and two-thirds of them shall be named and appointed by a majority of the board, and one-third by a minority. All fees and money collected by any such officer, under any law or ordinance, shall be by him paid to the county treasurer, to be by him distributed to the proper fund of the city or town whence collected. And such officer shall receive for his services such sum as may be fixed by the board of county commissioners, not to exceed one hundred (\$100) dollars per month, except the chief of police, who shall receive not to exceed one hundred and fifty (\$150) dollars per month.

### 889. County treasurer's liability and duties.

SEC. 13. The county treasurer in each of the counties of this state shall perform the duties required or authorized to be performed by him, under and

by virtue of the provisions of this act, and shall be held liable on his official bond for the faithful performance of such duties, and shall pay any fee by him received by virtue of any law or ordinance into the treasury, to be apportioned to the fund of the town or city from which collected.

### 890. Clerk's liability and duties—Other officers.

SEC. 14. The county clerk in each of the counties of this state shall perform the duties required or authorized to be performed by him, under and by virtue of the provisions of this act, and shall be held liable on his official bond for their faithful performance. He shall be ex officio clerk of the board of county commissioners in the execution of the provisions of this act, and shall keep a record of their proceedings thereabout, in books not used for other purposes. The district attorney, county auditor, county assessor, and all other county officials, not specially exempted therefrom, in each of the counties of this state, shall perform the duties required or authorized to be performed by him and them, under and by virtue of the provisions of this act, and shall be held liable on his or their official bond or bonds for the faithful performance thereof. No officer performing any duty under this act, excepting the board of county commissioners, officers, and employees of any fire department or company, or peace officer thereunder authorized, shall demand or receive any compensation therefor. All such officers shall pay all fees or moneys by them received under any law or ordinance touching the provisions of this act, in time and manner as by general law provided, to the county treasurer of their respective counties, to be by him distributed to the fund of the proper town or city.

### 891. Commissioners to hold meetings—Special meetings—Quorum.

SEC. 15. The board of county commissioners of any county in this state, having jurisdiction of the affairs of any town or city, as in this act provided, shall hold a regular meeting in the court house, at the county-seat, at least once in each month, on a day previously fixed by them, for the purpose of transacting the business provided for in this act, and shall continue in session from day to day until such business is completed. They may also hold special meetings, upon a call of the chairman of the board, or a majority of the members thereof. A majority of said board shall be necessary to constitute a quorum, and a vote of the majority of the whole board shall be necessary to carry any question. In any county whose inhabitants shall number twelve thousand or more, wherein the board of county commissioners transact the business required under the provisions of this act, each member of such board shall receive, in addition to the compensation allowed by general law, the additional sum of forty (\$40) dollars per month.

### 892. Petition to be filed for application of this act.

SEC. 16. None of the powers or jurisdiction in this act authorized or required, shall be exercised in any town or city until there shall have been filed in the clerk's office of the county in which the same is situated, a written petition for the application of the provisions of this act to said town or city, signed by a majority of the actual residents thereof, representing at least three-fifths of its taxable property, except in the case of any disincorporated town or city, or towns having a voting population of six hundred or more, no such nor any petition need be filed, but all the provisions of this act shall immediately apply thereto. When a petition is filed the genuineness of its signatures and the qualification of its subscribers shall be established by the affidavits of reliable taxpayers of said town or city filed with such petition. *As amended, Stats. 1887, 117.*

### 893. Act repealed.

SEC. 17. An act entitled "An act providing for the government of the

towns and cities of this state," approved February twenty-first, eighteen hundred and seventy-three [p. 66], and all other acts and parts of acts in conflict with the provisions of this act, are hereby repealed (*provided*, that any town which has availed itself of the provisions of this act entitled "An act to provide for the government of unincorporated towns in this state," approved March eighth, eighteen hundred and seventy-nine, and elects to remain under the provisions thereof, may continue its government thereunder, and the provisions of said act, in respect to such town, shall remain in full force).

Act of March 8, 1879, 103, repealed, Stats. 1887, 51.

NOTE—Sections of acts following, 894-999, relate to town government.

*An Act authorizing boards of county commissioners to transfer surplus money in the several funds of unincorporated towns from one to the other.*

Approved February 10, 1881, 34

#### 894. Commissioners to transfer moneys.

SECTION 1. Whenever there shall be any surplus money in either the fire department, town, or police department funds, now or hereafter created by virtue of the laws of this state, in any unincorporated town, the board of county commissioners of the respective counties may, and they are hereby authorized and empowered, to transfer such surplus, or any portion thereof, from any one to either of said funds, in the manner and proportion best calculated, in the judgment of said commissioners, to subserve and protect the credit of the other.

*An Act to create a fire department fund.*

Approved March 9, 1865, 328

895. Town or city tax for.	899. Order of commissioners.
896. Prescribe boundaries for tax.	900. How fund used.
897. Manner of assessing and collecting tax.	901. Warrant not drawn, when.
898. Fire department fund.	902. Intended to provide.

#### 895. Town or city tax for.

SECTION 1. The county commissioners of the various counties of the State of Nevada are hereby empowered to levy and collect a tax of not exceeding one per cent, upon the assessed value of property within any unincorporated town for the benefit of the fire department in such town. *As amended, Stats. 1881, 110; 1911, 34.*

#### 896. Prescribe boundaries for tax.

SEC. 2. The county commissioners shall prescribe the boundaries within which such tax shall be collected; *provided*, that such boundaries shall not extend beyond the limits of such unincorporated town, village, or city.

#### 897. Manner of assessing and collecting tax.

SEC. 3. Said tax shall be assessed in the same manner and subject to the provisions of the general laws for the assessment and collection of taxes, and collected at the same time and by the same officers who assess and collect the state and county taxes, and shall be paid over to the county treasurer.

#### 898. Fire department fund.

SEC. 4. The county treasurer shall keep said moneys in a separate fund, to be denominated the fire department fund.

#### 899. Order of commissioners.

SEC. 5. No money shall be paid out of the fire department fund, except by order of the county commissioners.

### 900. How fund used.

SEC. 6. The county commissioners shall use the fire department fund to aid in sustaining the fire companies within the boundaries of the town, as prescribed by the county commissioners.

### 901. Warrant not drawn, when.

SEC. 7. No debt is authorized by this act to be made; and any warrant drawn on the fire department fund, when there is not sufficient money in the treasury to pay the whole amount of said warrant, shall be void.

### 902. Intended to provide.

SEC. 8. This act is intended to provide for the payment of such liabilities provided for by this act as may accrue after its passage, and may be audited and allowed by the county commissioners, and incurred in maintaining fire companies in any unincorporated town, city, or village desiring to avail itself of the benefits of this law, and not for the payment of any liabilities accruing before the passage of this act.

Act in relation to fire wardens, secs. 903-907.

## *An Act to provide fire wardens in unincorporated cities and villages.*

Approved March 1, 1875, 109

903. Sheriff to appoint policemen.

904. Duty of fire warden.

905. Failure to repair defective fixtures.

906. Failure to remove dangerous material—  
Misdemeanor.

907. Fee of warden.

### 903. Sheriff to appoint policemen.

SECTION 1. It shall be the duty of the sheriff of any county in the State of Nevada to appoint one or more policemen for any city, town or village which is unincorporated, when requested to do so, as provided by an act entitled "An act to provide policemen in unincorporated cities, towns and villages," approved March eleventh, eighteen hundred and sixty-five. The policemen so appointed shall be ex officio fire wardens of the unincorporated cities, towns, or villages for which they are acting as policemen.

### 904. Duty of fire wardens.

SEC. 2. It shall be the duty of the said fire wardens to go, in the day time, and examine all houses, buildings, or superstructures within the city, town, or village where they are acting as said fire wardens and policemen, and ascertain from personal examination, the condition of all the chimneys, stovepipes, stoves, flues, ranges, grates, furnaces, or other articles, or anything used in said house, building, or superstructure, in which to hold fire or to conduct the smoke from any fire; and when any of said articles, or the fixtures thereto are found to be so defective, in make or material, or so situated as to endanger any of the property of said city, town, or village, or the property of any of the inhabitants thereof, to loss from fire by or on account of any of said defects, then the said fire wardens shall, in writing, notify the owner or occupant of said house, building, or superstructure, where such defective chimney, flue, or stovepipe, or other article, is situated, to repair the same, so as to prevent danger from fire to the property in said city, town or village; and said fire wardens shall also direct the manner in which said repairs shall be made; said fire wardens shall also, under the direction of the chief engineer of the fire department, where there is one, and where there is no chief engineer of a fire department in a city, town, or village, then under the direction of the sheriff, shall examine streets, alleys, out-lots, and the surrounding of houses and buildings in such city, town or village, where he is acting as such fire warden, and direct the removal, by the owner of the premises, of any inflammable matter or material found thereon; and

generally to perform such duties as directed by the sheriff of the county or the chief of the fire department in the city, town, or village, to fully protect the property of such city, town, or village, from loss by conflagration.

**905. Failure to repair defective fixtures.**

SEC. 3. Any person who shall, after being notified by the fire wardens to repair any defective chimney, flue, furnace, range, oven, stovepipe, or fixture therewith connected, so as to prevent the same from endangering the property of said city, town, or village from destruction or loss by fire, who shall neglect or refuse, for a longer time than twenty-four hours after notice in writing to repair the same, to comply with the order and direction of said fire wardens, and shall fail or refuse to make the required repairs, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars and not to exceed five hundred dollars, together with the costs of prosecution in the case.

**906. Failure to remove dangerous material, misdemeanor.**

SEC. 4. When the said fire wardens shall order the removal of any dangerous or inflammable material from the premises of any person, a failure to comply or remove the same upon the part of the owner, occupant, or agent of the premises where said dangerous or inflammable material is situated, for the period of forty-eight hours after notice in writing from said fire warden to remove the same from the limits of the city, town, or village, so as to prevent danger therefrom, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than one hundred dollars, together with the costs of prosecution, and shall also be directed to remove said dangerous or inflammable article or articles, or that the same shall be removed by the said fire warden at the expense of said defendant, in case the defendant neglects to remove the same for one day after being notified by the justice of the peace or other officer so to do.

**907. Fee of warden.**

SEC. 5. The fire warden shall be allowed a fee of five dollars in each conviction, in addition to other costs, to be collected from defendant.

*An Act to provide policemen in unincorporated cities, towns, and villages.*

Approved March 11, 1865, 396

908. Tax authorized.

909. Boundaries prescribed.

910. Tax assessed and collected.

911. Police department fund.

912. Restriction.

913. Use of police fund.

914. Warrant void, when.

915. Intention of act.

916. Policemen, how appointed—Powers.

917. Majority of electors to petition.

918. Duty of commissioners.

**908. Tax authorized.**

SECTION 1. The board of county commissioners of the various counties of the State of Nevada are hereby empowered to levy and collect a tax of not exceeding one-half of one per cent upon the assessed value of property within any unincorporated city, town, or village, for the benefit of the police department of such city, town or village. *As amended, Stats. 1907, 97.*

**909. Boundaries prescribed.**

SEC. 2. The board of county commissioners shall prescribe the boundaries within which such tax shall be collected; *provided*, that such boundaries shall not extend beyond the limits of such city, town, or village.

**910. Tax assessed and collected.**

SEC. 3. Said tax shall be assessed and collected at the same time, and by the same officers, who assess and collect the state and county taxes, and under the same provisions of law, and shall be paid over to the county treasurer.

**911. Police department fund.**

SEC. 4. The county treasurer shall keep said moneys in a separate fund, to be denominated the "police department fund."

**912. Restriction.**

SEC. 5. No money shall be paid out of the police department fund, except by order of the county commissioners.

**913. Use of police fund.**

SEC. 6. The board of county commissioners shall have power to use the police department fund in paying the expenses of such police department within the boundaries of such city, town, or village, as prescribed by the said commissioners.

**914. Warrant void, when.**

SEC. 7. Any warrant drawn on the police department fund, when there is not sufficient money in the treasury to pay the whole amount of such warrant, shall be void.

**915. Intention of act.**

SEC. 8. This act is intended to provide for the payment of such liabilities provided for by this act as may accrue after its passage, and which may be audited and allowed by the board of county commissioners, and incurred in maintaining a police department in any unincorporated city, town, or village, desiring to avail itself of the benefits of this act, and not for the payment of any liabilities accruing before the passage of this act.

**916. Policemen, how appointed—Powers.**

SEC. 9. The board of county commissioners of any county are hereby empowered and required to appoint policemen, not exceeding two in number, in any unincorporated city, town, or village, and to fix their compensation, not exceeding one hundred and fifty dollars per month; and said board of county commissioners may, at any time, remove such policemen and appoint others in their place, whenever they shall deem it necessary for the public good. Such policemen shall serve within the limits of such unincorporated cities, towns and villages; and said board of county commissioners shall have power to appoint such other special policemen as, in their judgment, the public safety may require, whose compensation shall not exceed four (\$4) dollars per day, or per night, as the case may be, and who shall continue to serve only during the pleasure of said board of county commissioners. Such policemen and special policemen shall, within the limits of such unincorporated cities, towns and villages, be invested with all the powers of making arrests which are now exercised, or which may be hereafter exercised by the peace officers according to the laws of this state, and within the limits of any unincorporated cities, towns and villages, as aforesaid; and any such policeman or peace officer may, on any day, and without a warrant, and at any time of the day or night, arrest a person or persons. *As amended, Stats. 1907, 97.*

**917. Majority of electors to petition.**

SEC. 10. The provisions of this act shall not be enforced, or have effect, in any city, town or village, within this state unless a majority of the property holders of such city, town or village aforesaid, shall petition to the board of county commissioners of the county wherein such city, town, or village is situated, setting forth the following facts:

1. That said petition contains the names of the majority of the property holders of such city, town or village, as the case may be.

2. That they request the appointment of such policemen and the levying of a tax of one-half of one per cent as a compensation therefor as herein provided. *As amended, Stats. 1907, 98.*

#### 918. Duty of commissioners.

SEC. 11. Upon the presentation of a petition, in compliance with the provisions of section 10 of this act, it shall be the duty of the board of county commissioners, in which county such city, town, or village is situated, to levy said taxes aforesaid, and to make the appointment of one or more policemen, in accordance with the request of such petition. *As amended, Stats. 1907, 98.*

*An Act to provide for abating nuisances in unincorporated towns in the State of Nevada.*

Approved March 17, 1905, 207

#### 919. Definition.

SECTION 1. For the purposes of this act, nuisances in any unincorporated town in this state shall be deemed to consist of permitting filth-heaps, garbages, unprotected sewage or drainage pipes or boxes, cesspools, obstructions to the safe and convenient passage of vehicles and pedestrians through and over the public highways, streets and alleys and other such nuisances as may be named by the state board of health, or county board of health, to remain unabated after due notice to abate or remove same as required by the provisions of this act.

#### 920. Officers to abate—To post notice—Proviso.

SEC. 2. Upon the complaint of any resident in any unincorporated town in this state to the sheriff or constable in which the unincorporated town is situated that a nuisance exists in said unincorporated town, or from the personal observation and knowledge of the sheriff or constable that a nuisance exists in any unincorporated town of the nature mentioned in section 1 of this act, the said sheriff or constable shall notify the property owner or occupants of the premises causing or permitting the nuisance to exist that unless said nuisance is abated or removed within ten days after service of notice, the said sheriff or constable will abate or remove, or cause to be abated or removed, at the expense of the owner of the property, the nuisance complained of or found to exist. Notice to abate or remove any nuisance shall be served upon the owner or occupants of the premises, or agent of the owner of the property or premises responsible for the unabated nuisance. If the owner of the property is unknown or absent with no known representative or agent upon whom notice can be served, then the sheriff or constable shall post a written or printed notice upon the property premises, setting forth that unless the nuisance is abated or removed within ten days, the said sheriff or constable will abate or remove, or cause to be abated or removed, at the expense of the owner and property, the nuisance complained of and found to exist; *provided*, that in carrying out the provisions of this act, no charge, debt or claim against any individual owner or any one piece of real property shall exceed the sum of fifty dollars.

#### 921. Expense claim against property.

SEC. 3. Any unpaid sum of money against the property or owner accrued in abating or removing nuisances contemplated by this act, shall be a claim against the property and may be recovered in an action at law in any court of competent jurisdiction in the county in which the unincorporated town is situated. The amount recovered to be disbursed in paying the expenses of abating or removing the nuisance and court expenses.

*An Act to provide for the improvement of streets and alleys in the unincorporated towns and villages in the State of Nevada.*

Approved March 10, 1865. 355

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| 922. Petition for improvement or repairs.  | 932. Duty of clerk regarding special tax—       |
| 923. Extent of petition.                   | Proviso.  |
| 924. Notice of improvement—Form of notice. | 933. Delinquent list.                           |
| 925. Hearing of objections.                | 934. List delivered to district attorney.       |
| 926. Proceedings upon granting prayer.     | 935. Provisions of revenue law made applicable. |
| 927. Contract in writing for improvement.  | 936. Moneys, how paid over.                     |
| 928. Bid accepted.                         | 937. Tax to be a lien.                          |
| 929. Special assessment roll.              | 938. Completion of contract.                    |
| 930. Tax levied.                           | 939. Clerk receive no fees.                     |
| 931. Notice of special taxes.              |   |

**922. Petition for improvement or repairs.**

SECTION 1. Whenever it is deemed necessary to make any improvements or repairs upon any street or alley, in any unincorporated village or town within this state, such improvements or repairs shall be made upon complying with the requirements hereinafter set forth, to wit: A petition shall be presented to the board of county commissioners of the county in which such village or town is situated, setting forth in said petition—first, the street or alley where such improvements or repairs are to be made; second, full and complete specifications as to the nature and extent of such improvements or repairs, with sufficient certainty so as to enable parties to make bids or proposals for the work.

**923. Extent of petition.**

SEC. 2. Said petition must be signed by at least two-thirds of the property owners, or their agents, owning or having legal control of property fronting or being situated on said street or alley.

**924. Notice of improvement—Form of notice.**

SEC. 3. Upon presentation of such petition, the clerk of the board shall file the same, and thereupon the board shall make an order, to be entered in the minutes of proceedings of said board, requiring the clerk of said board to give notice to all persons interested, to appear before said board on a day certain, which shall be ten days from the date of the notice, to show cause why the prayer of said petition should not be granted, which notice shall be published in some newspaper published in the county, if there be one; if not, then by posting the same in three public places on the street or alley, within the limits of the proposed improvements. The notice shall be substantially in the following form, to wit:

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_, a petition was presented to the board of county commissioners of \_\_\_\_\_ county, praying for the improvement of \_\_\_\_\_ street (or alley), in the town of \_\_\_\_\_, in the nature and extent as follows, to wit: (Here set forth the specifications, as contained in the petition.) All persons interested are hereby notified to be and appear before the board of county commissioners, on the \_\_\_ day of \_\_\_\_\_, at ten o'clock a. m. of that day, to show cause, if any they have, why the prayer of said petitioners should not be granted.

(Date.) Signed: \_\_\_\_\_,  
 Clerk of the Board of Commissioners, \_\_\_\_\_ County.

**925. Hearing of objections.**

SEC. 4. On the day, and at the time mentioned in said notice, the board shall meet and hear any objections which may be made to the making of the improvements or repairs mentioned in the said petition; parties objecting, or other persons, may be examined under oath. If, upon such hearing, the party or parties objecting do not own, represent, or have legal control of

more than one-third of the value of all the property fronting or situated upon the street or alley within the limits of the proposed improvements, then it shall be the duty of the board of county commissioners to grant the prayer of said petitioners, and further proceed as hereinafter provided.

#### 926. Proceedings upon granting prayer.

SEC. 5. If the board, by a majority vote, shall grant the prayer of said petition, they shall signify the same by an entry in their minutes to that effect. The board of county commissioners shall thereupon advertise in some newspaper published within the county, if there be one, if not, then by posting in three public places within the village or town, for bids or proposals to make such improvements or repairs; the bids or proposals shall be open for fifteen days from the date of the notice, and shall be directed to the board of county commissioners, and delivered to the clerk of said board. Upon the day succeeding the fifteenth day from the date of said advertisement, the board shall proceed to open the bids or proposals, and the person or persons offering to do the work for the smallest amount of money shall be declared the lowest bidder, and his or their bid shall be accepted in preference to all other bids; the board may reject any and all bids; *provided*, that no contract shall be let within thirty days after the order is made by the board; *and provided further*, that after said order is made, and specifications furnished for the work, any property owner may make such improvement, sidewalk, or grade, according to the order and specifications of the board of county commissioners, and such parties shall not be taxed for such improvements if the board of commissioners shall examine and accept said work.

#### 927. Contract in writing for improvement.

SEC. 6. Whenever any bid is accepted, the board shall make a contract, in writing, for the improvements and repairs, signed by the board of commissioners, and the party or parties whose bid or proposal is accepted.

#### 928. Bid accepted.

SEC. 7. If the party or parties whose bid is accepted shall fail to sign said contract within five days after such bid is accepted, or contract drawn, the board may accept the next lowest bidder, and make contract with him, as aforesaid.

#### 929. Special assessment roll.

SEC. 8. Within twenty days after the execution of the contract, the board shall, from the last assessment roll of the county, make out a list of the property within the limits of the proposed improvements on said street or alley, properly ruled into columns, in which columns shall be contained respectively, the name of the owner of the property, the description thereof, its value, the rate of tax, and the total amount of taxes; which list, when completed, shall be signed by the board, or a majority thereof, and, when filed with the clerk of said board, shall be known as the "Special assessment roll for street improvements."

#### 930. Tax levied.

SEC. 9. The board shall, within the time specified in section 8 of this act, levy a tax upon the assessed value of the property contained in the "special assessment roll," sufficient to pay the contract price for making the improvements, and all costs and charges incurred subsequent to the filing of the petition mentioned in section 1 of this act; the tax, when so levied, shall be entered by the clerk of said board in the minutes of proceedings of said board.

#### 931. Notice of special taxes.

SEC. 10. Upon the filing of the special assessment roll, the clerk of the board shall proceed to collect the taxes, and shall forthwith give notice, by

publication in one newspaper, if there be any published in his county, and if none be published, then by posting notices in three public and conspicuous places upon the street or alley where the improvements are being, or are to be made, that the special taxes for the improvement of ----- street, "or alley," are due and payable, and that if the same are not paid to the said clerk within thirty days from the date of said notice, the law in regard to their collection will be strictly enforced.

### 932. Duty of clerk regarding special tax—Proviso.

SEC. 11. Whenever the said tax is paid to the clerk aforesaid, he shall mark the word "paid," and the date of payment, in the assessment roll, opposite the name of the person, or description of the property liable for such taxes, and shall give a receipt therefor, specifying the amount of the assessment, the amount of the tax, and description of the property assessed, but no clerk of said board shall receive any taxes on real estate, for any portion less than the least subdivision entered on the special assessment roll; *provided, always*, that an owner of undivided real estate may pay the proportion of the taxes due on his interest therein.

### 933. Delinquent list.

SEC. 12. On the day succeeding the expiration of the thirty days mentioned in section 10 of this act, the clerk shall immediately ascertain the total amount of taxes then delinquent, and shall proceed to make out a list of all persons and property then owing taxes, verified by the oath of himself or deputy, which list shall be completed within ten days, and shall be known as the "delinquent list."

### 934. List delivered to district attorney.

SEC. 13. The clerk shall within three days after completing said delinquent list, deliver the same to the district or prosecuting attorney of the county, and the said district or prosecuting attorney is hereby authorized and directed, immediately after the expiration of ten days from the time when such delinquent list shall have been delivered to him, to commence suit in the name of the people of the county of -----, in the State of Nevada, against the person so delinquent, and against the real estate and improvements assessed, so delinquent, and against all owners and claimants to the same, known or unknown; such action may be commenced before any justice of the peace or court in the county having jurisdiction thereof, and such jurisdiction shall be determined solely by the amount of delinquent tax sued for, not regarding the location of the property as to the township or district, nor the residence of the person, as to town, township, county, or state.

### 935. Provisions of revenue law made applicable.

SEC. 14. The provisions of the revenue law then in force, for the collection of delinquent taxes for state and county purposes, from the commencement of suit to the final sale of property under execution, and the redemption thereof, inclusive, when not inconsistent with the provisions of this act, are hereby made applicable in all actions for the collection of delinquent taxes mentioned in this act, unless otherwise specially provided for in this act.

See secs. 3649-3677.

### 936. Moneys, how paid over.

SEC. 15. All money received or collected by the clerk and district or prosecuting attorney, for taxes mentioned in this act, shall be paid over as directed by the board of county commissioners, and subject to their entire control.

### 937. Tax to be a lien.

SEC. 16. Every tax levied under the provisions or authority of this act is hereby made a lien against the property assessed, which lien shall attach

from the date of the assessment, and shall not be satisfied or removed until the taxes are all paid, or the property has absolutely vested in a purchaser under a sale for taxes.

### 938. Completion of contract.

SEC. 17. Whenever the improvement or repairs shall have been completed in accordance with the provisions and terms of the contract heretofore mentioned, it shall be the duty of the board of commissioners to audit and allow the contract price, and order the same to be paid.

### 939. Clerk receives no fees.

SEC. 18. For collecting and receiving the taxes, the clerk of the board shall receive no fees or percentage whatever.

*An Act to enable the unincorporated cities and towns of the State of Nevada to acquire by construction, purchase or otherwise, sewerage systems, light systems, water systems, or combined water and light systems, or combined water, light and sewerage systems, and to issue bonds for the construction or purchase of the same, and to provide for the fixing and collections of rates for the service thereof and other matters relating thereto.*

Approved March 23, 1911, 348

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| 940. May acquire or construct public utility systems.     | 947. Further provisions for payment of bonds.              |
| 941. Amount of bonds limited.                             | 948. Disposition of money received—To go to certain funds. |
| 942. Special election for bonds.                          | 949. Act applies to unincorporated towns.                  |
| 943. Election, how conducted.                             | 950. Special election provided for.                        |
| 944. Fund for payment of bonds and interest.              | 951. In effect.  |
| 945. Constructed or purchased, how.                       | 952. Officers responsible.                                 |
| 946. When town is incorporated municipal board to govern. | 953. No compensation for services herein.                  |

### 940. May acquire or construct public utility systems.

SECTION 1. Full power and authority is hereby granted to the county commissioners of the several counties in this state acting with regard to the management of the affairs and business of any unincorporated town or city within their respective counties, subject to the provisions of this act, to acquire by construction, purchase or otherwise, sewerage systems, light systems, water systems, combined light and water systems, and combined light, water and sewerage systems, and all such other personal or real property as may be necessary for the installment, use and management thereof, and to issue bonds in payment therefor in the amount and manner herein set forth and prescribed.

### 941. Amount of bonds limited.

SEC. 2. The bonds herein provided for and hereby authorized to be issued of any such city or town shall not at any time exceed the sum or amount designated by the authority authorizing the issuance thereof, as in this act hereinafter provided; said bonds shall be of convenient denominations, not less than fifty dollars nor more than one thousand dollars, and shall bear interest at the rate of not more than six per cent per annum, interest on each bond to be payable annually, beginning on the third Monday of January on the second year after such bonds shall have been issued, and upon the same date in each succeeding year during the life of such bond. The bonds shall be numbered consecutively and have interest coupons attached in such manner that they can be removed upon the payment of the installments of interest without injury to the bonds. The bonds shall be signed by the chairman of the board of county commissioners, acting as a city or town board, and countersigned by the clerk of said board. The bonds shall be distinctly known as sewerage bonds, light bonds, water bonds, water and light bonds,

or water, light and sewerage bonds, as appropriate, and the name of the town or city issuing said bonds shall be inserted before the word as designating the character thereof.

#### 942. Special election for bonds.

SEC. 3. Before issuing said bonds, the board of county commissioners, acting as such city or town board, shall publish notice for at least three consecutive weeks in some daily newspaper, published in said city or town, calling for a special election by the legally qualified electors of such city or town, to determine whether such bonds shall issue. If there be no daily newspapers published in such city or town, the said notice shall be posted in at least three conspicuous places within the limits of such city or town for three consecutive weeks, and if there be in said town or city a weekly newspaper, or any other newspaper published in said city or town not being a daily newspaper, such notice shall also be published in each issue of said newspaper during the period prescribed herein for the posting of such notice. The notice shall state specifically the amount of the proposed bond issue, the rate of interest the bonds are to bear, time and manner of their payment, and that they are for the construction or purchase, as the case may be, of sewerage system, light system, water system, combined light and water system, or combined sewerage, light and water system, as the case may be.

#### 943. Election, how conducted.

SEC. 4. The board shall cause a sufficient number of ballots to be printed which shall bear the words "Sewerage bonds—Yes," "Sewerage bonds—No" or "Light bonds—Yes," "Light bonds—No" or "Water bonds—Yes," "Water bonds—No" or "Water and light bonds—Yes," "Water and light bonds—No" or "Sewerage, light and water bonds—Yes," "Sewerage, light and water bonds—No," as the case may require, printed thereon in parallel lines, one above the other. The voter will scratch out the word "yes" if opposed to the bonds, or the word "no" if in favor of their issue. The election shall be conducted and the votes canvassed, in all essential particulars as in other city and town elections. If a majority of all the votes cast are in favor of the issue of the bonds, the board of county commissioners, acting as such city or town board, shall proceed at once to issue them as rapidly as needed, in conformity with the provisions of this act. Said board of county commissioners are hereby authorized to sell such bonds or any part thereof as may be necessary, to be sold at not less than their par value; bonds hereby authorized to be issued and sold shall be redeemable in the order of their issuance annually thereafter, according to the time specified therein from the date of their issue respectively.

#### 944. Fund for payment of bonds and interest.

SEC. 5. To provide for the payment of the said bonds and the interest thereon, whenever the revenues from the sale of service hereinafter provided for shall be insufficient for that purpose, the board of county commissioners shall at the time of the regular tax levy for the state and county purposes, levy an additional tax upon all real and personal property within the limits of such town or city, sufficient in their judgment to pay the interest upon such bonds annually, as such interest shall become due, and to pay the principal of such bonds as the same shall mature, according to the time designated in such bonds as the maturity thereof respectively. Said taxes shall be assessed and collected the same as other taxes, paid to the county treasurer, and by him placed in a fund to be known as "----- Sewerage Fund," "Light Fund," "Water and Light Fund," or "Sewerage, Light and Water Fund," with the name of the city or town as the case may be, with the name of the city or town preceding the word designating the character of the bond. The principal upon said bonds shall

become due and the said bonds shall mature and be payable in \_\_\_\_\_ years from the date of the issuance thereof respectively.

**945. Constructed or purchased, how.**

**SEC. 6.** All sewerage systems, light systems, water systems, light and water systems, or sewerage, light and water systems, constructed, purchased or otherwise acquired under the provisions of this act, shall be so constructed, purchased or otherwise acquired under the supervision and control of the board of county commissioners, acting as such city or town board. The board of commissioners acting as such town or city board may purchase any sewerage system, light system, water system, water and light system, or sewerage, light and water system theretofore established, or in use, or they may purchase the franchises, rights, privileges and plants thereof from the owners thereof, corporate or private, and improve or extend the same. Or they may advertise for plans and specifications and bids for the construction of any or all of such systems hereby authorized to be acquired, as in cases of other public work.

**946. When town is incorporated municipal board to govern.**

**SEC. 7.** In all cases wherein such sewerage systems, light systems, water systems, water and light systems, or sewerage, light and water systems, are constructed, or acquired, under the provisions of this act in such unincorporated cities and towns, and such cities and towns are afterwards incorporated, the control and management of such systems shall at once be vested in the municipal governments of such cities and towns. In case such cities and towns shall be incorporated while the work of construction is in progress, the work shall nevertheless be carried on to completion by the board of county commissioners and when completed such system shall be turned over to the city or town government as soon as it shall have been organized and it shall have control and management thereof. In such case it shall then be the duty of such city or town government to provide for the payment of the principal and interest on said bonds, when the revenues from the service of such systems shall be insufficient therefor, by the levy and collection of taxes as herein provided. It shall be the duty of the county treasurer to have the custody of the sewerage, light, water, light and water, or sewerage, light and water funds and to turn such funds over to the city treasurer, immediately upon the qualification of the city treasurer, and the bonds, principal and interest shall then be paid by the city government in all respects as prescribed for their payment by the board of county commissioners acting as city or town boards, as herein provided, and whatever may be the designation of the board of control of such incorporated city or town, it shall succeed to all the powers and privileges heretofore conferred on the board of county commissioners by the provisions of this act.

**947. Further provisions for payment of bonds.**

**SEC. 8.** For the purpose of further providing for the payment of the principal and interest upon the bonds hereby authorized to be issued at the time and in the manner specified in this act and in such bonds respectively, the board of county commissioners, acting as a town or city board, and the successors of such commissioners, by which it is intended to mean any municipal government of such towns or cities, which may succeed to the control and management of the systems or any of the systems in this act to be acquired, shall have the power and it shall be their duty to fix the rates of service of the or any of the systems acquired under the provisions of this act, to the inhabitants of such towns or cities and to adopt ordinances regulating the manner and use by such inhabitants of the system or any of the systems so acquired, collect the rates so fixed in the manner prescribed by the law of the city for the collection of delinquent taxes or by proceeding in the nature

of a civil action, brought in the name of the county commissioners of the county wherein the cause of action arises and to enforce the collections of such rates from the delinquents in the manner provided by the code of civil procedure of this state.

#### 948. Disposition of moneys received, to go to certain funds.

SEC. 9. All moneys acquired by the sale of services herein provided for shall be paid to the county treasurer and by him assigned to a fund to be known as the "-----Contingent Light," "Contingent Water," "Contingent Sewerage," "Contingent Water and Light," or "Contingent Sewerage, Water and Light fund of-----town," inserting before the word "Contingent" the name of the town to which such fund is credited; the contingent expense necessary to the installment, management and control of any system acquired under the provisions of this act shall first be paid out of said fund; the surplus money remaining after the payment of such contingent expenses shall annually thereafter and at the first meeting of the board of commissioners in January of each year thereafter be assigned by the county commissioners to the city as a redemption fund for the payment of the bonds issued under the provisions of this act. No interest shall be paid on said bonds after their maturity.

#### 949. This act applies to unincorporated towns.

SEC. 10. The provisions of this act shall apply to any unincorporated city or town within this state, which is now or may hereafter be subject to the provisions of an act of the legislature entitled "An act providing for the government of cities and towns of this state," approved February 26, 1881, and all acts amendatory thereof or supplementary thereto.

Secs. 877-893

#### 950. Special election provided for.

SEC. 11. It is hereby made the duty of the county commissioners of the several counties of this state to call, hold and provide, in the manner required by law, for a special election as provided for in section 3 of this act, upon a petition signed by electors residing within the city and town, equal in number to at least twenty per cent of the entire vote cast at the last preceding election, held in the town or city in which said special election is to be held.

#### 951. In effect.

SEC. 12. This act shall take effect from and after its passage.

#### 952. Officers responsible.

SEC. 13. The county treasurer and the city treasurer, as the case may be, shall be responsible on his official bond for all funds which may come into his hands under the provisions of this act.

#### 953. No compensation for services herein.

SEC. 14. The county commissioners of the several counties of this state and the treasurers of such counties shall perform all the duties required of them under the provisions of this act, without further compensation than now required by law.

*An Act providing for the payment of a portion of the moneys collected for county licenses for the sale of liquors into the city treasury of incorporated cities within such county.*

Approved February 17, 1893, 25

#### 954. Apportionment of license in incorporated towns.

SECTION 1. In every county in this state which now has or may hereafter have a duly incorporated city government, it shall be the duty of the license

collector of said county to pay in the city treasury one-half of the amount of license moneys collected from any person or persons for disposing of any spirituous, malt or fermented liquors, or wines, in less quantities than one quart, within the corporate limits of said city.

*An Act authorizing owners of land to lay out and plat such land into lots, streets, alleys and public places, and providing for the approval and filing of maps or plats thereof.*

Approved March 13, 1905, 223

955. May plat lands.

956. Map to be made.

957. Map approved.

958. Dedication of streets.

959. Penalty for selling lots before recording plats.

960. Vacating plat.

961. Petition to vacate.

962. Hearing on petition ordered.

963. Vacating portion—Petition.

964. Hearing—Order.

965. Recording maps and plats.

966. Plats, how made.

### 955. May plat lands.

SECTION 1. *Owner May Plat Lands.* It shall be lawful for any owner or owners of any land, or any trustee or trustees selected by such owners, to lay out and plat such land into lots, streets, alleys, and public places.

### 956. Map to be made.

SEC. 2. *Map.* Whenever any lands are hereafter laid out and platted as mentioned in section 1, the owner or owners of the same or any trustee or trustees selected by such owner or owners, shall cause to be made out an accurate map or plat, particularly setting forth and describing:

1. All the parcels of ground so laid out and platted by their boundaries, course and extent, and whether they are intended for avenues, streets, lanes, alleys, commons, or other public uses, together with such as may be reserved for public purposes, and every map or plat of ground so laid out shall, if it covers forty or more acres of land, show one block for every quarter-section of land in the parcel of ground so mapped or platted, and the block so designated upon the map shall be forever devoted and dedicated to the uses of the public school system of the district in which it is located.

2. All lots intended for sale by numbers and their precise length and width. *As amended, Stats. 1909, 111.*

### 957. Map approved.

SEC. 3. *Approved by Legislative Authority of City.* Such map or plat shall be acknowledged by such owner or owners, or trustee, before some officer authorized by law to take the acknowledgment of conveyances of real estate, and certified by the surveyor making such plat, and, if the land is situated in any city or town, shall be approved by the legislative authority of the city or town in which such land is situated, or by some city or town officer for that purpose designated by resolution or ordinance of said legislative authority, and in the absence of such legislative authority, by the legislative authority of the county in which the town is situated; and if the land is situated outside of any city or town, shall be approved by the board of county commissioners of the county, or by some county officer for that purpose designated by resolution or ordinance of said board; and when so acknowledged, certified and approved, shall be filed and recorded in the office of the county recorder of the county in which the said lands so platted and laid out are situated.

### 958. Dedication of streets.

SEC. 4. *Dedication of Streets.* Such maps and plats when made, acknowledged, filed and recorded with the county recorder, shall be a dedication of all such avenues, streets, lanes, alleys, commons, or other public places

or blocks, and sufficient to vest the fee of such parcels of land as are therein expressed, named, or intended, for public uses for the inhabitants of such town and for the public for the uses therein named or intended.

#### 959. Penalty for selling lots before recording plats.

SEC. 5. *Selling Lots Before Recording Map—Penalty.* If any person shall sell or offer for sale any lot so platted according to said plat within any town site or addition before the map or plat thereof shall have been made out, approved, acknowledged, filed and recorded, as in this act provided, such person shall forfeit to the county in which said town site or addition is located, a sum not exceeding three hundred dollars for every lot which he shall sell. Such a forfeiture shall be recovered in the name of such county in an action brought by the district attorney or other prosecuting officer thereof.

#### 960. Vacating plat.

SEC. 6. *Vacating Plat.* Any owner or owners of land that has been laid out and platted as hereinbefore provided, may, upon application to the city council of the city wherein said land is situated, or to the board of county commissioners of any county wherein said land is contained, have such plat, or any portion thereof, or any street or alley therein contained, vacated, altered, or changed as hereinafter provided.

#### 961. Petition to vacate.

SEC. 7. *Petition.* If it is desired to vacate an entire plat, and the land is situated in any incorporated city, an application in writing signed by all of the owners of the land contained in said plat, and by the owners of land contiguous or adjacent to any street or alley in such plat, shall be made to the city council of the city wherein such land is situated, and in all other cases the application shall be made to the board of county commissioners wherein said land is contained.

#### 962. Hearing on petition ordered.

SEC. 8. *Hearing—Order.* The city council or the board of county commissioners shall, at its next regular meeting after the filing of such application, consider the same, and if the said council or said board be satisfied that neither the public or any person will be materially injured thereby, it shall order such plat to be vacated as prayed for in the petition, which order shall be recorded in the office of the recorder of the county wherein said land is situated.

#### 963. Vacating portion—Petition.

SEC. 9. *Vacating Portion of Plat—Petition.* If it is desired to vacate a portion only of any plat or a street or alley therein, application in writing may be made for that purpose to the city council of the city wherein said land is situated, and in all other cases to the board of county commissioners of the county wherein said land is contained, which petition shall be signed by all the owners of land in the plat of which a portion is to be vacated, and by the owners of land contiguous or adjacent to any street or alley in such plat, to vacate or alter which application is made.

#### 964. Hearing—Order.

SEC. 10. *Hearing—Order.* Upon the filing of such application, the city council or board of county commissioners, as the case may be, shall, at its next regular meeting proceed to hear and consider the same, and if the said council or board be satisfied that neither the public nor any person will be materially injured thereby, it shall order such portion of said plat or such street or alley to be vacated, altered or changed, as prayed for in the petition, which

order shall be duly recorded in the office of the recorder of the county wherein said land is situated.

### 965. Recording maps and plats.

SEC. 11. *Recording Maps and Plats.* It shall be unlawful for any recorder to record any map, plat, or subdivision of land, situated in any city or town, until the same shall have been approved by the legislative authority of the city or town in which such land may be situated, or by some city or town officer for that purpose to be designated by resolution or ordinance of said legislative authority, and, in the absence of said legislative authority, by the legislative authority of the county in which the town is situated, except the said map, plat, or subdivision be attached to or form a part of a conveyance and relate to the property or some part thereof embraced in said conveyance. And it shall be unlawful for any recorder to record any map, plat, or subdivision of land situated outside of any city or town until the same shall have been approved by the board of county commissioners of the county in which such land is situated, or by some county officer for that purpose designated by resolution or ordinance of said board, except that the said map, plat, or subdivision be attached to or form a part of a conveyance and relate to the property, or some part thereof, embraced in said conveyance. For each and every violation of this section by any recorder, his deputy, or employee, each recorder shall forfeit and pay to the county the sum of two hundred dollars, to be recovered in any court of competent jurisdiction.

### 966. Plats, how made.

SEC. 12. All maps and plats shall be made upon vellum or tracing cloth and no map or plat shall be accepted for filing and recording made upon ordinary paper or blue print.

### *An Act to provide for the disincorporating of cities and towns incorporated under the laws of the Territory of Nevada.*

Approved February 7, 1865, 132

967. Commissioners to have power to disincorporate—Liabilities.

968. No rights affected.

969. Trustees appointed.

970. Trustees to take oath.

971. To prosecute and defend suits.

972. To pay over and make settlement.

973. Annual revenue paid to board—Proviso.

974. Moneys, how apportioned.

### 967. Commissioners to have power to disincorporate—Liabilities.

SECTION 1. The board of commissioners of each county shall have the power to disincorporate any city or town which may have been incorporated under the laws of this state, or the Territory of Nevada, upon the petition of a majority of the legal voters residing within the corporate limits of such city or town; but no corporation shall be dissolved, by virtue of this act, unless it shall appear to the satisfaction of the board that notice has been given of the intended application for such dissolution of the corporation, by advertisement in a newspaper published in the city or town praying to be disincorporated; and in case no such newspaper be published in said city or town, then by written notice, posted in three of the most public places in said city or town, for at least thirty days prior to such application; nor until all the liabilities of such city or town have been paid or secured to the satisfaction of the board of county commissioners. *As amended, Stats. 1866, 95.*

### 968. No rights affected.

SEC. 2. No dissolution of any corporation under this act shall invalidate or affect any right, penalty, or forfeiture, accruing to such corporation, or invalidate or affect any contract entered into or imposed upon such corporation.

**969. Trustees appointed.**

SEC. 3. Whenever the board of commissioners shall dissolve any corporation, they may appoint three competent persons to act as trustees for the corporation so dissolved.

**970. Trustees to take oath.**

SEC. 4. The trustees, before entering upon the discharge of their duties, shall take and subscribe an oath before some judge or justice of the peace, that they will faithfully discharge the duties of their office, and shall, moreover, give bond, with sufficient sureties, to be approved by the board of commissioners, to the use of such disincorporated city or town, conditioned for the faithful discharge of the duties of their office.

**971. To prosecute and defend suits.**

SEC. 5. The trustees shall prosecute to final judgment, and defend all suits instituted by or against the corporation, collect all money due the same, liquidate all lawful demands against the same, and for that purpose shall sell and convey any property belonging to such corporation, or so much thereof as may be necessary, and generally to do all acts required to bring to a speedy close all of the affairs of the corporation, and they shall make a report of their proceedings to the board of county commissioners at each session of the board.

**972. To pay over and make settlement.**

SEC. 6. The trustees shall pay over to the board of commissioners, and the commissioners shall pay the same to the treasurer, from time to time, such money as may come into their hands; and when they shall have closed the affairs of the corporation, shall make a final settlement thereof to the board, and deliver up all books, records, papers, deeds, and all other effects belonging to the dissolved corporation. Such trustees shall receive for their services such compensation as the board shall deem reasonable.

**973. Annual revenue paid to board—Proviso.**

SEC. 7. If any city or town, disincorporated as aforesaid, have annual revenue accruing thereto, the same shall be paid to the board of commissioners by persons owing the same, and all moneys thus paid, as well as all moneys paid to the trustees, shall be held and disposed of by the board for the benefit of such city or town, and may be applied by the board to any specific object, upon the petition of a majority of the taxable inhabitants of said city or town; *provided, always*, that all of the just and lawful debts, dues, and demands, against said corporation, shall have been first paid.

**974. Moneys, how apportioned.**

SEC. 8. All moneys arising from the collection of taxes, fines, penalties, and forfeitures shall be appropriated by the board of county commissioners toward the carrying out of those objects which, by this act, are placed under their control and jurisdiction, and none others.

*An Act relating to the government of towns and cities, and limiting the tax rate thereof.*

Approved March 20, 1903, 215

975. Tax rate limited.

976. Excess tax void.

977. Unlawful to contract debt without funds.

978. Exception in emergency, method of procedure.

979. Emergency tax.

980. Floating a debt tax.

981. Time to contract floating debt limited.

982. Annual reports.

983. Examiner to report.

**975. Tax rate limited.**

SECTION 1. In all the towns and cities of this state the tax rate for the

year 1903 for town purposes, exclusive of the tax to pay the interest and maintain the sinking fund of the bonded indebtedness of such cities and towns, shall not exceed one dollar on the one hundred dollars of assessed valuation, and thereafter such tax rate shall be diminished annually at the rate of not less than five cents per annum on the one hundred dollars of assessed valuation until it reaches fifty cents on the one hundred dollars of assessed valuation, and thereafter the permanent limitation of the tax rate for such city or town purposes, exclusive of the tax to pay the interest and maintain the sinking funds aforesaid, shall be fifty cents on the one hundred dollars of assessed valuation.

#### 976. Excess tax void.

SEC. 2. Any tax levied in excess of the limitation herein imposed shall be void as to such excess, and any member of the governing board of such city or town voting therefor shall be removed from office in a suit to be instituted by the district attorney of said county upon the request of the attorney-general, when in the opinion of a majority of the state board of revenue it is deemed advisable.

#### 977. Unlawful to contract debt without funds.

SEC. 3. It shall not be lawful for the governing board of any town or city, or any member thereof, or any officer of such town or city, to authorize, allow or contract for any expenditure unless the money for the payment thereof is in the treasury and is specially set aside for such payment. Any member of such governing board, or any officer, violating the provisions of this section shall be removed from office in a suit to be instituted by the district attorney of said county upon the request of the attorney-general, when in the opinion of the majority of the state board of revenue it is deemed necessary.

#### 978. Exception in emergency. method of procedure.

SEC. 4. In case of great necessity or emergency the governing board of such town or city, by unanimous vote, by resolution reciting the character of such necessity or emergency, may authorize a temporary loan for the purpose of meeting such necessity or emergency, but such resolution shall not take effect until it has been approved by resolution adopted by the majority of the state board of revenue, and the resolution of the state board of revenue shall be recorded in the minutes of such city or town.

#### 979. Emergency tax.

SEC. 5. It shall be the duty of the governing board of such city or town, at the first tax levy following the creation of such emergency indebtedness, to levy an extra tax sufficient to pay the same, which tax shall be designated "Emergency Tax."

#### 980. Floating debt tax.

SEC. 6. The governing board of any town or city in the state which has a floating debt or scrip outstanding shall either levy a tax for the year 1903, in addition to the county tax above specified, for the payment of such scrip or floating indebtedness, or shall fund such floating debt in bonds providing for the payment of the principal and current interest at a rate not to exceed five per cent per annum in not more than ten equal annual installments. The tax levied for the payment of such floating debt shall be designated "Floating Debt Tax."

#### 981. Time to contract floating debt limited.

SEC. 7. After the fiscal year 1903 it shall be unlawful for the governing board of any town or city to contract any floating indebtedness or to contract any obligation whatever, except bonds authorized by law, unless the funds

are in the treasury for the payment of the same and are specifically set aside for the payment thereof. Any member of such governing board voting to incur any obligation, except the bonded indebtedness authorized by law, when there are not sufficient funds in the county treasury properly applicable thereto, shall be removed from office in a suit to be instituted by the district attorney of said county upon the request of the attorney-general acting under the instructions of the state board of revenue.

### 982. Annual reports.

SEC. 8. Annual reports shall be made to the controller of the state by the auditing officer of such city or town, from which a classified table as to the accounts of each city and town shall be made by said controller and published in his annual report. The state board of revenue shall prescribe the general form of such annual reports, and the items and details, which shall be given with a view to securing and publishing for comparison and criticism the transactions and doings of each county and town in the state.

### 983. Examiner to report.

SEC. 9. The state board of revenue is empowered to instruct its examiner, at such times as may be necessary to inspect the accounts and records of the cities and towns in this state, and he shall report any violation of this act to the state board of revenue. Any failure or refusal upon the part of any city or town official to furnish such examiner with the proper facilities for such inspection shall be punishable as a misdemeanor, and such official shall be removed from office in a suit to be instituted by the district attorney of said county upon the request of the attorney-general, acting under the instruction of the state board of revenue.

### *An Act to authorize the issuance of bonds by unincorporated cities and towns for the construction of sewerage systems.*

Approved March 22, 1909, 179

984. May issue bonds.

985. Amount limited—Denomination.

986. Special election to determine.

987. Ballots—Bonds issued, when.

988. Providing for redemption and interest.

989. Commissioners to supervise work.

990. In case of incorporation.

### 984. May issue bonds for sewerage systems.

SECTION 1. For the purpose of constructing sewerage systems within their respective limits, and waste mains therefrom, any unincorporated city or town within this state, which is being or may hereafter be governed under the provisions of an act of the legislature of this state entitled "An act providing for the government of towns and cities within this state," approved February 26, 1881, and acts amendatory thereof, are hereby authorized to issue bonds in the amount and manner hereinafter set forth and prescribed.

See secs. 877-893.

### 985. Amount limited—Denomination.

SEC. 2. Said bonds shall not in any such city or town at any time exceed the sum and amount of sixty thousand dollars (\$60,000); they shall be of convenient denominations, ranging from one hundred dollars (\$100) to one thousand dollars (\$1,000), and shall bear interest at the rate of not more than six (6) per cent per annum, the interest on each bond to be payable annually, beginning on the third Monday in January of the second year after such bond shall have been issued, and upon the same date in each succeeding year during the life of such bond. The bonds shall be numbered consecutively and have interest coupons attached in such manner that they can be removed upon payment of the installments of interest without injury to the bonds. The bonds shall be signed by the chairman of the board of county commis-

sioners, acting as a city or town board, and countersigned by the clerk of said board. The bonds shall be distinctively known as "----- Sewerage Bonds," the name of the city or town issuing them being inserted before the word "Sewerage."

#### 986. Special election to determine.

SEC. 3. Before issuing the said bonds the board of county commissioners, acting as such city or town board, shall publish a notice for at least three consecutive weeks in some daily newspaper published in said city or town, calling for a special election by the legally qualified electors of said city or town to determine whether such bonds shall issue. If there be no daily newspaper published in such city or town, the said notice shall be posted in at least three conspicuous places within the limits of such city or town, for the same length of time, and if there be a weekly newspaper published in such city or town, the said notice shall also be published in each issue of said weekly newspaper during the period of posting. The notice shall state specifically the amount of the proposed bond issue, the rate of interest the bonds are to bear, the time and manner of their payment, and that they are for the construction of a sewerage system.

#### 987. Ballots—Bonds issued, when.

SEC. 4. The board shall cause a sufficient number of ballots to be printed which shall bear the words "Sewerage Bonds—Yes," and "Sewerage Bonds—No," printed thereon in parallel lines, one above the other. The voter will scratch out the "Yes" if opposed to the bonds, or the "No" if in favor of their issue. The election shall be conducted and the votes canvassed, in all essential particulars as in other city and town elections. If a majority of all the votes cast are in favor of the issue of the bonds, the board of county commissioners, acting as such city or town board, shall proceed at once to issue them as rapidly as needed, in conformity with the provisions of this act. Said bonds shall be sold at not less than their par value, and shall be redeemable, in the order of their issue, not less than three years or more than fifteen (15) years from the date of their issue respectively.

#### 988. Providing for redemption and interest.

SEC. 5. To provide for the payment of the said bonds and the interest thereon the board of county commissioners shall, at the time of the regular tax levy for state and county purposes, levy an additional tax upon all property real and personal, within the limits of such city or town, sufficient, in their judgment, to pay the interest upon such bonds annually as it becomes due, and the principal at such a rate as will redeem all of the bonds within fifteen (15) years from the date of issue. In each case the fifteen (15) years shall begin to run from the date of the particular bond to be paid. The said taxes shall be assessed and collected the same as other taxes, paid to the county treasurer, and by him placed in a fund to be known as the "----- Sewerage Fund" with the name of the city or town preceding the word "Sewerage."

#### 989. Commissioners to supervise work.

SEC. 6. All sewerage systems constructed under the provisions of this act shall be so constructed under the supervision and control of the board of county commissioners, acting as such city or town board. The materials may be purchased and the work caused to be done directly by the board, or it may advertise for plans and specifications, and bids for construction as in cases of other public works.

#### 990. In case of incorporation.

SEC. 7. In all cases wherein such sewerage systems are constructed in unincorporated cities and towns, and such cities and towns are afterwards

incorporated, the control and management of such systems shall at once be vested in the municipal governments of such cities and towns. If such cities or towns shall be incorporated while the work of construction is in progress, the work shall, nevertheless, be carried on to completion by the board of county commissioners, and when completed the system shall be turned over to the city or town government as it shall have been organized. It shall then be the duty of such city or town government to provide for the payment of the principal and interest upon said bonds, by the levy and collection of taxes as prescribed by law. It shall be the duty of the county treasurer having custody of the sewerage funds to turn such funds over to the city treasurer immediately upon the qualification of the city treasurer, and the bonds, principal and interest shall then be paid by the city government in all respects as prescribed for their payment by the boards of county commissioners, acting as city or town boards.

*An Act to authorize municipalities to issue bonds for the purpose of paying the cost of municipal improvements for which special assessments are levied.*

Approved March 13, 1909, 96

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| 991. Street improvement bonds — Interest limited—Proviso. | 995. Bonds, how signed.                      |
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**991. Street improvement bonds—Interest limited—Proviso.**

SECTION 1. Any incorporated town or city in the State of Nevada, whether incorporated under a general or special act, may, by ordinance, cause to be issued bonds of the town or city to be called "Street Improvement Bonds," payable in annual periods of one to ten years from date, and to bear interest payable annually, not exceeding the rate of seven per cent per annum; and said bonds shall not be sold for less than their par value. Such bonds shall be issued for the purpose of paying the cost of paving, macadamizing or otherwise improving the streets and alleys in said town or city, exclusive of the intersections of streets and spaces opposite alleys therein; *provided*, that the entire cost of paving or macadamizing any such streets, avenues, or alleys, properly chargeable to any blocks, lots of lands, or parts thereof, within the district assessed, may be paid by the owner of such lots of land within fifty days from the levy of such special taxes, and thereupon such lots or lands shall be exempt from any lien or charge therefor.

**992. Issued under special tax.**

SEC. 2. The said bonds shall be issued only when any said city or town has authorized and levied a special tax and assessment to pay for said street improvements, and then only for the amount of said tax or assessment remaining unpaid by the said owners at the end of the said fifty days.

**993. Regulations to be pursued.**

SEC. 3. When the council of any such city or town shall determine to make any of the public improvements above mentioned it shall, in the ordinance declaring such determination, also declare whether or not bonds shall be issued to pay for the cost of such improvement, as provided in this act; and in case it is decided to issue bonds as herein provided the assessments to pay for the cost of such improvement shall be made as provided in the charter of said city or town or act under which the same is incorporated. If said assessments are not all paid by the proper owners against whom they are levied, at the end of fifty days from the time they become a lien, the said council shall pass an ordinance directing the issuance of the bonds herein

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provided, fixing their form, declaring the amount remaining unpaid, denominations and interest, the lots or parcels of land against which the said assessments remaining unpaid in whole or in part are a lien and the names of the owners thereof, where known, with the amounts due from each, and directing that the said unpaid assessments or portions thereof shall thereafter be paid as follows: One-tenth one year from the expiration of said fifty days, and one-tenth at the end of each year thereafter until the same is paid in full. Each of the said installments shall bear interest from the end of the said fifty days until due at the same rate of interest as that provided for in the bonds, payable annually, which rate shall be fixed by the ordinance. Any delinquent installment shall bear interest at the rate of ten per cent per annum until paid. Such installments and the interest thereon shall be and remain a lien on the said lots and parcels until paid and shall be collected in the same manner as other delinquent special assessments.

#### 994. Sinking fund.

SEC. 4. Said installments and interest, when collected, shall constitute a sinking fund for the payment of said bonds and interest thereon, and said fund shall not be used for any other purpose.

#### 995. Bonds, how signed.

SEC. 5. The said bonds shall be signed by the mayor or other chief executive officer, and by the clerk of any such city or town, and countersigned by the city assessor.

#### 996. Assessments paid in installments, when.

SEC. 6. In any case where a special assessment is now, or may hereafter be, levied by any city or town to pay for any street improvement, and said assessment has not been paid in full, and the issuance of bonds to pay for such improvement has not theretofore been authorized by law, or by the council, the council may, by ordinance, upon the written petition of one or more property owners, whose unpaid assessments shall aggregate at least one thousand dollars, provide that the assessments, or portions thereof, of said petitioners then unpaid shall be paid in installments in the manner set forth in section 3 of this act, and direct the issuance of bonds to pay for the same, as provided in this act. Such ordinance shall fix the form of the bonds, the denominations and interest; and such bonds shall be payable in any period not exceeding ten years, and the interest shall not exceed seven per cent per annum.

#### 997. Proceedings regular.

SEC. 7. The issuance of the bonds, herein provided for, shall be conclusive evidence of the regularity of all proceedings up to the issuance of such bonds.

#### 998. May be paid from general fund, when.

SEC. 8. In event that the fund created by special assessment shall be insufficient to pay the said bonds as they become due, the deficiency shall be paid by the city out of the general fund, and each of the bonds issued under this act shall contain a provision of this effect.

*An Act to exempt incorporated cities and towns from the payment of costs in certain cases.*

Approved March 1, 1866. 165

#### 999. Costs not to be charged against city or town.

SECTION 1. In any suit commenced, or hereafter to be commenced, in any incorporated city or town of this state for the collection of delinquent taxes,

no costs shall, in any event, be charged against or collected from such city or town.

Powers of taxation, assessment, borrowing money, contracting debts, and loaning credit, except for procuring supplies of water, to be restricted, see sec. 345.

Not become stockholder in or loan credit to any corporation except railroads, see sec. 347.

May be formed by special act, see sec. 338.

Legislature to provide for organization of by general laws, see sec. 345.

To support its own officers, see sec. 405.

## COMMISSIONERS OF DEEDS

*An Act empowering the governor to appoint commissioners of deeds, and to define their duties.*

Approved February 4, 1865, 130

1000. Governor may appoint—Term of office. 1003. Copy of act transmitted to appointees.  
1001. Legality same as notaries. 1004. Fee, and application of.  
1002. Oath of office.

**1000. Governor may appoint—Term of office.**

SECTION 1. The governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the territories and districts thereof, and in each foreign state, kingdom, province, territory and colony, one or more commissioners of deeds, to continue in office four years, unless sooner removed by him. Every commissioner of deeds so appointed, shall have power to administer oaths, and to take and certify depositions and affidavits to be used in this state, and also to take the acknowledgment or proof of any deed or other instrument, to be recorded in this state, and duly certify the same under his hand and official seal.

Form and proof of execution of instrument, 1020-1037.

Record to keep, 1098, 1099.

Cited, *Sargent v. Collins*, 3 Nev. 380.

**1001. Legality same as notaries.**

SEC. 2. All oaths administered by said commissioners, all depositions and affidavits taken by them, and all acknowledgments and proofs of deeds, and other instruments aforesaid, taken and certified by them and under their seals as such commissioners, shall have the same force and effect in law, for all purposes whatever, as if done and certified by any notary public or other officer, in and for this state, who is now or hereafter may be authorized by law to perform such act.

**1002. Oath of office.**

SEC. 3. Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath that he will faithfully perform and discharge all the duties of his office, which oath shall be filed in the office of the secretary of state of the State of Nevada, within six months after being taken and subscribed.

[Sec. 4 is repealed, Stats. 1865, 152.]

**1003. Copy of act transmitted to appointees.**

SEC. 5. It is hereby made the duty of the secretary of state to transmit a copy of this act, with the commission, to each person appointed under the provisions thereof.

**1004. Fee, and application of.**

SEC. 6. Before any commission shall be delivered to any appointee under the provisions of this act, a fee of ten dollars on such commission, exclusive of other legal charges thereon, shall be paid therefor to the said secretary of state, and shall be accounted for by him and paid into the "library fund" of this state, to be appropriated to the purchase of books therefor, in such manner as is or may be provided by law.

## COMPILATION OF LAWS

*An Act to provide for revising, compiling, annotating and publishing the laws of the State of Nevada, and the compiling, annotating and publishing therewith certain laws of the United States of particular interest to the State of Nevada, and other matters properly connected therewith, and making appropriation therefor.*

Became a law March 31, 1909, 330

1005. Supreme court to compile.

1006. What compilation to include.

1007. Briefly annotated.

1008. Index.

1009. Method of revision.

1010. To be completed, when.

1011. Assistant employed.

1012. Compensation for services.

1013. State officers to afford aid.

1014. Duties of state printer.

1015. Distribution of bound copies.

1016. Compilation legal evidence of law.

**1005. Supreme court to compile.**

SECTION 1. The justices of the supreme court of the State of Nevada shall constitute a commission to revise, compile, annotate and index the laws of the State of Nevada, and certain laws of the United States hereinafter designated.

**1006. What compilation to include.**

SEC. 2. The said justices shall on or before the first day of January, 1911, prepare a compilation and annotation of all the laws of the State of Nevada as the same shall exist and be in force at said time, including the state constitution and also the constitution of the United States, and the laws of Congress relating to naturalization, grants of land by the United States to the State of Nevada, the location and patenting of mineral lands of the United States, the election of United States senators, the authentication of records, and such other acts of Congress as said commission may deem of direct interest to the State of Nevada and advantageous to publish in such compilation.

**1007. Briefly annotated.**

SEC. 3. Each section of said compilation shall have such marginal notes or headings as shall briefly indicate the subject-matter of the section, and shall be followed by brief annotations or references to all the decisions of the supreme court of this state, construing or having a bearing upon such section, and also a reference to such other decisions, statutes or publications as such justices shall deem advantageous. The compilation shall also contain a full and comprehensive table of contents.

**1008. Index.**

SEC. 4. They shall also prepare a thorough and complete index of said compilation, which index shall fully cover the subject-matter treated in each section, together with such cross references as will make the same thoroughly comprehensive.

### 1009. Method of revision.

SEC. 5. In the preparation of such compilation, the said justices of the supreme court shall, so far as practicable, make a revision of the laws of this state as follows:

All acts that are manifestly unconstitutional shall not be included in such compilation, but in cases where they deem an act unconstitutional they shall call the attention of the next session of the legislature to the same and make recommendations in reference thereto; they shall also suggest to the next session of the legislature such amendments or additions to the existing law as in their judgment will be an improvement to the same; they shall, so far as they shall deem expedient, provide for including in the fewest number of acts all laws in reference to the same general subject-matter, so that when the compilation is finally published as hereinafter provided for, the laws of this state, so far as possible, shall be harmonious, and the several statutes relating to any particular subject shall, so far as practicable, be embodied in one act. Such comprehensive acts as now exist, like the civil practice act, the criminal practice act, and the like, shall be carefully examined and amendments, or additions thereto, suggested to the next session of the legislature. The suggestions of amendments or additions to the existing law, as said justices shall deem advisable, shall be in the form of prepared bills to be submitted for the consideration of the next session of the legislature.

### 1010. To be completed, when.

SEC. 6. On or before the first day of September, 1911, the entire work of compiling, annotating and indexing the laws of this state, as they shall exist and be in force on the first day of January, 1912, and subsequent to the adjournment of the twenty-fifth session of the legislature, shall be completed and certified to by the said justices of the supreme court as such commissioners and deposited with the secretary of state; *provided*, that the justices of the supreme court, as such commissioners, may approve and certify such work in parts so as to enable the superintendent of state printing to commence the printing thereof at the earliest practicable date. *As amended, Stats. 1911, 139.*

### 1011. Assistant employed.

SEC. 7. The said justices are authorized to employ an assistant, who shall be skilled in the work of compiling statutes, and who shall receive a compensation while so employed, of not exceeding three hundred dollars per month.

### 1012. Compensation for services.

SEC. 8. The said justices shall each receive for the services rendered as herein provided the following compensation: Upon the first days of July, October, January, and April the said justices shall each receive a quarterly salary of five hundred dollars, the last quarterly payment of five hundred dollars each to be paid on the first day of January, 1911, and thereafter no further payments on account of such services shall be paid to said justices. The state controller is hereby authorized and directed to draw his warrants in favor of said justices respectively for the several quarterly payments herein provided for, and the state treasurer shall pay the same. The said state controller and state treasurer shall respectively draw and pay warrants in favor of such assistant as is herein authorized to be employed by said justices.

### 1013. State officers to afford aid.

SEC. 9. The secretary of state and all other state officers shall afford to said justices all reasonable information, aid, means and facilities for the purpose of enabling them to prosecute and complete the work aforesaid with all reasonable despatch.

**1014. Duties of state printer.**

SEC. 10. Upon receiving such compilation, the state printer shall at once, in as expeditious and economical manner as practical, proceed to print, in good style, and to the approval of said justices, upon good book paper, three thousand copies of said compilation, and the secretary of state, subject to the approval of said justices shall have two thousand copies thereof bound in a good and workmanlike manner in law sheep or buckram, in either one or two volumes as the said commission may direct.

**1015. Distribution of bound copies.**

SEC. 11. The secretary of state shall deliver one bound copy to each of the persons, libraries, and associations now entitled to receive the laws of the State of Nevada, as published biennially, said copies to be delivered subject to the rules and restrictions now governing the distribution of the statutes of this state. He shall deliver ten copies to the state librarian for the use of the state, and the remainder of the said bound volumes he shall sell as they may be called for at not less than eight dollars per volume, if bound in one volume, or at not less than twelve dollars per set, if bound in two volumes, and he shall pay all moneys received from such sales into the state treasury. The remaining unbound sheets shall be bound in lots of not less than one hundred copies as they may be required.

**1016. Compilation legal evidence of law.**

SEC. 12. Upon the delivery of said compilation, ready for printing, to the secretary of state, he shall duly certify the same under the great seal of the State of Nevada, and deliver the same to the state printer for printing and when printed and distributed, the said compilation, as printed, shall be legal evidence of the law therein contained in all the courts of this state, but shall not preclude reference to, or control in case of any difference the force or effect of any original act as passed by the legislature of this state.

## CONVEYANCES

Act concerning conveyances, sections 1017-1092.

Supplementary act concerning conveyances, sections 1093-1094.

Omission of word "seal," section 1095.

Conveyances executed without the state, sections 1096-1097.

Preserving evidence of officials taking acknowledgments, sections 1098-1099.

Conveyance of mining claims, sections 1100-1102.

Conveyance of mining locations by minors, sections 1103-1104.

### *An Act concerning conveyances.*

Approved November 5, 1861, 11

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## 1017. Conveyance by deed.

**SECTION 1.** Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded, as hereinafter directed.

A deed of conveyance, executed and delivered, carries the absolute title to the grantee.

When the purchaser of real property agrees with the vendor to pay certain incumbrances upon it, as a part of the consideration of the conveyance, the person holding such incumbrance, or the person to whom such payment is to be made, may maintain an action upon such promise. *Ruhling v. Hackett*, 1 Nev. 360.

Parties usually describe what is intended to be conveyed in the granting clause of the deed. Courts should not interpret deeds so as to carry more than is mentioned in that clause, unless the intent to carry more is clearly shown in other portions of the deed. *McCurdy v. Alpha M. Co.*, 3 Nev. 27.

Cited, *Sargent v. Collins*, 3 Nev. 285.

If the recitals of a sheriff's deed are sufficient to show he is acting in his official character and by due authority of law, it becomes a good deed on being signed and delivered, without reference to acknowledgment. *In re Smith*, 4 Nev. 254 (97 A. D. 531).

Act cited generally. *Sargent v. Collins*, 3 Nev. 285.

A deed made prior to enactment of this act, but acknowledged as provided therein, is admissible in evidence. *Sharon v. Davidson*, 4 Nev. 416, 420.

Cited, *Ford v. Hoover*, 5 Nev. 146.

A person entering upon a tract of land

under a deed with definite boundaries, is presumed by the mere act of entry so made to intend to claim the entire tract. *Sharon v. Minnock*, 6 Nev. 377.

A deed absolute on its face may be shown to be a mortgage. Parol evidence for such purpose is not evidence contradicting the instrument, but evidence to create an equity superior to the deed. The proof should be clear, satisfactory and convincing. *Bingham v. Thompson*, 4 Nev. 224; *Saunders v. Stewart*, 7 Nev. 200; *Pierce v. Traver*, 13 Nev. 526.

Rules of construction, to determine what was conveyed by certain deeds, applied. *Fogus v. Ward*, 10 Nev. 209; *Langworthy v. Coleman*, 18 Nev. 440.

A conveyance of land to Thomas Barnett & Bros. vests the legal title in Thomas Barnett alone, and a conveyance from him will give to his grantees a good and valid title. *Barnett v. Lachman*, 12 Nev. 361.

It is essential that the certificate should show the fact of the acknowledgment and the identity of the person.

The law does not require that the exact form of the certificate shall be followed. A substantial compliance therewith is sufficient.

Omission of word "be" in acknowledgment held to be a clerical error that should be disregarded. *Johnson v. Badger M. Co.*, 13 Nev. 351, 353.

Description of tract of land by name held sufficient. *Paroni v. Ellison*, 14 Nev. 60.

A quit-claim deed conveys whatever interest the grantor has in the property at the time the conveyance is made. *Harden v. Cullins*, 8 Nev. 49; *Brophy M. Co. v. Brophy & D. G. & S. M. Co.*, 15 Nev. 101.

S. held a deed of mining ground as a mortgage to secure an existing indebtedness; he conveyed the premises to P., and after two or more transfers of the title, the property was re-deeded to S.: Held, that when the title returned to S., the same equities attached to it in his hands as existed at the time he made the conveyance to P. *Brophy M. Co. v. B. & D. G. & S. M. Co.*, 15 Nev. 101.

Parol evidence is admissible to ascertain the identification of property described in a conveyance. *Brown v. Warren*, 16 Nev. 229.

A conveyance by the owner of an alley and adjoining lots of part of them, describing them as fronting on a certain street, and running back to said alley, carries title to the middle of the alley, with an easement of way over the other half. *Lindsay v. Jones*, 21 Nev. 72 (25 P. 297).

An absolute deed for the purpose of securing money due to third persons, together with a written acknowledgment by the grantee that he holds it for that purpose, is a mortgage. *First Nat. Bank v. Kreig*, 21 Nev. 404 (32 P. 641).

### 1018. By married woman.

SEC. 2. A conveyance by a married woman has the same effect as if she were unmarried and may be acknowledged in the same manner. *As amended, Stats. 1909, 270.*

### 1019. Acknowledgment.

SEC. 3. Every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided.

### 1020. Acknowledgments, by whom made.

SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate shall be taken by some one of the following officers: First—If acknowledged or proved within this state, by some judge or clerk of a court having a seal, or some notary public or justice of the peace; *provided*, when the acknowledgment is taken before a justice of the peace in any other county than that in which the real estate is situated, the same shall be accompanied with the certificate of the clerk of the district court of such county, as to the official character of the justice taking the proof or acknowledgment, and the authenticity of his signature. Second—If acknowledged or proved without this state, and within the United States, by some judge or clerk of any court of the United States, or of any state or territory having a seal, or by any commissioner appointed by the government of this state for that purpose, or by a justice of the peace of any county in any state or territory in the United States, accompanied with the certificate of the clerk of a court of record of the county having a seal, as to the official character of the justice and the authenticity of his signature. Third—If acknowledged or proved without the United States, by some judge or clerk of any court of any state, kingdom, or empire having a seal, or by any notary public therein, or by any minister, commissioner, or consul of the United States appointed to reside therein. *As amended, Stats. 1867, 103.*

See, also, sec. 1096; commissioner of deeds, secs. 1000-1004.

The act of 1867, p. 103, did not take away from county recorders the powers to make acknowledgments. *State, ex rel. Ford v. Harris*, 5 Nev. 141-147.

A certificate of the vice-consul-general of the United States at London, under his official seal is prima facie evidence of the execution of a deed. *Evans v. Lee*, 11 Nev. 194, 197.

### 1021. Prior valid records remain valid.

(SEC. 2.) All acknowledgments or proofs heretofore taken of the execution of any instrument authorized by law to be recorded, acknowledged, or proven, and certified, or which may have been certified in the manner hereinabove provided, the record thereof now or hereafter made shall be valid and of like

force and effect as if proven before the officer, and certified to in the manner heretofore required by law; *provided*, that nothing herein shall affect any right of a bona fide purchaser, or any right acquired by operation of law prior to the passage of this act. *As amended Stats. 1867, 103.*

See sections 1053-1054.

### 1022. Certificate annexed.

SEC. 5. Every officer shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be indorsed or annexed to such conveyance; such certificate shall be: First—When granted by any judge or clerk, under the hand of such judge or clerk, and the seal of the court. Second—When granted by an officer who has a seal of office, under the hand and official seal of such officer.

### 1023. Proof of identity.

SEC. 6. No acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, shall be taken unless the person offering to make such acknowledgment shall be personally known, to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

### 1024. Certificate, what to state.

SEC. 7. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known, to the officer granting the certificate, to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

### 1025. Form of acknowledgment.

SEC. 8. (a) Such certificate, when made for an acknowledgment by an individual, shall be in substantially the following form, to wit:

State of Nevada, County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, personally appeared before me, a notary public (or judge or other officer, as the case may be), in and for \_\_\_\_\_ County, A. B., known (or proved) to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he (or she) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(b) Such certificate, when made for an acknowledgment by a corporation, shall be in substantially the following form, to wit:

State of Nevada, County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, personally appeared before me, a notary public (or judge or other officer, as the case may be), in and for \_\_\_\_\_ County, A. B., known (or proved) to me to be the president (vice-president or secretary) of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

(c) Such certificate, when made for an acknowledgment by an attorney in fact, shall be in substantially the following form, to wit:

State of Nevada, County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, personally appeared before me, a notary public (or judge or other officer, as the case may be) in and for \_\_\_\_\_ County, A. B., known (or proved) to me to be the person whose name is subscribed to the within instrument as the attorney in fact of \_\_\_\_\_ and acknowledged to me that he subscribed the name of the said \_\_\_\_\_ thereto as principal, and his own name as attorney in fact, freely and voluntarily and for the uses and purposes therein mentioned.

2. (d) *Provided, however*, that any acknowledgment heretofore or hereafter taken, or certificate thereof made, without this state, either in accordance with the laws of this state, or in accordance with the laws of the place where the acknowledgment is taken, shall be sufficient in this state. *As amended, Stats. 1909, 270.*

The law does not require that the exact form of the certificate given in the statute shall be followed. A substantial compliance therewith is sufficient. *Johnson v. Badger M. & M. Co., 13 Nev. 351.*  
Testimony of notary. *Musgrove v. Waitz, 14 Nev. 78.*

### 1026. When grantor is unknown.

SEC. 9. When the grantor is unknown to the court or officer taking the acknowledgment, the certificate shall be in the following form, to wit: "Territory of Nevada, County of \_\_\_\_\_ On this \_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, personally appeared before me, a notary public (or judge, or officer, as the case may be), in and for the said county, A. B., satisfactorily proved to me to be the person described in and who executed the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned."

1027. Proof of execution of conveyance.

SEC. 10. The proof of the execution of any conveyance, whereby any real estate is conveyed, or may be affected, shall be: First—By the testimony of a subscribing witness; or, Second—When all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of, at least, one subscribing witness, given by a credible witness to each signature.

### 1027. Proof of execution of conveyance.

SEC. 10. The proof of the execution of any conveyance, whereby any real estate is conveyed, or may be affected, shall be: First—By the testimony of a subscribing witness; or, Second—When all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of, at least, one subscribing witness, given by a credible witness to each signature.

### 1028. Witness personally known.

SEC. 11. No proof by a subscribing witness shall be taken unless such witness shall be personally known, to the officer taking the proof, to be the person whose name is subscribed to the conveyance as witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

County recorders are authorized to administer the oath and certify to the verification required by law in filing mechanics' liens. *Arrington v. Wittenberg, 12 Nev. 99, 101.*

### 1029. Proof necessary.

SEC. 12. No certificate of such proof shall be granted unless such subscribing witnesses shall prove the person, whose name is subscribed thereto as a party, is the person described in, and who executed, the same; that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

### 1030. What to set forth.

SEC. 13. The certificate of such proof shall set forth the following matters: First—The fact that such subscribing witness was personally known, to the officer granting the certificate, to be the person whose name is sub-

scribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. Second—The proof given by such witness of the execution of such conveyance, and of the fact that the person, whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

### 1031. Evidence of handwriting.

SEC. 14. No proof by evidence of the handwriting of the party, and of a subscribing witness, shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

### 1032. When certificate granted.

SEC. 15. No certificate of any such proof shall be granted unless a competent and credible witness shall state, on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall, in like manner, state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

### 1033. Witnesses to conveyance may be subpoenaed.

SEC. 16. Upon the application of any grantee in any conveyance required by this act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance, may issue a subpoena requiring such witness to appear before such officer, and testify touching the execution thereof.

### 1034. Penalty for failure to appear.

SEC. 17. Every person who, being served with a subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have been first tendered to him.

### 1035. Conveyances acknowledged—Recorded—Patents.

SEC. 18. A certificate of the acknowledgment of any conveyance or other instrument in any way affecting the title to real or personal property, or the proof of the execution thereof, as provided in this act, signed by the officer taking the same, and under the seal of such officer, shall entitle such conveyance or instrument, with the certificate or certificates aforesaid, to be recorded in the office of the recorder of any county in this state; *provided, however*, that any state or United States contract or patent for land may be recorded without any such acknowledgment or proof. *As amended, Stats. 1909, 271.*

[Sec. 19, repealed by Stats. 1909, 272.]

**1036. Covenants binding on married woman.**

**SEC. 20.** No covenant, expressed or implied, in any such conveyance, shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs all her rights and interest expressed to be conveyed in such conveyance.

**1037. Acknowledgments of married woman.**

**SEC. 21.** Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

[Secs. 22 and 23, repealed by Stats. 1909, 272.]

The testimony of a notary who has taken an acknowledgment which conforms to the statute, when called as witness, is not entitled to any greater weight than his certificate. *Musgrove v. Waitz*, 14 Nev. 77, 78.

An assignment of a note and mortgage upon real estate is not such a contract respecting real estate as is required to be acknowledged by a married woman separate and apart from her husband. *Cartan v. David*, 18 Nev. 330 (4 P. 61).

**1038. All conveyances recorded.**

**SEC. 24.** Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged, and certified in the manner prescribed in this act, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

The deposit for record of a revocation of a power of attorney in proper office, operates as a notice to all parties dealing with the attorney. By such deposit, the revocation becomes absolute without actual notice to

the attorney. *Arnold v. Stevenson*, 2 Nev. 234-240.

Cited, *State ex rel. Nev. T. G. & T. Co. v. Grimes*, 29 Nev. 56.

Cited, *Levy v. Ryland*, 32 Nev. 460 (109 P. 910).

**1039. Record to be notice to whom.**

**SEC. 25.** Every such conveyance or instrument of writing, acknowledged or proved and certified, and recorded in the manner prescribed in this act, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

It is not using due diligence to rely solely on the assertion of the vendor of the land that another person has no equity therein. *Crosier v. McLaughlin*, 1 Nev. 348.

The purpose of the record of a mortgage is simply to give notice and to prevent parties who hold encumbered real estate from imposing on innocent purchasers or subsequent mortgagees. *Virgin v. Brubaker*, 4 Nev. 32.

Possession is not notice of an unrecorded defeasance. *Fair v. Howard*, 6 Nev. 304; *Brophy v. B. & D. M. Co.*, 15 Nev. 101.

Actual notice dispenses with constructive notice. A purchaser with actual notice is not a purchaser in good faith of the estate previously conveyed. *Gilson v. Boston*, 11 Nev. 413.

The recording of the seal to a deed is not absolutely essential. If the original document cannot be produced, and the record thereof is offered in evidence, the existence of the seal will be presumed from the statement in the deed that the grantor did set his hand and affix his seal thereto, and from the attestation clause that it was signed, sealed

and delivered in the presence of the witnesses. *Flowers M. Co. v. N. B. M. Co.*, 16 Nev. 302.

Information which makes it the duty of a party to make inquiry, and shows where it may be made, is notice of all facts to which such inquiry would naturally lead. The law necessarily imputes to a litigant knowledge of a fact of which the exercise of ordinary prudence and diligence must have apprised him. *Burbank v. Rivers*, 20 Nev. 159 (18 P. 753).

Where a deed intended as a mortgage is recorded, and no defeasance appears of record, a bona fide purchaser from the grantee acquires an absolute title, free from the equity of redemption of the mortgagee. *Gruber v. Baker*, 20 Nev. 453 (9 L. R. A. 302, 23 P. 858).

See *Arnold v. Stevenson* under sec. 24 of this act.

Our statute has no provisions similar to those of New York under which, in that state, it is held that the record of a deed, absolute upon its face, though intended as a

mortgage, gives no notice to a subsequent mortgagee.

In this state both subsequent purchasers and mortgagees have constructive notice of every properly recorded conveyance affecting real estate.

Where the owner of real estate made a deed of the same absolute on its face, but intended as a mortgage, and the same was recorded as a deed, and afterwards he made a formal mortgage upon the same property: Held, that the latter instrument was taken with constructive notice of and subject to the lien of the former.

The matter of constructive notice by the record of conveyance is entirely a creature of statute, and its effect is to be gathered from construction of the statute. *Grellet v. Heilshorn*, 4 Nev. 526, 527, 531.

The record of a deed only imparts notice of the contents thereof to subsequent purchasers and mortgagees, and not to persons who claim by entirely independent right and title. *Sharon v. Minnock*, 6 Nev. 378, 390; *Wilson v. Wilson*, 23 Nev. 267, 273 (45 P. 1009).

The record is not notice of anything not contained in the deed. *Idem*.

A wife who has filed a declaration of homestead on community property is not affected with notice of a prior recorded mortgage executed by her husband which misdescribes the property. *Adams v. Baker*, 24 Nev. 162 (77 A. S. 799, 51 P. 252).

Cited, *State ex rel. Title Co. v. Grimes*, 29 Nev. 50, 56, 85 (5 L. R. A. (N. S.) 545; 124 A. S. 883, 84 P. 1061).

#### 1040. When not recorded void as against whom.

SEC. 26. Every conveyance of real estate within this territory hereafter made, which shall not be recorded as provided in this act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

The open and notorious possession by a grantor, after sale and conveyance of property, is not sufficient to impart notice, to a subsequent purchaser for value, of any unre-

corded defeasance. (*Hawley, J.*). *Brophy M. Co. v. Brophy & D. G. & S. M. Co.*, 15 Nev. 110.

#### 1041. Powers of attorney.

SEC. 27. Every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed, or may be affected, shall be acknowledged, or proved and certified, and recorded as other conveyances whereby real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded.

See *Arnold v. Stevenson*, under sec. 24 of this act.

#### 1042. Revocation of power.

SEC. 28. No such power of attorney or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

See *Arnold v. Stevenson*, under sec. 24 of this act.

#### 1043. Evidence of conveyance.

SEC. 29. Every conveyance, or other instrument, conveying or affecting real estate, which shall be acknowledged, or proved and certified, as hereinafter prescribed, may, together with the certificate of acknowledgment, or proof, be read in evidence without further proof.

#### 1044. Record evidence of, when lost.

SEC. 30. When any such state or United States contract or patent is recorded, or when any such conveyance or instrument is acknowledged or proved, certified, and recorded, in the manner in this act prescribed, the record thereof, or the transcript thereof, certified by the recorder, under the seal of his office, may be read in evidence without further proof. *As amended, Stats. 1909, 271.*

Cited, *Reno Brewing Co. v. Packard*, 31 Nev. 433, 441 (103 P. 415).

**1045. Evidence may be rebutted.**

SEC. 31. Neither the certificate of the acknowledgment nor of the proof of any such conveyance, or instrument, nor the record, nor the transcript of the record, of such conveyance, or instrument, shall be conclusive, but the same may be rebutted.

**1046. Proof by other evidence.**

SEC. 32. If the party contesting the proof of any such conveyance, or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance, or instrument, nor the record thereof, shall be received in evidence, until established by other competent proof.

**1047. Subsequent title passes to grantee.**

SEC. 33. If any person shall convey any real estate, by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterward acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

**1048. Adverse possession does not prevent sale.**

SEC. 34. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

This is a change of the common-law rule common law. *Gruber v. Baker*, 20 Nev. 485 as such transfers were interdicted by the (9 L. R. A. 302, 23 P. 858).

**1049. Mortgages and liens, how discharged.**

SEC. 35. Any mortgage or lien that has been or may hereafter be recorded, may be discharged or assigned by an entry on the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of or value received for the mortgage or lien, and the debt secured thereby in the presence of the recorder or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release or assignment duly acknowledged and recorded. *As amended, Stats. 1881, 23.*

Mortgage marked satisfied by fraud or mistake still holds. *Gibson v. Milne*, 1 Nev. 526. Cited, *Drexler v. Tyrrell*, 15 Nev. 125.

**1050. Discharge.**

SEC. 36. Any mortgage shall also be discharged upon the record thereof by the recorder, in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or approved and certified, as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Cited, *Drexler v. Tyrrell*, 15 Nev. 125.

**1051. Discharge to be recorded.**

SEC. 37. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage, made by the recorder upon the record thereof.

**1052. Penalty for failure to discharge.**

SEC. 38. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance of the conditions of the mortgage,

whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgageor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

### 1053. Conveyances heretofore made.

SEC. 39. All conveyances of real estate heretofore made and acknowledged, or proved according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with like effect, as conveyances executed and acknowledged in pursuance of this act.

See sec. 1021.

### 1054. Legality not affected.

SEC. 40. The legality of the execution, acknowledgment, proof, form or record of any conveyance, or other instrument, heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this act, but shall depend for its validity or legality upon the laws and customs then in existence and in force in the mining and agricultural districts.

See sec. 1021.

### 1055. Tenancy in common.

SEC. 41. Every interest in real estate granted or devised to two or more persons, other than executors and trustees, as such, shall be a tenancy in common, unless expressly declared in the grant or devise to be a joint tenancy.

Cited, *Smith v. Shrieves*, 13 Nev. 314, 315.

### 1056. Estate in fee simple presumed.

SEC. 42. The term heirs, or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant.

### 1057. "Heir" or "issue" in remainders.

SEC. 43. Where a remainder in lands or tenements, goods or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heirs, or heirs of his or her body, or without issue, the word "heir," or "issue," shall be construed to mean heirs or issue living at the death of the person named as ancestor.

### 1058. Posthumous child.

SEC. 44. A future estate, depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent.

### 1059. Estate tail, posthumous child.

SEC. 45. Where an estate shall be by any conveyance limited, in remainder, to the son or daughter or issue, or to use of the son or daughter or issue of any person to be begotten, such son or daughter or issue, born after the decease of his or her father, shall take the estate in the same proportion, and in the same manner, as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

**1060. Attornments not necessary.**

SEC. 46. Grants of rents, or of reversions, or remainders, shall be good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, shall suffer any damage thereby.

**1061. Attornment, when void.**

SEC. 47. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenant, or in pursuance to, or in consequence of, a judgment or decree of some court of competent jurisdiction.

**1062. Warrantees abolished.**

SEC. 48. Lineal and collateral warrantees, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be 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.

**1063. Import of "grant, bargain, and sell."**

SEC. 49. The words "grant, bargain, and sell," in all conveyances hereafter to be made, in and by which any estate of inheritance or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyances, be construed to be the following express covenants, and none other, on the part of the grantor, for himself and his heirs to the grantee, his heirs, and assigns: First—That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right title, or interest therein to any person other than the grantee. Second—That such real 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; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

See sec. 1062.

**1064. Fraudulent conveyances, when void.**

SEC. 50. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created, with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents, or profits, as against such purchasers, shall be void.

**1065. When fraudulent.**

SEC. 51. No such conveyance, or charge, shall be deemed fraudulent in favor of a subsequent purchaser, who shall have legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

**1066. Power of revocation at will.**

SEC. 52. Every conveyance or charge of or upon any estate, or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from said grantor for a valuable consideration, of any estate, or interest, so liable to be revoked, or determined, although the same be not directly revoked, determined, or altered by such grantor, by virtue of the power reserved, or expressed in such prior conveyance or charge.

### 1067. Revocation and reconveyance.

SEC. 53. Where a power to revoke a conveyance of lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner, and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

### 1068. Same.

SEC. 54. If a conveyance to a purchaser, under either of the last two preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall, nevertheless, be valid from the time the power of revocation shall actually vest in such person, in the same manner, and to the same extent, as if then made.

### 1069. Statute of frauds—Lease for one year.

SEC. 55. No estate, or interest in lands, other than for leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized in writing.

Parol evidence cannot be heard to prove that a bill of sale (under seal) absolute on its face, was intended merely as an assignment in trust for the benefit of grantor's creditors unless in case of fraud or mistake.

To prove that a deed, absolute on its face, was given as a deed in trust, is not to prove a new and distinct contract, but is to vary and contradict the terms of the deed.

The rule that a deed, absolute on its face, may be proved to have been given as a mortgage, is an exception to the general rule, rests on peculiar reasons, and the proof to be introduced is of a peculiar nature.

Courts of equity may inquire into the objects which induced parties to enter into contracts, and may prevent a fraudulent use being made of them.

When an attempt is made to show that the object of a deed is different from that expressed on its face, the proof must be clear and conclusive; and there must also be satisfactory evidence that one of the parties has committed or is attempting to commit some fraud before the court will interfere. *Feusier v. Sneath*, 3 Nev. 120, 126.

A legal interest in land can only be conveyed by means of a deed of conveyance in writing. The right to the enjoyment and repair of a dam, and to have the water so diverted flow through certain land, is such an interest in land as can only be conveyed by deed in writing. *Lobdell v. Hall*, 3 Nev. 517, 521, 522.

An express trust cannot be created by parol, but all the facts and circumstances out of which an implied trust is raised may be so proved. *White v. Sheldon*, 4 Nev. 280.

Where an estate is purchased in the name of one person and the consideration is paid at the time by another, there is a resulting

trust in favor of the latter. The consideration must be shown to have been advanced at the time the title was acquired, as the trust must be created when the title passes. *Frederick v. Haas*, 5 Nev. 389.

A declaration of trust as to land must be by deed or conveyance in writing. Such declaration may be made at any time, and need not be made at the time of the creation of the trust. *Sime v. Howard*, 4 Nev. 473, 481.

A lease for a year need not be in writing, nor the power to execute it. *Gilson v. Boston*, 11 Nev. 413, 415.

A parol license is irrevocable after the party to whom the license is given has executed it or has expended money upon the faith of the license. The expenditure of money in consequence of the license has the effect of turning such license into an agreement that will be enforced in equity. The execution of the parol license supplies the place of a writing, and takes the case out of the statute. *Lee v. McLeod*, 12 Nev. 280.

This statute is intended for the protection of the respective parties to a parol agreement. Whenever one party proceeds so far in execution of a parol contract that he can have no adequate remedy unless the whole contract is specifically enforced, then equity requires such relief to be granted.

Nothing is to be considered as a part performance which does not put the party into a situation which is a fraud upon him, unless the agreement is fully performed.

To entitle a party to take the case out of a statute upon the ground of part performance, it is essential that the contract be clearly established. Before the contract can be enforced it must be shown that the party seeking its enforcement has performed, or

offered to perform, all the essentials of the agreement on his part. *Evans v. Lee*, 12 Nev. 393.

A trust concerning lands created by act or operation of law may be proven by parol. If land is purchased in the name of one person and the consideration paid by another at the time the title was acquired, there is a resulting trust in favor of the latter, but the money must be paid at the time the title passed. *Boskowitz v. Davis*, 12 Nev. 457.

A leasehold interest is an interest in land. *Adams v. Smith*, 19 Nev. 272 (3 A. S. 888, 9 P. 337).

A constructive trust may be established by parol evidence, and in such case this statute does not apply. *Bowler v. Curler*, 21 Nev. 158, 161 (37 A. S. 501, 26 P. 226).

Unless partnership capital is employed in the acquisition of a mining claim, the partnership agreement, unless in writing, is within the statute of frauds. *Craw v. Wilson*, 22 Nev. 385, 389 (40 P. 1076).

Since it will be presumed till the contrary appears that a contract within the statute on which a suit is based is in writing, where the complaint is silent as to whether it is oral or written, to invoke the statute to defeat the action it must be pleaded by answer and cannot be raised by demurrer. Where a resulting trust is created by the purchase of lands in the name of one person for the joint benefit of himself and another, the contract on which it is based is not within the statute and need not be in writing. *Levy v. Ryland*, 32 Nev. 460 (109 P. 906).

### 1070. *Idem*—Not to apply to wills.

SEC. 56. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate, by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

### 1071. *Idem*—Contracts in writing.

SEC. 57. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

### 1072. *Idem*—Agent to subscribe.

SEC. 58. Every instrument required to be subscribed by any person under the last preceding section may be subscribed by the agent of such party lawfully authorized.

### 1073. Specific performance.

SEC. 59. Nothing contained in this act shall be construed to abridge the powers of courts to compel the specific performance of agreements in cases of part performance of such agreements.

See *Evans v. Lee*, 12 Nev. 393 under sec. 55 of this act.

for labor and services performed under a contract void by the statute of frauds. *Lap- ham v. Osborne*, 20 Nev. 168 (18 P. 881).

Recovery on quantum meruit may be had

### 1074. Trusts when void.

SEC. 60. All deeds of gift, conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

### 1075. Statute of frauds—Agreements not in writing when void.

SEC. 61. In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith: First, every agreement that, by the terms, is not to be performed within one year from the making thereof; second, every special promise to answer for the debt, default, or miscarriage of another; third, every promise or undertaking made upon consideration of marriage, except mutual promises to marry.

An agreement by the purchaser of real property to pay certain incumbrances upon it is part of the consideration, and the person

holding such incumbrance or the person to whom such payment is to be made may enforce such agreement. Such an agreement

does not come within the statute and need not be in writing. *Ruhling v. Hackett*, 1 Nev. 360.

The promise and the consideration for that promise need not be contained in the same paper, provided the signature of the guarantor can be connected with both. *Van Doren v. Tjader*, 1 Nev. 380.

A guarantee of a promissory note must be in writing, and must express the consideration upon which it is based. *Van Doren v. Tjader*, 1 Nev. 380.

An agreement by a vendee of goods, in consideration of the sale to pay certain creditors of the vendor, is not within this statute. *Alcada v. Morales*, 3 Nev. 133, 137.

Where the condition precedent of a contract is the delivery and reception of chattels to be kept for two years, and there is no written agreement, the contract is void. *Buckley v. Buckley*, 9 Nev. 373, 381.

The law will not imply a contract which will be void if expressed. *Capron v. Strout*, 11 Nev. 313.

An undertaking, executed to the sheriff, and agreeing to satisfy any judgment that plaintiff in a certain action might recover,

is not within the statute. Such an undertaking is not void, because the consideration is not expressed therein. *Lightle v. Berning*, 15 Nev. 389.

When a contract is fully executed on both sides the rights of the parties become fixed, and neither can interfere with the same by pleading the statute. *Cartan v. David*, 18 Nev. 311 (4 P. 61).

A promise by plaintiff to intervener to take up the debt due him from defendant if intervener would not record his mortgage, was void under this section, there being no evidence of the promise in writing and it also appearing that the intervener did not, in consideration of the promise, release any of his security against defendant. *Simpson v. Harris*, 21 Nev. 353, 365 (31 P. 1009).

An agreement between defendant bank and a hay dealer, whereby the bank must collect for sales of hay, and from the proceeds pay checks given by the dealer for the purchase price thereof, and such agreement was communicated by the bank to plaintiff, who, relying thereon, sold hay to said dealer, is not within the statute. *Wills v. Bank of Nevada*, 23 Nev. 59 (42 P. 490).

## 1076. *Idem*—Sale of goods.

SEC. 62. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or over, shall be void unless: First, a note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or, second, unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in action; or, third, unless the buyer shall, at the time, pay some part of the purchase money.

A contract for the manufacture of an article as distinguished from the sale, does not

come within this section. *O'Neil v. N. Y. & S. P. M. Co.*, 3 Nev. 141, 144, 145.

## 1077. *Idem*—Auction sale.

SEC. 63. Whenever goods shall be sold at auction, and the auctioneer shall, at the time of the sale, enter in a sale-book a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

## 1078. Sale, when evidence of fraud.

SEC. 64. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith.

Sales of merchandise, secs. 3908-3912.

An agreement by the purchaser of real property, as a part of the consideration of the conveyance, with the vendor, to pay certain incumbrances upon it, does not come within the statute, and need not be in writing. *Ruhling v. Hackett*, 1 Nev. 360.

Delivery of possession may be either actual or constructive; actual delivery is contemplated unless such delivery be impossi-

ble or extremely inconvenient, in which case a symbolical delivery is sufficient. *Doak v. Brubaker*, 1 Nev. 218, 222, 224.

Facts constituting immediate delivery and continued change of possession. *Carpenter v. Clark*, 2 Nev. 243, 245-248.

A mere request made to a servant of the vendor who has the property in actual possession, to keep it for the vendee, without

any removal or change in the situation of the property, is not an actual delivery or change of possession. *Sharon v. Shaw*, 2 Nev. 289, 292, 293.

Facts held not to constitute delivery. The want of an immediate delivery and an actual and continued change of possession, is conclusive evidence of fraud against the creditors of the vendor, and it makes no difference whether such creditors have notice of an attempted sale or not. *Lawrence v. Burnham*, 4 Nev. 361, 366, 368 (17 A. D. 540).

In an action against an officer to recover personal property seized by him on execution against a third person from whom plaintiff claimed to have purchased and received possession previous to the seizure: Held, that it was competent for plaintiff to show his acts of ownership after the sale.

To show a continued change of possession, nothing generally can have a more direct tendency than the control or management of the property or acts of ownership exercised over it by the vendee. *Conway v. Edwards*, 6 Nev. 190.

Facts sufficient to establish actual and continued change of possession. On a question as to the validity of a sale of personal property where the fact of the sale and change of possession was established, it was held that the declarations of the vendor made after such sale and change of possession were mere hearsay evidence, and not admissible to impeach or defeat the sale. *Lewis v. Wilcox*, 6 Nev. 215.

Facts constituting a valid sale and delivery. Where goods were sold and the vendee took possession at a time subsequent to the sale but before the levy of an attachment, it was held that the delivery before the attachment validated the sale.

A mere creditor is not in a position to attack a sale of goods on the ground of want of delivery and change of possession; before he can do so he must acquire a lien by attachment or otherwise. *Clute v. Steele*, 6 Nev. 338, 339.

The vendee must take actual possession of the property and the possession must be open, unequivocal, substantial and continuous, and must not be taken to be surrendered back. When it appears after the purchase, that the vendee exercised such acts of ownership as is usual for persons who own the same species of property, and that it was at all times after the purchase under his direction and control and was in his

charge at the time of the levy, and had not been in the possession of either of the vendors, it was held that there was a change of possession. *Gray v. Sullivan*, 10 Nev. 416.

To take the case out of the statute, the vendee must take actual possession of the property; the possession must be open, unequivocal, substantial and continuous, and must be taken not to be surrendered back. *Gray v. Sullivan*, 10 Nev. 416; *Twist v. Kelly*, 11 Nev. 377; *Estey v. Cooke*, 12 Nev. 276.

The mere fact of the reemployment of the clerk of the vendor by the vendees does not render a sale of personal property invalid. *Ivanovich v. Stern*, 14 Nev. 342.

The employment of the vendor in a subordinate capacity is only colorable and not conclusive evidence of fraud. *Gray v. Sullivan*, 10 Nev. 416, 432.

To entitle a party to the character of a bona fide purchaser, without notice, he must have acquired the legal title and have actually paid the purchase money before receiving notice of the equity of another party. *Moresi v. Swift*, 15 Nev. 215, 228.

Facts held sufficient to constitute a change of possession. *Tognini v. Kyle*, 17 Nev. 209, 212 (45 A. R. 442, 30 P. 829).

Facts held not sufficient to constitute delivery and change of possession. *Wilson v. Hill*, 17 Nev. 402, 406 (30 P. 1076).

A delivery of a bill of sale is not even symbolical delivery of personal property described therein. *Comaiti v. Kyle*, 19 Nev. 38 (5 P. 666).

Delivery of the possession of inclosed land carries with it possession of the personal property—wood and coal—thereon. *Ferraris v. Kyle*, 19 Nev. 435 (14 P. 529).

An agent bought for his principals all ores of a mine to be delivered when loaded on wagon at mine. Ores thus loaded and delivered to a carrier, consigned to the agent; and a bill of lading in the agent's name was sent to him. Held, that the title passed when ores were delivered to the carrier. *West v. Humphrey*, 21 Nev. 80 (25 P. 446).

The object of this section is the prevention of fraud, and what will amount to change of possession must be determined in each case, having relation to the character and situation of the property at the time of sale. Where the possession of a buyer is not a concurrent or joint possession with the seller, but is exclusive, the sale is not fraudulent. *Hoffman v. Owens*, 31 Nev. 481, 488, 491 (103 P. 414).

### 1079. Creditor defined.

SEC. 65. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

### 1080. Possession of mortgaged property—Authorized to sell—Lien—Chattel mortgages recorded.

SEC. 66. No mortgage of personal property shall be valid for any purpose against any other person than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by, the mortgagee,

or, unless the mortgage shall be recorded in the office of the county recorder of the county where the property is situated, and also in the county where the mortgageor resides. A mortgage upon personal property, including growing crops, executed, acknowledged and recorded, shall be valid against all third parties without such delivery of possession; *provided*, that no such mortgage shall be valid for any purpose as against other than the parties thereto, unless there be appended or annexed thereto the affidavits of the mortgageor and mortgagee, or some person in their behalf, setting forth that the mortgage is made in good faith, and given for a debt actually owing from the mortgageor, stating the amount and character of such debt, and that the same is not made to hinder, delay or defraud any creditor of the mortgageor. Any personal property, mortgaged as aforesaid, may be seized under attachment or execution, and the surplus, over and above the mortgage debt, secured to any other creditor of the mortgageor by serving upon the mortgageor and mortgagee, or, in his absence from the county, upon his or their agent or other person in charge or possession of such personal property, a copy of the attachment or execution, or, in case no such person can be found in the county in charge or possession thereof, then by filing a copy of the writ of attachment or execution in the office of [the] county recorder of the county where such property is situate, with a notice endorsed thereon by the officer executing the same, to the effect that such property is so attached. But the possession of mortgaged personal property shall not be taken from the mortgageor or mortgagee unless full payment of the mortgagee's demand be first made, which, if done by the attaching or executing creditor of the mortgageor, shall entitle him to hold such personal property and the possession thereof, under his levy for repayment to him of the amount so paid, in addition to his own individual demand; and any officer executing any execution is hereby authorized to sell such property for the amount of such mortgage demand, in addition to the amount of the execution, and out of the proceeds of sale to first satisfy such mortgage demand. In case of such levy of attachment or execution upon such mortgaged personal property, when the amount of the mortgage demand is not paid to the mortgagee, the officer may expose such property for sale, and may sell the same subject to the rights of the mortgagee under the mortgage, and the purchaser shall take the property subject to such rights and subject to the possession of the parties to the mortgage. The lien of a mortgagee upon a growing crop shall continue until after the crop shall be harvested and threshed or baled, or otherwise prepared for market, and delivered to the mortgagee or his order; *provided*, that a chattel mortgage upon a growing crop may be executed as well before as after the crop is planted, and when executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of the parties that the same shall take effect upon the crops when planted. The several county recorders of this state are hereby authorized and directed to procure for their respective offices, at the expense of the county, suitable books, properly indexed, for the recording of all chattel mortgages, which books shall be plainly labeled and marked "Records of Chattel Mortgages." All chattel mortgages shall be recorded therein, and such books shall, at all times, be open to the public for inspection, and the mortgages therein recorded shall be canceled and discharged in the same manner as mortgages on real property are canceled and discharged. The recorder of the several counties shall receive for recording chattel mortgages, indexing and releasing the same, the same fees as are allowed them for mortgages on real estate; *provided*, that no chattel mortgage shall be given or be valid for a less sum than one hundred dollars. *As amended, Stats. 1869, 55; 1885, 53; 1887, 66.*

Fraudulent grantors cannot rely upon their own fraud. *Maher v. Swift*, 14 Nev. 324.

When a party executes and delivers a bill of sale to another with intent to hinder, delay or defraud his creditors in the enforcement of their claims, or to secure any benefit to themselves at the expense of his creditors, the transaction is fraudulent.

A debtor has a right to protect his property from being sacrificed, provided he does not do so at the expense of his creditors. When a sale is made to a party who agrees to immediately pay all the vendor's creditors in full, the transaction is not fraudulent. *Ivancovich v. Stern*, 14 Nev. 342.

Facts recited from which it was held that delivery and change of possession was not sufficient to comply with the statute. *Wilson v. Hill*, 17 Nev. 402, 406 (30 P. 1076).

An unrecorded mortgage where there is no delivery of the property, is void as to all creditors of the mortgagee even though they have actual notice of the existence of such mortgage. *Simpson v. Harris*, 21 Nev. 354, 366, 367 (31 P. 1009).

A description in a chattel mortgage that it "covers all other property of a personal nature belonging to said mortgagee which is situated either in Elko or Eureka Counties," is sufficient to cover all such property so situated then belonging to the mortgagee. An affidavit attached to a chattel mortgage, when made by some one in behalf of the parties, need not state that fact. When it appears that a bona fide mortgage, although agreed upon, was not executed until after

the note it was given to secure fell due, but that such delay was not fraudulent, and does not appear to have worked injury to any one, the mortgage does not, for that reason, become invalid.

The mortgagee of personal property does not, in the absence of fraud, lose his lien thereon merely by failing to take possession of the property when the debt falls due. *Streeter v. Johnson*, 23 Nev. 194, 302 (44 P. 819).

Admitting a mortgage in evidence without objection is a waiver of the claim that its execution had not been sufficiently proven. *Idem*.

In the absence of a statute requiring the affidavit annexed to a chattel mortgage to be signed by the affiants, the mortgage is notice to and valid against third persons, though the affidavit is not signed by the mortgagee or mortgagee. A mortgage is void per se if it confers upon the mortgagee, the right to sell and dispose of the mortgaged property for his own benefit. *Lutz v. Kinney*, 24 Nev. 38 (49 P. 453).

Cited, *State ex rel. Title Co. v. Grimes*, 29 Nev. 57.

A person having attached property of the defendant in the hands of a pledgee thereof and having obtained a judgment against defendant, must move by direct proceeding against the pledgee under "proceedings supplementary to execution," to prevent disposition of the property by the pledgee pending an action to determine the rights therein. *Persing v. Reno S. B. Co.*, 30 Nev. 342, 351 (96 P. 1054).

### 1081. Bottomry, respondentia.

SEC. 67. Nothing contained in the last three sections shall be construed to apply to contracts of bottomry, respondentia, or assignments or hypothecations of vessels, or goods at sea, or in foreign states, or without this territory; *provided*, the assignee, or mortgagee, shall take possession of such goods as soon as may be, after the arrival thereof within this territory.

### 1082. Agent to subscribe.

SEC. 68. Every instrument required by any of the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

### 1083. Contracts void, when.

SEC. 69. Every conveyance, or assignment, in writing or otherwise, of any estate or interests in lands, or in goods in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond, or other evidence of debt given, suits commenced, decree, or judgment suffered, with the like intent, as against the persons hindered, delayed or defrauded, shall be void.

The declarations of a vendor, made before the sale, of his intention to make a transfer to delay his creditors, will be taken as evidence of his intention in making the sale, but a knowledge of that intention must be brought home to the vendee to avoid the sale. *Gregory v. Frothingham*, 1 Nev. 253.

As between the parties to a fraudulent conveyance or between a fraudulent grantee and his creditors, courts will not permit either the grantor or the grantee to be heard in avoidance of the fraudulent act. *Allison v. Hagan*, 12 Nev. 38.

In a suit, brought against the administra-

tor of a deceased person upon a promissory note, the defendant should be allowed to allege and prove that the note was made and delivered without consideration for the sole purpose of protecting the property of the deceased from his creditors.

Courts will not aid either party in enforcing an illegal, executory contract; nor if

executed will they aid either party in setting it aside, or in recovering back what has been passed under it. *McCausland v. Ralston*, 12 Nev. 195, 203, 205, 210 (28 A. R. 781).

When a sale of personal property is made by the vendor with the intent to hinder, delay and defraud his creditors, and the purchaser has knowledge of such intention, the sale is void. *Greenwell v. Nash*, 13 Nev. 286.

### 1084. Grants of trust, when void.

SEC. 70. Every grant or assignment, of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the person making the same, or by his agent lawfully authorized, shall be void.

See *Sime v. Howard*, 4 Nev. 473, under sec. 55 of this act.

### 1085. Instruments, when void.

SEC. 71. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this act, as against creditors, or purchasers, shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors or purchasers.

### 1086. Fraud a question of fact.

SEC. 72. The question of fraudulent intent, in all cases arising under the provisions of this act, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Cited, *Simpson v. Harris*, 21 Nev. 365 (31 P. 1009); *Lutz v. Kinney*, 24 Nev. 48 (49 P. 453).

### 1087. Not to affect purchaser for value.

SEC. 73. The provisions of this act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

### 1088. Lands defined.

SEC. 74. The term "lands," as used in this act, shall be construed as coextensive in meaning with lands, tenements, and hereditaments, and shall include in its meaning all possessory right to the soil for mining and other purposes, and the term "estate and interest in lands," shall be construed and embrace every estate and interest, present and future, vested and contingent, in lands as above defined.

An assigned leasehold interest is an interest in lands. *Adams v. Smith*, 19 Nev. 272 (3 A. S. 888, 9 P. 337).

The dedication of a tract of land to homestead uses carries with it the tenements and hereditaments thereon. *Smith v. Stewart*, 13 Nev. 76.

### 1089. Conveyance defined.

SEC. 75. The term "conveyance," as used in this act, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

### 1090. Mortgage recorded.

SEC. 76. A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, all quartz and mining claims, and all such personal property as shall be fixed in its structure to the soil, acknowledged in manner and form as mortgages upon real estate are required by law to be acknowledged and recorded in the

office of the recorder in the county in which the property is situated, shall have the same effect against third persons as mortgages upon real estate.

Cited, State ex rel. Title Co. v. Grimes, 29 Nev. 57.

#### 1091. Mining rules.

SEC. 77. This act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations, or customs in regard to the locating, holding, or forfeiture of claims, but, in all cases of mortgages of mining interests under this act, the mortgagee shall have the right to perform the same acts that the mortgageor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations, or customs of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by the court ordering the sale upon a foreclosure; *provided*, that such compensation shall, in no case, exceed the amount realized from the claim by a foreclosure and sale.

The mining laws have been given the force and binding obligation of legislative enactment. Mallett v. Uncle Sam M. Co., 1 Nev. 203.

#### 1092. Limitation of leases.

SEC. 78. No lands within this territory shall hereafter be conveyed by lease, or otherwise, except in fee and perpetual succession, for a longer period than ten years; nor shall any town or city lots, or other real property, be so conveyed for a longer time than twenty years. All leases hereafter made, contrary to the provisions of this act, shall be void.

*An Act supplementary to an act concerning conveyances.*

Approved December 17, 1862, 29

#### 1093. County records impart notice.

SECTION 1. All instruments of writing now copied into the proper books of record of the office of the county recorders of the several counties of this territory, shall, after the passage of this act be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of all deeds, mortgages, powers of attorney, contracts, conveyances, or other instruments, notwithstanding any defect, omission, or informality existing in the execution, acknowledgment, or certificate of recording the same; *provided*, that nothing herein contained shall be construed to affect any rights heretofore acquired in the hands of subsequent grantees or assignees.

Cited, State ex rel. Title Co. v. Grimes, 29 Nev. 57.

#### 1094. Certified copies.

SEC. 2. Duly certified copies of such instruments as are embraced in section one of this act may be read in evidence, under the same circumstances and rules as are now or may hereafter be provided by law for using copies of instruments duly executed and recorded; *provided*, that proof shall be first made that the instruments, copies of which it is proposed to use, were genuine instruments, and were in truth executed by the grantor or grantors therein named.

*An Act to provide for the omission of the word "seal," the letters "L. S.," and other words, letters, or characters of like import on instruments in writing.*

Approved February 20, 1883, 45

#### 1095. Seal unnecessary.

SECTION 1. The word "seal," and the initial letters "L. S.," and other words, letters, or characters of like import, opposite the name of the signer of any instrument in writing, are hereby declared unnecessary to give such instrument legal effect, and any omission to use them by the signer of any instrument shall not be construed to impair the validity of such instrument.

*An Act concerning conveyances executed without the state.*

Approved February 13, 1871, 54

**1096. Acknowledgments taken out of the state.**

SECTION 1. The proof or acknowledgment of every conveyance affecting any real estate, taken without this state, but within the United States, shall be taken by some one of the following officers: A judge or clerk of a court having a seal, or some notary public or justice of the peace, or by any commissioner appointed by the governor of this state, for that purpose; *provided*, that when the acknowledgment is taken by a justice of the peace, the same shall be accompanied with the certificate of the clerk of a court of record of the county having a seal as to the official character of the justice and the authenticity of his signature.

See, also, sec. 1020; commissioner of deeds, secs. 1000-1004.

**1097. Record valid.**

SEC. 2. All acknowledgments of proofs heretofore taken of the execution of any instrument authorized by law to be recorded, acknowledged or proven and certified, or which may have been certified in the manner hereinabove provided, the record thereof now or hereafter made shall be valid and of like force and effect as if proven before the officer and certified to in the manner heretofore required by law; *provided*, that nothing herein shall affect any right of a bona fide purchaser, or any right acquired by operation of law, prior to the passage of this act.

See secs. 1021, 1053, 1054

*An Act to provide for preserving the evidence of the official acts of officers taking acknowledgments, etc.*

Approved February 20, 1869, 72

**1098. Officers required to keep record.**

SECTION 1. Each officer authorized by law to take the proof or acknowledgment of the execution of conveyances of real estate, or other instrument required by law to be proved or acknowledged, shall keep a record of all his official acts in relation thereto in a book to be provided by him for that purpose, in which shall be entered the date of the proof or acknowledgment thereof, the date of the instrument, the name or character of the instrument proved or acknowledged, and the names of each of the parties thereto, as grantor, grantee, or otherwise. Said record shall, during business hours, be open to public inspection without fee or reward.

Cited, State ex rel. Title Co. v. Grimes, 29 Nev. 57.

**1099. Penalty for refusal or neglect.**

SEC. 2. Any officer aforesaid refusing or neglecting to comply with the requirements of this act shall be deemed and held guilty of a misdemeanor, and, on conviction thereof, fined before any court of competent jurisdiction in any sum not less than fifty nor more than five hundred dollars, and shall, in addition, be liable on his official bond in damages to any person injured by such refusal or neglect to the extent of the injury sustained by reason of the refusal or neglect mentioned in this section.

*An Act to provide for the conveyance of mining claims.*

Approved December 12, 1862, 12

**1100. Conveyance of mining claim.**

SECTION 1. Conveyance of mining claims shall hereafter require the same formalities and be subject to the same rules of construction as the transfers and conveyances of other real estate.

When a person conveys a lode of ore, we have only to ascertain by the best means in our power what lode he meant; and if we can do so, it makes no difference that he has called it by a name illegitimately acquired by or applied to it. *Phillipotts v. Blasdel*, 8 Nev. 61.

The words "mining ground," when used in a deed, have a technical meaning. They refer to that interest which a mere occupant of the mine has in the same. They are not the words used when a fee simple or leasehold interest in real estate is to be conveyed. *Hale & Norcross G. and S. M. Co. v. Storey Co.*, 1 Nev. 105.

### 1101. Former conveyances construed.

SEC. 2. All conveyances of mining claims heretofore made by bills of sale or other instruments in writing, with or without seals, recorded or unrecorded, shall be construed in accordance with the lawful local rules, regulations, and customs of the miners in the several mining districts of this territory; and if heretofore regarded valid and binding in such districts, shall have the same force and effect between the parties thereto, as prima facie evidence of sale, as if such conveyances had been made by deed under seal.

### 1102. How proved.

SEC. 3. The location and transfers of mining claims heretofore made shall be established and proved in contestation before courts, by the local rules, regulations, or customs of the miners in the several mining districts of the territory in which such location and transfers were made.

*An Act concerning conveyances of mining locations and claims by minors.*

Approved February 27, 1869, 96

### 1103. Deed of minor held valid—Suits pending.

SECTION 1. In all cases in this state, since the first day of July, A. D. eighteen hundred and sixty-seven, where minors over the age of eighteen years have sold interests acquired by them in mining claims or locations by virtue of their having located such claims, or having been located therein by others, and have executed deeds purporting to convey such interests, such deeds, if otherwise sufficient in law, shall be held valid and sufficient to convey such interest fully and completely, notwithstanding the minority of the grantor, and without any power or right of subsequent revocation; *provided*, that this section shall not apply to cases where any fraud was practiced upon such minor, or any undue or improper advantage was taken by his purchaser or any other person to induce such minor to execute such deed; *and, provided further*, that this section shall not apply to or affect any suits which may now be pending in any courts of this state, in which the legality or validity of such deeds may be involved.

### 1104. Minors empowered to sell or convey.

SEC. 2. All minors in this state, over the age of eighteen years, are hereby authorized and empowered to sell and convey by deed such interests as they may have acquired, or may hereafter acquire, in mining claims or mining locations within this state, by virtue of locating the same, or being located therein, and such deed shall, if otherwise sufficient in law, be held valid and sufficient to convey such interest fully and completely, and without the right of subsequent revocation, notwithstanding the minority of the grantor, subject, however, to the same provisions and limitations contained in the first section of this act.

## CORPORATIONS

- General incorporation law, sections 1105-1215.
- To enable mining corporations to consolidate, sections 1216-1218.
- General corporation law (old act), sections 1219-1241.
- Formation of corporations for transacting business as sureties, sections 1242-1248.
- For incorporation, operation and management of cooperative associations, sections 1249-1260.
- Franchises for furnishing electric light, heat and power, sections 1261-1264.
- To grant certain privileges to gas companies and others, section 1265.
- To license and regulate insurance business, sections 1267-1284.
- Mutual fire insurance companies, sections 1285-1303.
- Relative to re-insurance and transaction of business by fire insurance companies, sections 1304-1309.
- Relating to life, health, accident and annuity or endowment insurance, sections 1310-1324.
- Mutual life, health and accident insurance of live stock, sections 1325-1326.
- Requiring insurance companies to make annual statements, sections 1327-1329.
- Requiring mining corporations to file statements, sections 1330-1340.
- To encourage construction of cheap transportation lines, sections 1341-1345.
- To require foreign corporations to furnish evidence of incorporation and corporate name, sections 1346-1347.
- To require foreign corporations to qualify before carrying on business, sections 1348-1350.
- Requiring foreign corporations to publish annual statements, sections 1351-1354.
- To give foreign corporations benefit of the statute of limitations, section 1355.
- Regulation of foreign building and loan societies, sections 1356-1360.
- Requiring nonresident joint-stock building and loan associations to furnish security, sections 1361-1364.

### CONSTITUTIONAL PROVISIONS

- May be formed under general laws, section 338.
- Formation by special act, except for municipal purposes, prohibited, section 338.
- General laws may be altered or repealed, section 338.
- Property of, liable to taxation, section 339.
- Corporations for charitable, religious or educational purposes may be exempted, section 339.
- Dues from, shall be secured as may be prescribed by law, section 340.
- Corporators not individually liable for debts, section 340.
- Territorial laws concerning, continued until enactment of new laws, section 341.
- May sue and be sued, section 342.
- Prohibited from circulating bank notes or paper as money, section 343.
- No appropriation of right of way until full compensation first made or secured, section 344.
- State not to donate or loan money or credit or be stockholder in any corporation except those for educational or charitable purposes, section 346.
- Cities prohibited from being stockholders in any corporation, or loan its credit to corporations, except railroads, section 347.

### FRATERNAL, BENEVOLENT, LITERARY, RELIGIOUS AND ELEMOSYNARY SOCIETIES

- For incorporation of religious, charitable, literary, scientific and other associations, sections 1365-1372.
- For more effectual prevention of cruelty to animals, sections 1373-1381.
- For organization and maintenance of historic, scientific and literary societies, sections 1382-1389.
- For incorporation of hospitals or asylums, sections 1390-1397.
- For incorporation of rural cemetery associations, sections 1398-1409.
- To incorporate the Ancient Order of Hibernians, sections 1410-1415.
- To incorporate the Grand Lodge of Knights of Pythias and subordinate lodges, sections 1416-1417.
- To incorporate the Grand Lodge of Free and Accepted Masons, the Grand Lodge of Independent Order of Odd Fellows and their subordinate lodges, sections 1418-1423.

To extend provisions of above act, section 1424.

For the incorporation of the Protestant Episcopal churches, sections 1425-1433.

To incorporate the Woman's Christian Temperance Union, sections 1434-1439.

Certain acts relating to corporations omitted, section 1440.

Incorporation of banks, see Banks and Banking, sections 616-694.

Incorporation of railroads, see Railroads, sections 3511-3601.

*An Act providing a general corporation law.*

Approved March 16, 1903, 121

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### 1105. Purposes for which may be formed.

SECTION 1. Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this act as hereinafter provided; except to carry on within this state, an insurance business or that of a surety company or that of a railroad company, other than a street railroad.

Corporations may not be formed whose objects embrace the caring for dependent, neglected or delinquent children, see sec. 744.

For special provisions relative to telegraph companies, see secs. 4603-4630.

For special provisions relative to telephone companies, see secs. 4631-4632.

### 1106. Companies operating out of the state.

SEC. 2. Notwithstanding the exceptions in the preceding section of this act, a corporation may be incorporated under this act to transact the business of an insurance company, life, fire, marine or accident or other form of insurance or of a surety company or of a railroad company, or for other cognate or other like purposes, to operate wholly without this state and may unite the powers to conduct such business without this state, with any powers which it is authorized to exercise without or within this state; *provided*, such corporation do not infringe the laws of such other state or country, as it may intend to transact business in, by so incorporating under this act.

### 1107. Formation, how accomplished.

SEC. 3. All the persons who desire to form a corporation for any one or more of the purposes specified in this act shall make, sign and acknowledge before some person competent to take the acknowledgement of deeds, and file and have recorded in a book provided for that purpose, in the office of the clerk of the county in which the principal place of business of the company is intended to be located, articles of incorporation, or a certificate of incorporation, and file a certified copy, under the hand of the clerk and the seal of said county, in the office of the secretary of state, of said articles, or certificate of incorporation. *As amended, Stats. 1905, 73.*

### 1108. What articles or certificate shall set forth.

SEC. 4. 1. The name of the corporation (which name shall end with the word "incorporated," or shall contain one of the following words, used therein as a substantive or noun, "association," "company," "corporation," "club," "society," or "syndicate") and shall be such as to distinguish it from any

other formed or incorporated in this state or engaged in the same business, or promoting or carrying on the same objects or purposes in this state.

2. The name of the county and of the city or town and of the place within the county, city or town, in which its principal office or place of business is to be located in this state (giving street and number if practicable), and if not, so described as to be easily located within the said county, city or town, the secretary of state shall refuse to issue his certificate until such location is marked and established.

3. The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on by the corporation.

4. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars; the number of shares into which the same is divided, and the par value of each share; the amount of subscribed capital stock with which it will commence business, which shall not be less than one thousand dollars; the amount actually subscribed and the amount actually paid up if any; and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective classes of stock are created, and the amount of each class subscribed and amount paid thereon; *provided, however*, that the provisions of this paragraph shall not apply to corporations not for profit, for which it is desired to have no capital stock; in case any such corporation desires to have no capital stock, it shall be so stated, and the conditions of membership shall be also stated.

5. The names of each of the original subscribers to the capital stock and the amount subscribed by each, or if there be no stock, of the original incorporators.

6. The period, if any, limited for the duration of its existence.

7. Whether the members of its governing board shall be styled directors or trustees of the corporation and the number of such trustees or directors, which shall not be less than three.

8. Whether or not capital stock, after the amount of the subscription price or par value has been paid in, shall be subject to assessment to pay debts of the corporation, and, unless provision is made in such original certificate or articles of incorporation for assessment upon paid up stock, no paid up stock and no stock issued as fully paid up shall ever be assessable or assessed, and the articles of incorporation shall not be amended in this particular.

9. The certificate of articles of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation and the rights, powers or duties of the directors, the stockholders, or any classes of the stockholders, or holders of the bonds or other obligations of the corporation, or providing for governing the distribution or division of the profits of the said corporation; *provided*, such provisions are not contrary to the laws of this state. *As amended, Stats. 1905, 73.*

#### 1109. When corporate existence begins.

SEC. 5. Upon making the certificate or articles of incorporation and causing the same to be filed and recorded as aforesaid, and paying the fees therefor the secretary of state must issue to the corporation a certificate that a copy of the articles containing the required statement of facts has been filed in his office and thereupon the persons so associating, their successors and assigns, shall from the date of such certificate be and constitute a body corporate, by the name set forth in said certificate or articles, subject to dissolution as in this act elsewhere provided.

### 1110. Evidence of incorporation.

SEC. 6. A copy of any certificate or articles of incorporation, filed in pursuance of this act, and certified by the county clerk of the county in which it is filed or a copy of the copy filed with the secretary of state certified by him or said certificate, issued by the secretary of state pursuant to section 5 of this act shall be received in all courts and places as prima facie evidence of the facts therein stated, and of the existence and due incorporation of said corporation therein named.

### 1111. Powers.

SEC. 7. Every corporation created under the provisions of this act shall have power:

1. To have succession, by its corporate name, for the time stated in its certificate or articles of incorporation, and when no period is limited, perpetually or until dissolved and its affairs wound up according to law.

2. To sue and be sued, complain and defend in any court of law or equity.

3. To make and use a common seal and alter the same at pleasure.

4. To hold, purchase and convey real and personal estate, and to mortgage any such real and personal estate with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest in this state or in any other state, territory or country.

5. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation.

6. To require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will.

7. To make by-laws not inconsistent with the constitution or laws of the United States or of this state, fixing and altering the number of its directors or trustees, providing for their election and removal or for the management of its property, the regulation and government of its affairs, and for the certification and transfer of its stock, and to provide suitable penalties for a breach thereof not exceeding \$25 in any one case.

8. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.

9. To conduct business in this state, other states, the District of Columbia, the territories, districts, dependencies and colonies of the United States and in foreign countries, and have one or more offices out of this state, and to buy or otherwise obtain, hold, purchase, mortgage and convey real and personal property within or out of this state, to issue its bonds, debentures or other securities and hypothecate its franchises and property of any kind as security therefor.

### 1112. Power to issue money denied.

SEC. 8. No corporation created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidences of debt for circulation as money, and nothing in this act shall be so construed as to authorize the formation of banking corporations for the purpose of issuing or circulating money or currency within this state or without the state or at all, except the federal currency or the notes of banks authorized under the laws of the Congress of the United States, nor shall bank notes or paper of any kind, be permitted to circulate as money in this state, other than the notes of banks authorized by the laws of the Congress of the United States.

Act in relation to banking, secs. 616-694.

### 1113. Additional powers.

SEC. 9. In addition to the powers enumerated in this act, every corporation, its officers, directors and stockholders, shall possess and exercise all the

powers and privileges contained in this act, and the powers expressly given in its articles or certificate under which it was incorporated, so far as the same are necessary or convenient to the attainment of the objects set forth in such certificate or articles of incorporation; but shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

#### 1114. Preferred and other special stocks.

SEC. 10. Every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated and expressed in the certificate or articles of incorporation or in any amendment or certificate of amendment thereof; and the power to increase or decrease the stock as in this act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks issued and outstanding exceed two-thirds of the capital stock paid for in cash or property, and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon (but only out of the profits or property of said corporation) dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding ten per centum per annum, payable quarterly, half yearly or yearly; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; *provided*, the corporation shall set apart or pay the said dividends to the holders of noncumulative preferred stock before any dividend shall be paid on the common stock; and in no event shall a holder of any class of stock be personally liable for the debts of the corporation nor for the payment of dividends; but in case of insolvency its debts and other liabilities shall be paid in preference to the preferred stock; the terms "general stock" and "common stock" are synonymous.

#### 1115. Rights may be given creditors to vote or inspect books.

SEC. 11. Every corporation, organized under and pursuant to the provisions of this act, or subject to its provisions, may make suitable provisions in its articles or certificate of incorporation, original or amended, and thereby to the extent, in the manner and subject to the conditions provided in the certificate or articles of incorporation confer upon the holders of any bond or debentures issued or to be issued by any such corporation, whether secured by mortgage or otherwise, the power to vote in respect to the corporate affairs and management of the company to the same extent and in the same manner as stockholders of the said corporation, as may be provided in the certificate of incorporation and, in case of a default in the payment of the principal or interest on said bonds or otherwise, or in any other case, confer upon such bondholders the same right of inspection of the corporate books and accounts and records of any such company, and also any other rights, which the stockholders of the said company have or may have by reason of the provisions of the statutes or laws of this state or pursuant to the provisions of the certificate or articles of incorporation or the by-laws of the company.

#### 1116. First meeting.

SEC. 12. The first meeting of every corporation shall be called by a notice signed by a majority of the incorporators named in the certificate of incorporation, designating the time, place and purpose of the meeting; which may be within or without the state, and such notice shall, at least two weeks

before the time of any such meeting, be published three times in some newspaper of the county where the corporation has its principal place of business; or said first meeting may be called without such or any publication of notice if two days' notice be personally served on all the parties named in the certificate of incorporation, and all stockholders, or if all the parties named in the certificate of incorporation and all who have become members or subscribed for stock therein, since its date, if any, waive notice in writing and fix a time and place of meeting which may be done in said certificate or articles of incorporation, or by a separate writing filed with the secretary or clerk of the corporation.

#### 1117. First meeting for election of directors.

SEC. 13. At such first meeting directors or trustees shall be elected and any business specified in the notice thereof or in the written waiver of notice thereof may be transacted. Stockholders or members shall be entitled to vote at said meeting, and thereafter the said directors or trustees shall be elected at the time and place within or without this state named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held. A notice of any change shall be given to each stockholder thirty days before the election is held, in person or by letter mailed to his last known postoffice address. Until the directors or trustees are elected the incorporators shall have charge of the formation of the corporation and may take all steps necessary to obtain subscriptions and perfect the organization.

#### 1118. Meeting of stockholders and principal office.

SEC. 14. That in all cases after the first meeting of the incorporators, where it is not otherwise provided by the by-laws, the meetings of the stockholders or members of every corporation shall be held at its principal office in this state. The stockholders and directors may, also, hold their meetings, and have an office or offices outside of this state, if the by-laws so provide; but every corporation shall maintain a principal office or place of business in this state and shall have an agent, resident of this state, in charge thereof, who shall at all times have the original or duplicate stock register and a copy of its articles of incorporation and of all amendments thereto, and a copy of all by-laws adopted and in force in his office, for the use of parties interested or entitled to examine same.

#### 1119. Banks and corporations may act as resident agents.

SEC. 15. The resident agent provided for by section 14 of this act, may be any bank or banking corporation located and doing business in this state, or any corporation incorporated hereafter under the laws of this state, with authority to act as such agent, and any such bank and any such corporation shall have authority:

1. To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

2. To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

3. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

4. To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between said corporation and those dealing with it.

**1120. Maintaining principal office and appointing agents.**

**SEC. 16.** Every corporation organized under this act shall have and maintain in a conspicuous place on its principal office required by section 14, in letters sufficiently large to be easily read, painted or printed, the corporate name of such corporation. And every such corporation which shall fail or refuse to comply with the requirements of section 14 and of this section, for a period of thirty days, or fail to maintain such office or fail to have a competent agent in charge thereof, on all business days of the year, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, to be recovered with costs by the state before any court of competent jurisdiction by action at law, to be prosecuted by the attorney-general, or by the district attorney of the county in which such action or proceeding to recover such fine is prosecuted. Failure to comply with the requirements of this section for a period of ninety days, shall render the certificate issued by the secretary of state void, and the same can only be revived by a certificate from the governor issued for good and sufficient reasons for noncompliance. *As amended, Stats. 1905, 75; 1907, 228.*

**1121. Voting power of stockholders.**

**SEC. 17.** Unless otherwise provided in the charter, the articles or certificate or by-laws of the corporation, each stockholder whether resident or non-resident, shall at every election be entitled to one vote in person or by proxy for each share of the capital stock held by him; and each member of a corporation without capital stock to one vote, but no share of the stock shall be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election. No fractions less than one share shall be recognized in voting nor shall certificates be issued therefor. All proxies and powers of attorney to vote must be in writing and filed with the secretary.

**1122. Election to be by ballot.**

**SEC. 18.** All elections of directors or trustees shall be by ballot unless otherwise provided in the charter or articles or certificate of incorporation, or in the by-laws.

**1123. Qualification of directors.**

**SEC. 19.** The directors who may be called either directors or trustees, as determined by the articles or certificate of incorporation, shall, before entering upon the duties of their office respectively take and subscribe to an oath, as prescribed by the laws of this state, to perform their duties faithfully and observe and maintain the respect due said laws.

**1124. Cumulative voting.**

**SEC. 20.** In all corporations heretofore formed and now existing and in all corporations formed under this act—unless otherwise provided in the certificate or articles of incorporation, original or amended—every stockholder shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are trustees to be elected, or to cumulate said shares and give one candidate as many votes as the number of trustees or 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, and such trustees or directors shall not be elected in any other manner; unless such method be set forth in said certificate or articles of incorporation or an amendment thereto. The person or persons receiving the greatest number of votes shall be director or directors, trustee or trustees. But a different plan or method of voting, limiting and regulating the mode of voting, may be prescribed in said certificate or articles of incorporation,

original or amended, and when so prescribed shall be observed and shall govern.

#### 1125. By-laws, how made.

SEC. 21. The power to make and alter by-laws shall be in the stockholders or members, but any corporation may, in its articles or certificate of incorporation, original or amended, or by resolution adopted by a two-thirds vote, or by written consent of two-thirds of the stock, or the holders thereof, or two-thirds of the members, confer that power upon the directors or trustees. By-laws made by the directors under power so conferred, may be altered or repealed by the directors or trustees, or by the stockholders or members. The written consent of the owners of two-thirds of the stock or of two-thirds of the members shall suffice to adopt, amend or repeal any by-law or by-laws. All by-laws in force must be copied legibly in a book called Book of By-laws, kept at all times for inspection in the principal office. Until so copied, they shall not be effective nor in force.

#### 1126. Officers.

SEC. 22. Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen either by the directors or trustees or stockholders, as the by-laws may direct, and shall hold their respective offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty; and shall record all the acts and votes of the corporation and its members or stockholders, trustees or directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer shall give bond in such sum, and with such surety or sureties, as shall be required by the by-laws, for the faithful discharge of his duty. The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws.

#### 1127. Meeting of directors, executive committee—Quorum.

SEC. 23. The board of directors or trustees may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, who, to the extent provided in the by-laws of said company, and until a change occurs in said board shall have and exercise the powers of the board of directors or trustees in the management of the business and affairs of the company and may have the power to authorize the seal of the company to be affixed to all papers which may require it, except as modified by the above provisions. A majority of the whole number of trustees or directors shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act, subject to the provisions of the by-laws and of the laws of this state. The board of directors shall hold meetings at such times and places inside or outside of the state and upon such notice as it may prescribe or determine; and the by-laws may provide that any action of a majority, although not as a regularly called meeting, and the record thereof, if assented to in writing by all the other members of the board, shall always be as valid and effective in all respects as if passed by the board in regular meeting.

#### 1128. Vacancies by failure to elect trustees or to qualify.

SEC. 24. If it shall happen, at any time, that an election of trustees or directors shall not be held on the day designated by the by-laws of the company, or otherwise fixed, the corporation shall not for that reason be dissolved, but it shall be lawful, on any other day, to hold an election for trustees or directors in such manner as shall be provided for by law, or statute or in

the by-laws of the company, and all acts of the trustees or directors shall be valid and binding on the company until their successors shall be elected. When a majority of any newly elected board of trustees or directors shall fail to qualify and file in the office of the company their oath of office, within thirty days from the day of their election, it shall be the duty of any officer of the company upon the request of owners in said company representing not less than one-third of the capital stock of the corporation owned in the company, to call a meeting of the stockholders of said company, which meeting when assembled shall have power to elect trustees or directors to supply the place of those who have failed to qualify; but such trustees or directors may qualify and enter upon the duties of their office at any time after the said thirty days, if such meeting for a new election shall not have been called. Whenever a majority of the trustees or directors elected have qualified by taking the oath of office, and one or more of the remaining trustees or directors elected shall fail to qualify within thirty days' after their election, then the board of trustees shall fill the vacancy caused by failure to qualify by appointment.

#### 1129. Vacancies in board of directors.

SEC. 25. Any vacancy occurring among the directors or in the office of president, secretary or treasurer by death, resignation, removal or otherwise, except a vacancy caused by the removal of a director pursuant to this act, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors; but directors or trustees so appointed shall hold only until their places are filled by an election by stockholders or members.

#### 1130. Revisory power of court.

SEC. 26. The district court of the district wherein said corporation has its principal office upon application of any party who may be aggrieved by or complain of any election or any proceeding, act or matter in or touching the same, ten days' notice having been given to the adverse party or to those who are affected thereby of such intended application, shall proceed forthwith at chambers in any county in the district where the corporation has its principal place of business to hear proofs, affidavits and allegations of the parties, or otherwise inquire into the said matter or cause of complaint and either thereupon establish the election so complained of or order a new election or make such order and give such relief in the premises as right and justice may require, and the judge of said court may also, if any election for directors or trustees is not held on the day designated by law or in the by-laws, order an election to be held on petition of any stockholder, and may punish the officers and directors of said corporation for failure or refusal to obey said order as for a contempt of court.

#### 1131. Stock personal estate—Transfer of.

SEC. 27. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, the stock of the company shall be deemed personal estate. Such shares may be transferred by endorsement and delivery of the certificate thereof, such endorsement being by the signature of the proprietor, or his or her attorney, appointed by written power, or legal representative duly authorized; but such transfer shall not be valid except between the parties thereto, until the same shall have been 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, and the old certificate surrendered and canceled, which must be done in all cases, except in case of loss or destruction of original, before a new one issue. In all cases in which shares of stock in corporations now existing, or hereafter incorporated under any law of this state, are held or

owned by a married woman, such shares may be transferred by her, her agent or attorney, authorized by writing, without the signature of her husband, in the same manner, as if such married woman were a *femme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent, or attorney, in the same manner as if she were unmarried. And it shall not be necessary for her husband to join in receipt therefor; and any proxy or power given by a married woman, touching any share of stock of any corporation owned by her, shall be valid and be binding, without the signature of her husband, the same as if she were unmarried.

### 1132. Payment of subscribed capital stock.

SEC. 28. The stockholders of any corporation formed under this act, may in the by-laws of the company prescribe the times, manners and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees or directors shall have power to demand and call in from the stockholders the sums by them subscribed, at such times and in such manner, payments, or installments, as they may deem proper. The trustees shall also have power at such times and in such amount, as they may from time to time deem the interest of the corporation to require, to levy and collect assessments upon the capital stock of the corporation, as herein provided, but not upon stock issued as paid up unless so specified and provided in the original certificate or articles of incorporation, which shall not be amended in this respect. Notice of each assessment or call shall be given to the stockholders personally, or by publication once a week for at least four weeks, in some newspaper published in the county in which the principal office or place of business of the company is located, and in a newspaper published in the county wherein the property of the company or corporation is situated if in this state, and if no paper be published in either of such counties, then the newspaper published nearest to the said principal place of business in the state.

### 1133. Sale for nonpayment of calls.

SEC. 29. If after such notice has been given, any stockholder shall make default in the payment of the call or assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the call or amount of subscribed capital called in or the assessment upon all the shares held by him, her or them, together with all costs of advertising and expenses of sale. The sale of said shares shall be made at the office of the company at public auction to the highest bidder, after a notice thereof published for four weeks, as above in this section directed, and a copy of such notice mailed to each delinquent stockholder if his address is known four weeks before such sale, and at such sale the person who shall pay the call or assessment so due, together with the expenses of advertising and sale, for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder.

### 1134. When company may buy its stock.

SEC. 30. Every corporation in this state shall also have the power, whenever at any assessment sale of the stock of said corporation or sale for unpaid subscription or call no person will take the stock and pay the assessment, or amount unpaid and due thereon and costs, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this state which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid, and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stockhold-

ers, who may make such disposition of the same as they may deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase or otherwise, a majority of the remaining shares of stock in said corporation shall be held to be a majority of the shares of the stock in said incorporated company, for all purposes of election or voting on any question before a stockholders' meeting.

### 1135. Stockholders liable until subscriptions are fully paid.

SEC. 31. Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or its articles of incorporation, or such proportion of that sum as shall be required to satisfy such debts and obligations, but no more. No suit shall be brought against any director or stockholder for any debt of a corporation organized as aforesaid, of which he is such director or stockholder, until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied.

### 1136. Trustees not personally liable.

SEC. 32. No person holding stock in any corporation incorporated in this state as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally liable or subject to any liability as a stockholder in or of such corporation (provided the transfer and the books of the company show the nature of the transfer and that the said stock is held in such fiduciary capacity or as a pledge and as security merely), but the person pledging such stock shall be considered as holding and owning the same, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such fund would have been had he been living and competent to act and hold the stock in his own name.

### 1137. Liabilities created by statutes of other states not to be enforced in this state.

SEC. 33. No action or proceeding shall be maintained by any creditor of any corporation, nor by said corporation, nor by any other party or person in any court of this state against any stockholder, officer or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of the United States or of any other state, territory, colony or foreign country.

[Secs. 34 and 35, repealed, Stats. 1905, 75.]

### 1138. Conversion of preferred stock into bonds; issue of bonds convertible into common stock.

SEC. 36. With the consent of two-thirds in interest of each class of the stockholders present in person or by proxy at a meeting called in the manner provided in section 40 of this act, every corporation organized under this act, that shall have issued preferred stock, entitling the holders thereof to receive dividends at a rate exceeding seven per centum per annum, and that shall have continuously declared and paid dividends at such rate, on such preferred stock for the period of at least one year next preceding the meeting, and whose floating or unfunded debt at the time of the stockholders' meeting shall, in the certificate thereof filed with the secretary of state, be certified not to exceed ten per centum of the par amount of the preferred stock then

outstanding, and whose assets at such time, after deducting the amount of its indebtedness, shall be certified, in the judgment of the officers making such certificate, to be at least equal to the amount of preferred stock issued and outstanding, may, with the consent of the holders of any such preferred stock, redeem and retire the preferred stock of such holder, out of bonds or out of the proceeds of bonds of the corporation, bearing interest at a rate not exceeding seven per centum per annum, the principal of such bonds being made payable at a date not less than ten years from the date thereof; every corporation organized under this act, may, from time to time, in the manner above provided, issue bonds, which, if therein so declared, shall be convertible at par at the option of the holder, into fully paid common stock of the corporation at par, within any period therein prescribed not less than two years from the issue thereof; and in such case the board of directors may authorize the issue of the common stock into which such bonds, by their terms, shall be convertible.

### 1139. Incorporators may amend certificate before payment of capital.

SEC. 37. It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to record with the clerk of the county in which its original certificate of incorporation was recorded, and file with the secretary of state, an amended certificate duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under this act, modifying, changing or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of its original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; *provided, however*, that nothing herein shall permit the insertion of any matter not in conformity with this act; *and, provided, however*, that this act shall not in any manner affect any proceedings pending in any court, and for filing said amended certificate of incorporation, the secretary of state shall charge such fee as may be allowed by law.

### 1140. Surviving incorporators may designate others for organization.

SEC. 38. When one or more of the commissioners or incorporators of any corporation, created by or under this or any general or special act, shall have died before the corporation shall have been organized, pursuant to law, the survivors or survivor may in writing designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so effected by their aid shall be effectual in law as if it had been effected by all the original commissioners or incorporators.

### 1141. Errors and omissions in certificate cured by amendment.

SEC. 39. Whenever in the certificate or articles of incorporation or organization of any corporation organized under any general act of the legislature of this state, there shall be any error or omission in the recital of the act under which said corporation is created, or mistake in or the omission of any other matter which is required or proper to be stated in said certificate, it shall and may be lawful for said corporation to correct such error in the manner following: The board of directors of such corporation shall pass a resolution declaring that such error exists and that said corporation desires to correct the same. A certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of all the stockholders of said corporation, shall be filed in the office of secretary of state, and upon the filing thereof, the articles or

certificate of incorporation or of organization shall be deemed to be corrected and amended accordingly, and the filing of said certificate in conformity with this act shall have the same force and effect as if said certificate or articles of incorporation or organization had been originally drafted in conformity with the amendment so made.

#### 1142. Amendment and changes after organization.

SEC. 40. Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, change the par value of the shares of its capital stock, decrease its capital stock, change the location of its principal office in this state, extend its corporate existence, change the number of its directors or trustees, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired, in manner following: The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice, given personally or by mail; if two-thirds in interest of each class of the stockholders having voting powers and of other persons having like powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders and creditors, if any, having voting powers, shall be filed in the office of the secretary of state, and upon the filing of the same and filing a certified copy of said certificate of amendment with the county clerk of the county where the corporation has its principal office, the certificate or articles of incorporation shall be deemed to be amended accordingly; *provided*, that such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of state that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such change or alteration in all courts and places; *provided, also*, that no amendment making or attempting to make paid up stock issued as paid up or the holders thereof liable to assessment or for debts of the company shall be made.

#### 1143. *Idem*—Any corporation except railroad may amend articles.

SEC. 41. Any corporation of this state, whether organized under this act or by a special act of incorporation or under general laws, excepting railroad corporations, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock, or the location of its principal office in or out of this state, and fix any method of altering its by-laws permitted by this act in the manner prescribed in the foregoing section, and any corporation may in the same manner relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation; *provided*, that any corporation of this state, except railroad corporations, which has exercised any of the powers, or caused to be done any of the acts, hereinabove specified, in the manner provided by this act, shall be deemed to have possessed such powers as fully and to the same extent as if they had been expressly conferred upon such corporation by the terms and provisions of this act, and all such powers and acts are hereby ratified, confirmed and approved. *As amended, Stats. 1909, 198.*

**1144. Method of decrease of capital stock.**

SEC. 42. The decrease of capital may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, by amendment pursuant to this and the two preceding sections, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corpora[*tion shall be jointly and severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; provided, no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted*]. Part included in brackets not in enrolled bill.

**1145. Merger of two or more corporations.**

SEC. 43. Any two or more corporations organized under the provisions of this act, or existing under the laws of this state, for the purpose of carrying on any kind of business, may consolidate into a single corporation which may be either one of said consolidating corporations, or a new corporation to be formed by means of such consolidation; the directors or trustees, or a majority of them, of such corporation, as desire to consolidate, may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation, as provided in this act, as well as the manner of converting the shares of such of the old corporations into the new, with such other details and provisions as are deemed necessary. Said agreement shall be submitted to the stockholders of each corporation, at a meeting thereof, called separately for the purpose of taking the same into consideration, of the time, place and object of which meeting due notice shall be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each corporation either has its principal office or conducts its business in this state, and a copy of such notice shall be mailed to the last known postoffice address of each stockholder of each corporation, at least twenty days prior to the date of such meeting, and at said meeting said agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and if the votes of stockholders and others entitled to vote as stockholders of each corporation representing two-thirds in amount of its capital stock and two-thirds of the secured claims held by creditors entitled to vote as stockholders, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the secretary of each corporation, under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each of said corporations under the corporate seals thereof and acknowledged by the president of each of such corporations before any officer authorized by the laws of this state to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations, and the agreement so certified and acknowledged shall be filed in

the office of the secretary of state, and shall thence be taken and deemed to be the agreement and act of consolidation of said corporations, and a copy of said agreement and act of consolidation, duly certified by the secretary of state under the seal of his office, shall also be filed and recorded in the offices of the county clerks of the counties of this state in which the respective corporations so consolidated shall have their original charters or articles or certificates of incorporation recorded, or if any of the corporations shall have been specially created by a public act of the legislature, or shall have changed its place of business since its incorporation, then said agreement shall be filed and recorded in the county where such corporation shall have had its principal place of business, and such copy certified by the secretary of state as such record, or a certified copy thereof, shall be prima facie evidence of the existence of the corporation created by the said agreement, and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof.

For consolidation of foreign and domestic mining corporations, see secs. 1216-1218.

#### 1146. Agreement of mergers.

SEC. 44. When the agreement is signed, acknowledged, filed and recorded, as in the preceding section is required, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of said corporations so consolidated, and all and singular, the rights, privileges, powers, and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, wherever situate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; *provided*, that all rights of creditors, and all liens upon the property of either of said former corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

#### 1147. Payment for stock of dissatisfied stockholders.

SEC. 45. If any stockholder in either corporation consolidating as aforesaid, who objected thereto in writing, shall within twenty days after the agreement of consolidation has been filed and recorded, as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the value of the stock at the date of consolidation; in case of disagreement as to the value thereof, it shall be ascertained by three disinterested persons, one of whom shall be chosen by the stockholder, one by the directors of the consolidated corporation, and the other by the two selected as aforesaid; and in case the said award is not paid within sixty days from the making thereof, and notice thereof given to said stockholder and said consolidated corporation, the amount of the award shall be evidence of the amount due by said corporation, and may be collected as other debts are by law collectible; on receiving payment of the award, said stockholder shall transfer his stock to the said

consolidated corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders. If for any reason said award be not made, or be grossly unfair, either party may have an action in the district court to determine the value of the shares and effect the transfer thereof to the corporation on payment of such value.

#### 1148. Pending actions.

SEC. 46. Any action or proceeding pending by or against either of the corporations consolidated, may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.

#### 1149. Liability not affected by merger or decrease of capital.

SEC. 47. The liability of corporations created under this act, or existing under the laws of this state, or the stockholders or officers thereof, or the right or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation of two or more corporations, or by any change or amendment in the articles of incorporation.

#### 1150. Bonds—Power of consolidated company.

SEC. 48. When two or more corporations are consolidated, the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect such consolidation; to secure the payment of which bonds and obligations it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed; and may issue capital stock to such an amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment for the original shares, in the manner and on the terms specified in the agreement of consolidation.

#### 1151. Sale of franchise—New incorporation.

SEC. 49. If the franchise and property of any corporation formed under the provisions of this act, or existing under the law of this state is sold, the persons who may become the purchasers, at private sale or under the judgment of the court, may organize a corporation for the continuation, operation and management of the same, and such corporation, when organized, shall have the same rights, privileges and franchises as have been granted to, or acquired by, the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed upon it; and, in addition thereto, shall be subject to all the provisions of this act. Such corporation shall be formed by a certificate or articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of the provisions of this act, set forth the description of the property sold and the decree under which the sale was made, if it was sold under judgment, or if not, the deed conveying the property; the amount paid or to be paid, and to whom and by whom, and such other statements as may be deemed necessary. The articles shall be signed by the purchaser and his associates, if any, and shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office, which shall be recorded as hereinbefore provided for certificates of incorporation; and when a certificate of such fact is delivered to the purchaser the corporation shall be deemed to be organized, and shall have the rights, powers and privileges,

and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this act.

#### 1152. Manner of sale.

SEC. 50. Sales of property and franchises of such corporations that may be sold under a decree of court shall be made after such notice of the time and place as the court may deem proper; and if such sales are made in the foreclosure of one or more mortgages, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such mortgage or mortgages, or if the property and franchise will produce so much, then for the amount of interest due under said mortgage or mortgages, subject to the payment by the purchaser of the outstanding bonds and interest secured thereby as they became due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but when a sale shall be ordered to be made, subject as aforesaid, the court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from encumbrances. Sales under this section shall be made on such credits as the court may deem proper.

#### 1153. Forfeiture of charter for failure to commence business.

SEC. 51. Any corporation organized under this act shall forfeit all rights, privileges and franchises obtained thereunder, if it shall fail, for two years after its incorporation, to organize and to commence in good faith the business, or to promote the objects or purposes for which it was organized.

#### 1154. Incorporation cannot be attacked collaterally.

SEC. 52. The due incorporation of any company claiming in good faith to be a corporation pursuant to the laws of this state, and doing business as such, or its rights to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party. This section shall not be construed to prevent judicial inquiry into the regularity or invalidity of the incorporation or organization of the corporation, or its lawful possession of any corporate power it may undertake to assert in any other suit or proceeding where its corporate existence, or the power to exercise the corporate rights it asserts, is challenged by the state, or its officers authorized so to do, and evidence tending to sustain such challenge shall be admissible in any suit or proceeding.

[Sec. 53, repealed, Stats. 1905, 75.]

#### 1155. May issue stock for labor or real or personal property.

SEC. 54. Any corporation existing under any law of this state may issue stock for labor done or personal property or real estate or leases thereof; in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

#### 1156. Stock so issued is paid.

SEC. 55. All stock so sold or so issued pursuant to sections 53 or 54 of this act shall be fully paid and not liable to any further call or assessment (and this shall be so stated on the face of the certificate). But it shall be the duty of the corporation to have its minutes or other permanent records to show, with reasonable detail, the items and character of property (and of the labor or services) for which any stock or bonds were so issued.

#### 1157. Certificate of stock.

SEC. 56. Every stockholder shall have a certificate under the seal of the corporation, signed by the president, or vice-president, and by the treasurer or secretary, certifying the total amount of capital stock, authorized, and the

total number of shares, the par value, and the number of shares contained in the certificate, whether they are fully paid up and nonassessable or not, also give the location of the principal office, and the name of the resident agent. *As amended, Stats. 1905, 75.*

Certificates of stock in mining companies to be stamped "Treasury Stock" or "Promotion Stock," see secs. 1332-1335.

### 1158. Exemption of stock held by nonresidents.

SEC. 57. The shares of stock in every corporation shall be deemed personal property and transferable on the books of the corporation in such manner and under such regulations as section 27 of this act require[s] and the by-laws provide; *provided, however,* that no stock or bonds issued by any corporation organized under this act shall be taxed by this state when the same shall be owned by nonresidents of this state, or by foreign corporations.

### 1159. Voting list of stockholders and stock ledger.

SEC. 58. After the first election of directors where the by-laws or the certificate or articles of incorporation otherwise provide, no stock shall be voted on at any election of directors or trustees, or on any question submitted to stockholders at any meeting thereof, which shall have been transferred on the books of the company within twenty days next preceding such election, and it shall be the duty of the directors or trustees to cause the officer who shall have charge of the stock ledger to prepare and make, at least ten days before every election, a complete list of stockholders entitled to vote, arranged in alphabetical order. Such list shall be open, at the place where said election is to be held for said ten days, to the examination of any stockholder, or party entitled to vote at such election, or their agents or proxies, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder or party entitled to inspect the same who may be present. Upon the neglect or refusal of the said officers or of the directors or trustees to produce such list at any election, they shall be ineligible to any office at such election. The original or duplicate stock ledger provided for in section 71 of this act and containing the names and addresses of the stockholders, and the number of shares held by them, respectively, shall, at all times, during the usual hours of business, be open to the examination of every stockholder at its principal office or place of business in this state, and said original or duplicate stock ledger shall be evidence in all courts of this state. Such ledger shall be kept by all corporations, and either the original or duplicate shall always be kept open for inspection by stockholders or state officers, at the principal place of business of said corporation. If the duplicate is so kept, the original may be kept at any place the corporation may fix, within or without the state.

### 1160. Stock ledger to determine who may vote—Proxies to be filed.

SEC. 59. In case the right to vote upon any share of stock shall be questioned, the inspectors of the election shall refer to the stock books of the corporation to ascertain who are the stockholders, and in case of a discrepancy between the books, the stock ledger, if properly kept, shall control and determine who are entitled to vote. Proxies and powers of attorney to vote must (unless the by-laws or certificate or articles of incorporation otherwise provide) be filed with the secretary of the company twenty days before an election, or they cannot be used at such election.

### 1161. Stock held by representatives, how voted.

SEC. 60. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of

the company, though standing in the name of the beneficial owner on the books of the company, and may vote accordingly as a stockholder, or give proxies therefor.

#### 1162. Pledge of stocks and voting power of pledgor.

SEC. 61. Any stockholder may pledge his stock, by a delivery of the certificates, or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder. Persons holding stock pledged shall be entitled to vote the shares so held, if transferred to them and standing in their names, unless it appears on the books that the transfer is as security only and not absolute, or if in the transfer by the pledgor on the books of the corporation as security he shall have expressly given to the pledgee power to vote thereon; in all other cases only the pledgor or his proxy may represent said stock and vote thereon. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer, on the books of the company.

#### 1163. Treasury stock not to be voted.

SEC. 62. Shares of stock of the corporation belonging to the corporation shall not be voted upon directly or indirectly.

#### 1164. Lost certificates.

SEC. 63. Every corporation may issue a new certificate of stock in place of any certificate claimed to be lost or destroyed, but the directors may require as a condition of such reissue that the owner or his successors in interest give a bond in a sum not exceeding double the value of the stock, but not less than \$100, to indemnify the corporation against any claim that may be made on account of the issue of such new certificate.

#### 1165. Proceedings in court to obtain new certificate.

SEC. 64. The district court shall, for due cause shown upon complaint of the owner of a lost or destroyed certificate, order the delivery to him by said directors of a new certificate in lieu thereof, and may require a proper bond in such amount as the court may fix for the protection of the corporation and of any person who may be interested in the lost or destroyed certificates.

#### 1166. Security on transfer.

SEC. 65. No share of stock shall be transferred without the consent of the directors until the same is fully paid up or security given to the satisfaction of the board for the residue remaining unpaid. And where bond or security have been given to the corporation for any sum remaining unpaid upon stock, no transfer shall affect the validity of such bond as security.

#### 1167. Dividends.

SEC. 66. The directors of every corporation created under this act shall have power, after reserving over and above its capital stock paid in such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits, in excess of the amount so reserved, and pay the same to such stockholders on demand; *provided*, that the corporation may, in its certificate of incorporation, or in its by-laws, give the directors power to fix the amount to be reserved.

#### 1168. Subdividing capital stock.

SEC. 67. All corporations organized and existing under the laws of this state, whether under this or prior acts, desiring to divide the capital stock of the corporation into shares of smaller denominations than originally issued, thereby increasing the number of shares without changing the amount of capital stock, may do so by a majority vote of the trustees of the corporation

at any regular or called meeting of the trustees, without amending their articles or certificate of incorporation, and may issue the stock of such corporation in accordance therewith after having filed a certificate setting forth the amount or denomination into which they propose to divide such shares, verified by the affidavit of a majority of such trustees, in the office of the clerk of the county where such corporation has its principal place of business and a certified copy thereof in the office of the secretary of state.

**1169. Capital stock not to be reduced—Proviso—Dividend from net profits only.**

SEC. 68. It shall not be lawful for the trustees or directors to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this act, or in accordance with the provisions of the certificate or articles of incorporation; and in case of any violation of the provisions of this section, the directors or trustees under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the board of directors or trustees at the time, shall in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn or reduced, or paid out; *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain, after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter; *provided, also*, that this section shall not prevent the retirement or conversion of either stock or bonds or the distribution of the earnings or accumulations of the corporation as provided for in the articles or certificate of incorporation, original or amended.

**1170. Removal of place of business without amendment.**

SEC. 69. Any corporation, now existing or hereafter to be formed, desiring at any time to change the location of its principal office, shall, after a resolution has been passed by its directors, members or stockholders, authorizing or directing such change or removal, file in the office of the secretary of state and of the county clerk of the county where its principal office then is, and publish once a week for four weeks in the newspaper published nearest to the place from which said office is to be removed, a notice of such change, specifying particularly where the said office is to be located, the date when the change was or will be made, and the name of the resident agent to have charge of such office after such change. If it is desired to change the said office to some county other than the one in which the corporation then has its principal office, such a notice must also be filed in the office of the county clerk of the county to which the said office is to be removed, and unless such copies are already on file in said office, a certified copy of its original articles or certificate of incorporation, or of a copy or record thereof made and filed pursuant to this act, and certified copies of all amendments to such original articles must also be filed with said county clerk of the county to which it is proposed to remove. The notice of such change may be signed by any officer or director of the corporation. The formation or corporate acts of no corporation heretofore formed under this act, or any other act, shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation, and on compliance with the provisions of this section, in the several cases herein mentioned, or on filing of an amendment, under sections 40 and 41 of this act, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town, or locality or county in the state.

**1171. Filing copy of articles in other counties.**

SEC. 70. Whenever the principal office of a corporation is changed from one county to another by amendment of its articles of incorporation, or otherwise, and whenever any corporation becomes the owner or lessee of any real property in any county other than that where it has its principal place of business, or whenever copies of its articles of incorporation and of all amendments thereto are not on file or of record in the office of the county clerk of the county where its principal office is situated, or where it owns, holds, leases, manages or controls any real property, such corporation must file in the office of the county clerk of such county to which its office is changed, or where it owns or holds any real property in this state, certified copies of its original articles of incorporation, or of the copy thereof filed with the secretary of state, and of each and every amendment thereto on file with the secretary of state, and no corporation shall maintain or defend any suit in such county till this is done, and, if the said corporation fails to cause said papers to be so filed, any person desiring for a lawful purpose to examine the same, may procure and file and record in said county clerk's office said papers or any of them not so filed theretofore, and may recover the expense thereof with the costs of suit in an action against such delinquent corporation.

**1172. Book for names of members—Stock ledger.**

SEC. 71. It shall be the duty of the trustees of every company incorporated in this state to keep a book containing the names and addresses of all persons, alphabetically arranged, who are or shall become members or stockholders of the corporation, or who may be entitled to vote at stockholders' meetings, and showing the number of shares of stock held, or other voting rights, if any, by them respectively, and the time when they became the owners of such shares; which book shall be kept in its principal office, during the usual business hours of the day, on every day except Sunday and the legal holidays, and shall be open for the inspection of stockholders of the company, at the principal office or principal place of business of the company; and any stockholder of the company may have the right to examine any books and papers of said corporation in said office and to demand and receive from the agent or officer having the charge of such a certified copy of any entry therein, on paying the actual cost of making such copy, and such copy shall be presumptive and prima facie evidence in all actions against said corporation or any of its stockholders.

**1173. Information for creditor of stockholder.**

SEC. 72. Every person having charge of the original or duplicate stock books of any corporation shall, upon application of any person and upon presentation to him of a sworn affidavit on his behalf that he is a creditor of any stockholder, give him information as to the number of shares owned by said stockholder, and any person refusing to give such information shall forfeit to the party demanding such information the sum of \$100, to be recovered in any court having jurisdiction.

**1174. Publishing false statements a misdemeanor.**

SEC. 73. Any person who, being a director, manager or officer of any corporation or body corporate or company, shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of any such body corporate, corporation or company, or with intent to induce any person to become a shareholder therein, or to entrust or advance any property to such body corporate, corporation or company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor.

**1175. Officers liable for damages caused thereby.**

SEC. 74. If the directors or officers of any corporation organized under the provisions of this act shall knowingly cause to be published, or given out, any written statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published, or given out, or assenting thereto, shall be jointly and severally individually liable for any loss or damage resulting therefrom.

**1176. Penalty for making false entry.**

SEC. 75. If at any time the clerk, secretary, agent or other officer or employee having charge of any book required by this act to be kept, shall make any false entry therein, or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in section 71 of this act, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of one hundred dollars, and all damages resulting therefrom, to be awarded in an action for debt in any court having competent jurisdiction.

**1177. Keeping fraudulent accounts a crime.**

SEC. 76. Any person who, being a director, trustee, officer or manager of any body corporate, corporation, or company, shall, as such, receive or possess himself of any of the property of such corporation, body corporate, or company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause, or to direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor.

**1178. Wilful destruction of books, making false entries.**

SEC. 77. Any person who, being a director, manager, officer or member of any corporation, body corporate or company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing, or valuable security belonging to the said corporation, body corporate or company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of accounts or other document belonging thereto, shall be guilty of a misdemeanor.

**1179. Removal of directors.**

SEC. 78. Any director may be removed by a vote of two-thirds of the members or the owners of two-thirds of the stock, or by written consent thereto subscribed by two-thirds of the members, or by the owners of two-thirds of all stock outstanding and filed with the secretary of the company, and the by-laws may provide for removal by a vote or written consent of less than two-thirds, but not by less than a majority of the members of the stock. Upon such removal, a vote of the stockholders or members to fill the vacancy shall at once be taken, or a meeting to take such vote called, and if not called promptly may be ordered by the district court, and the order enforced by punishing the officers and directors or trustees who refuse or fail to comply therewith, as for a contempt, and the removal shall not take effect till such vacancy be so filled by vote of the stockholders or members, but such director so removed shall hold office until his successor is so elected by the members or stockholders and qualified.

**1180. Proceedings for removal of officers in certain cases.**

SEC. 79. On petition of the stockholders holding the majority of the stock actually issued by any corporation formed under this act, and subject to the provisions of this section, to the district judge of the district where said corporation has its actual place of business, verified by the signers, to the effect

that they are severally the holders of the number of shares set opposite their signatures to the foregoing petition, the district judge shall issue his notice to the stockholders of said company that a meeting of the stockholders will be held at the court room of the district court, in the county in which is said principal place of business, stating the time, not less than five, nor more than ten, days after the first publication of said notice, and the object to be taken into consideration, the removal of officers, directors or trustees of said company, which notice, signed by the said district judge, shall be published daily, in a daily newspaper published in said county, for at least five days before the time for the meeting; or, if there be no daily newspaper published in said county, then in such manner as the district judge shall direct.

#### 1181. Proceedings to organize such meeting.

SEC. 80. At the time appointed by said notice, the said district judge shall appoint a secretary of the meeting, and shall thereupon hear the proofs of those claiming to be stockholders in said corporation; and only those showing a right to vote, or their proxies, shall take part in the further proceedings. Said judge shall decide who are entitled to vote in a summary way, and his decision shall be final. If it appears at the time appointed, or within one hour thereafter, that holders of less than one-half the whole number of shares actually issued, or their proxies, are present, the meeting shall be dissolved; but, if the holders of more than one-half of the shares actually issued, or their proxies, are present, they shall proceed to vote, the secretary calling the roll, which he shall prepare by setting down the names of persons held to be entitled to vote, and the number of shares held by each, and such persons voting yea or nay on the question of removal of one or more of the officers, directors or trustees of the company, specifying which one or more that the voters desire to remove, as the case may be. The secretary shall enter the same upon his list, and, when he has added up the list and stated the result, he shall sign the same and hand it to the judge, who shall declare the result.

#### 1182. Removal of officers or directors in certain cases, and election of new board.

SEC. 81. If the result of the vote is that the holders of a majority of all the shares of the company actually issued, or their proxies, are in favor of the removal of one or more of the officers, directors or trustees of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the judge, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and, having stated the result of the count, in writing, shall sign the same and hand it to the judge, who shall announce the result to the meeting. The judge shall thereupon issue to each person chosen a certificate, stating that, from the date of such meeting until the next annual election, unless removed under the provisions hereof, he is entitled to exercise and fill the office to which he is chosen; and shall endorse upon, or annex to, said petition a report of the proceedings of said meeting; and an order, requiring that all books, papers, and all property and effects of said corporation, be immediately delivered to the officers-elect, and shall sign the same and file it with the clerk of his court, and thereafter any disobedience to said order may be punished as other contempts of court, and disobedience thereto may be enforced by the court of said district. The district judge shall preside at said meeting, and put to vote such proper motions as he may be requested to submit to the meeting. In deciding any controverted question that may arise, he shall have the power to administer oaths and take testimony, either orally or by ex parte affidavits. For all the services in these proceedings the county clerk shall receive twenty dollars.

**1183. The preceding sections optional with corporations hereafter formed.**

SEC. 82. All corporations heretofore formed under prior acts, their stockholders, trustees and officers, shall have the powers and be subject to the provisions of the three preceding sections contained providing for removal and elections of new officers, directors or trustees by majority vote in court, and all corporations hereafter formed, renewed or continued under and pursuant to the provisions of this act, which shall in their articles or certificate of incorporation, original or amended, state that they desire to take advantage of such provisions, or of said three sections, or to be governed thereby, or to be subject thereto, or words to that effect, shall accordingly be themselves, their stockholders, directors, trustees and officers, vested with all the powers, and subject to and governed by all the provisions of the said three sections of this act next preceding, that is to say, sections Nos. 79, 80, and 81 of this act, but no others shall be subject thereto nor affected thereby.

**1184. Incorporation need not be proven.**

SEC. 83. In all civil actions brought by or against a corporation it shall not be necessary to prove on the trial of the cause the existence of the corporation unless the defendant in his or its answer expressly aver that such plaintiff or defendant is not a corporation, and verify the same.

**1185. Validating defective articles of incorporation.**

SEC. 84. All corporations organized under general laws in whose certificates or articles of incorporation there is any error or omission of any matter or thing required to be therein stated, or which are defectively executed or acknowledged or certified or in which some of the informality or irregularity exists, are hereby declared to be corporations from the time of filing such certificate or articles, in the same manner and to the same effect and intent as if the same were without fault.

**1186. Report of election to secretary of state.**

SEC. 85. Every corporation incorporated or authorized to transact business in this state shall, within thirty days after every and any corporate act which makes any change in the board of directors or trustees, file in the office of the secretary of state a statement authenticated by the signatures of the president and secretary and verified by each of them, giving the names of all the directors or trustees and officers, with the date of election or appointment of each, term of office, residence and postoffice address of each, character of his business, location (giving also street and number if practicable) of its principal office in this state, and the name of the resident agent in this state, in charge of said office and upon whom process can be served, and every corporation failing so to do for thirty days shall forfeit to the state \$100. *As amended, Stats. 1905, 75.*

**1187. Lien of employees.**

SEC. 86. Whenever any corporation formed under the provisions of this act and prior acts shall become insolvent or be dissolved in any way, or for any cause, the employees doing labor or service of whatever character in the regular employ of such corporation, shall have a lien upon the assets thereof for the amount of wages due to them, not exceeding two months' wages, respectively, which shall be paid prior to any other debt or debts of said corporation; but the word "employees" shall not be construed to include any of the officers of such corporation.

**1188. Service of legal process.**

SEC. 87. Services of legal process upon any corporation created under this act or subject to its provisions shall be made by delivering a copy thereof personally to the president, cashier, secretary or resident agent of such

corporation, or by leaving the same at the principal office or place of business of the corporation in this state. Service by copy left at the said principal office or place of business in this state, to be effective, must be delivered thereat at least thirty days before the return of the process, and in the presence of an adult person; and the officer serving the process shall distinctly state the manner of service in his return thereto, naming such person; *provided*, that process returnable forthwith must be served personally.

#### 1189. Surrender of corporate rights before payment of capital stock.

SEC. 88. Before the payment of any part of the capital [stock] other than that paid in before filing articles or certificate of incorporation and before beginning business for which the corporation was created, the incorporators named in any certificate or articles of incorporation may surrender all their corporate rights and franchises, by filing in the office of the secretary of state, a certificate executed and acknowledged by all, and verified by the oath or affirmation of a majority of the said incorporators, that no part of the capital has been paid since filing articles of incorporation, and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved,

#### 1190. Dissolution of a corporation.

SEC. 89. If it should be deemed advisable, in the judgment of the board of directors, or trustees, and most for the benefit of any corporation organized under this act, and prior acts, that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution and of the time and place of the meeting of stockholders called to take action thereon, to be mailed to each stockholder and creditor having a right to vote with the stockholder, and also, beginning within said ten days, cause to be inserted in a newspaper published in the county wherein the corporation shall have its principal office, and also in the county, or city and county, where said stockholders' meeting is to be held, at least four weeks successively, once a week, next preceding the time appointed for such meeting, a like notice of said resolution and of such meeting of the stockholders to take action upon the resolution so adopted by the board of directors, or trustees, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, by consent of a majority in interest of the stockholders present, be adjourned from time to time, of which adjournment notice by advertisement in the same newspaper shall be given; and if at any such meeting or adjourned meetings two-thirds in interest of all the stockholders or two-thirds in interest of any class of creditors entitled to vote at such meeting shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and secretary and treasurer, shall be filed in the office of the secretary of state, who upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the corporation shall thereby be dissolved, and the secretary of state shall make an endorsement to that effect on the original certificate of incorporation and on the amendments thereto in his office. Whenever nine-tenths in interest of the stockholders and nine-tenths in interest of any class of secured creditors entitled to vote with stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent, duly acknowledged or proven, in the

office of the secretary of state, he shall forthwith issue a certificate of dissolution, as above provided.

In view of this section it is not probable that the legislature intended by section 94 that a corporation could be dissolved upon the mere ex parte application of persons holding one-tenth of the stock, but rather that proceedings could be initiated by this small percentage of the stockholders and

that, after the other necessary parties had been joined and heard, the court could determine whether good reason existed for the appointment of receivers to close the affairs of the corporation. *Golden v. District Court*, 31 Nev. 267 (101 P. 1021). (Per Talbot, J., concurring.)

#### 1191. Continuation of corporation after dissolution for certain purposes of suit.

SEC. 90. All corporations, whether they expire by limitation, or are otherwise dissolved, shall nevertheless be continued as bodies corporate, for the term of one year from such expiration or dissolution, and until all litigation to which such corporation is a party, if begun within that time and process served within said year, is ended, for the purpose of prosecuting and defending suits by or against them, begun within said time, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established. A majority in interest of the stockholders by resolution or by written consent, filed with the secretary of state, may extend this time not exceeding three years in all.

#### 1192. Trustees after dissolution.

SEC. 91. Upon the dissolution of any corporation under the provisions of section 89 of this act, or its expiration by limitation of time, the directors, or the governing body, by whatever name it may be known, shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell, and convey the property, real and personal, and divide the moneys and other property among the stockholders, after paying its debts.

#### 1193. Powers of trustees after dissolution of company.

SEC. 92. Upon the dissolution or expiration of the time limited for the existence of any corporation formed under the laws of this state the directors or trustees at the time of the dissolution shall be trustees to and for the creditors and stockholders of the corporation dissolved, and shall have power and authority to sue for and recover the debts and property of the corporation, in the name of said corporation or by the name of trustees of such corporation, to collect and pay the outstanding debts, settle all its affairs, and divide among the members or stockholders entitled thereto the money and other property that shall remain after the payment of the debts and necessary expenses. Any creditor of a corporation dissolved without decree of court, if said dissolution be in fraud of his rights, may unite with any action to enforce his debt an action to set aside such dissolution, and on proof thereof have such orders and decree as shall afford him complete relief in such action, but such dissolution shall not extend the period limited by law for the enforcement of such creditor's claim or demand.

#### 1194. Appointment of receivers.

SEC. 93. Whenever any corporation organized under this act shall be dissolved in any manner whatever, or expire by limitation, any court of equitable powers, held in the county where it has its principal office, on application of any creditor or stockholder of such corporation, may at any time, in an action, against the company, either continue such directors, trustees as aforesaid, or on proof that they or some of them are incapable or unfaithful, or have resigned, remove such as have given cause after such notice as may be reasonable, to the trustees or directors, or appoint them if none are removed

or the remainder of the board to be receivers of and for such corporation, or, if all are removed or resign, may appoint one or more other persons receivers, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for the purposes aforesaid.

### 1195. Receiverships and dissolution by the court.

SEC. 94. Whenever a corporation has in ten successive years failed to pay dividends amounting in all to five per cent of its entire outstanding capital, or has wilfully violated its charter, or its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs, or its assets are in danger of waste through attachment, litigation or otherwise, or said corporation has abandoned its business and has not proceeded diligently to wind up its affairs, or to distribute its assets in a reasonable time, or has become insolvent and is not about to resume its business with safety to the public, any holder or holders of one-tenth of the capital stock may apply to the district court, held in the district where the corporation has its principal place of business, for an order dissolving the corporation and appointing a receiver to wind up its affairs, and may by injunction restrain the corporation from exercising any of its powers or doing any business whatsoever, except by and through a receiver appointed by the court. Such court may, if good cause exist therefor, appoint one or more receivers for such purpose, but in all cases directors or trustees who have been guilty of no negligence nor active breach of duty shall have the right to be preferred in making such appointment, and such court may at any time for sufficient cause make a decree dissolving such corporation and terminating its existence.

One who is a stockholder in and director of a corporation and who is the administrator of an estate owning nearly one-third of the stock thereof is, in his individual and official capacities, interested in and affected by proceeding under this section instituted by another stockholder and resulting in ex parte orders dissolving the corporation and appointing a receiver to wind it up, and he may on certiorari review the same.

The court cannot, on the application of a stockholder and without notice or hearing, enter orders dissolving the corporation and appointing a receiver to wind it up, though a statute attempts to confer such authority. *Hettel v. District Court*, 30 Nev. 382, 386, 387 (133 A. S. 731, 96 P. 1062); *State ex rel. Howell v. Wildes*, 33 Nev. — (116 P. 595).

The court cannot dissolve a corporation and appoint a receiver on a mere petition of

the owner of more than one-third of the stock alleging that the corporate assets are in danger of waste, without notice to the corporation, its officers, or any person interested therein.

The appearance of a corporation after the making by the court of ex parte orders dissolving it and appointing a receiver to wind it up, upon the petition of the holder of more than one-third of the stock, conferred no jurisdiction on the court to make the orders. *Hettel v. District Court*, 30 Nev. 382, 386-388 (133 A. S. 731, 96 P. 1062).

The directors must be made parties to the proceeding, and notice commanding an appearance forthwith to show cause why a receiver should not be appointed, is not a sufficient notice, and all orders made in such proceeding without making the directors parties are void. *Golden v. District Court*, 31 Nev. 250, 260, 263, 267, 268 (101 P. 1021).

### 1196. Proceedings when receiver is appointed.

SEC. 95. Whenever any decree is made appointing a receiver to wind up the affairs of a corporation, it shall be the duty of such receiver to file a certified copy of his appointment and of the decree of dissolution, if made by a court, with the secretary of state. Such court shall also direct that such decree appointing a receiver be published at least once a week for four weeks in some newspaper published in the county and shall also limit a time

which shall not be less than four (4) months from the date of the first publication of the order or decree within which all claims against such corporation shall be presented to the receiver, and shall provide that all claims not so presented shall not share in the assets but be barred therefrom unless, before actual distribution is made and on good cause shown, permission be given to present any claim after the time so limited.

Cited, *Martin v. Kirby*, 33 Nev. — (116 P. —).

### 1197. Sale of property and franchises.

SEC. 96. Said court may in its discretion, in lieu of decreeing the dissolution of such corporation, order the receiver to sell its property and franchise, and the purchaser thereof shall succeed to all the rights and privileges of said corporation and may reorganize the same under direction of said court or pursuant to sections 49 and 50 of this act. At any sale of such property at public auction the court may in its discretion authorize the receiver to accept in payment duly allowed claims against said corporation at a proper valuation.

### 1198. Sale of deteriorating property.

SEC. 97. Whenever the property of an insolvent corporation is at the time of the appointment of a receiver incumbered with liens of any character, and the validity, extent or legality of any such lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending litigation over or respecting such lien, the court appointing the receiver may order the receiver to sell the property of the corporation clear of incumbrances, at public or private sale for the best price that can be obtained, subject to confirmation by the court, and pay the net proceeds of the sale into court, there to remain subject to order of court to be distributed and apportioned under the supervision of the court, as it shall direct.

### 1199. Compensation of receivers.

SEC. 98. The district court shall, before making distribution of the assets of an insolvent corporation among the creditors or stockholders thereof, allow a reasonable compensation to the receivers or trustees for their services, and the costs and expenses incurred in and about the execution of their trusts and the cost of the proceedings in said court, to be first paid out of said assets.

## CORPORATIONS FOR MINING PURPOSES

### Sections 99, 100, 101

### 1200. Capital stock consisting of mining ground.

SEC. 99. In corporations already formed, or which may hereafter be formed under this act, or otherwise, for mining purposes, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be or has been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the value of so much of his or her interest in said mining claim, the legal title to which he or she may, by deed, deed of trust, or other instrument, vest or have vested, in such corporation, for mining purposes; such subscription to be deemed to have been made and to have been fully paid on the execution and delivery to such corporation and its acceptance by such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied, or which may hereafter be levied, by the board of

directors or trustees of such corporation, provided such corporation has the right and power to levy assessments, be affected by reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section; *provided*, that the greater portion of said amount of capital stock shall have been subscribed; *and provided further*, that this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes, as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contract; *provided further*, that no corporation hereafter formed shall ever have power to assess paid up stock unless in its original articles or certificate of incorporation such power is reserved, and no amendment of such original in this respect or to give such power shall ever be made.

### 1201. Mining corporations governed by district mining laws.

SEC. 100. All corporations already formed, or which may hereafter be formed under this act for mining purposes, shall be governed by the mining laws of the district where the mine is located.

### 1202. Mining corporations may become stockholders in tunnel companies.

SEC. 101. Corporations already formed, or hereafter incorporated under the provisions of this act, for mining, milling or ore reduction purposes, may subscribe to and become stockholders in any corporation, company, or association now formed, or which may hereafter be formed, for the purpose of constructing any tunnel, shaft or other work, which may be calculated to aid or facilitate the exploration, development, or working of any mine or mining ground in this state; and any corporation so becoming a stockholder therein shall, in proportion to its interest, be subject to all the liabilities, and entitled to all the rights and privileges of an individual stockholder.

### 1203. Fees of secretary of state.

SEC. 102. On filing any certificate or articles or other paper relative to corporations, in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state: For certificate or articles of incorporation, ten (10) cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than ten dollars; increase of capital stock, ten (10) cents for each thousand dollars of the total of the increase authorized, but in no case less than ten dollars; consolidation and merger of corporations, ten (10) cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than ten dollars; extension or renewal of corporate existence of any corporation, one-half that required for the original certificate or articles of organization or incorporation by this act; dissolution of corporation, change of nature of business, amended articles or certificates of incorporation or organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value of number of shares, ten dollars; for filing list of officers and directors or trustees, and name of agent in charge of principal office, one dollar; filing copy of charter and statement of foreign corporation and issuing certificate of authority to transact business, ten dollars; for certifying to articles of incorporation where copy is furnished, two dollars; for certifying to the authorized printed copy of the general corporation law, as compiled by the secretary of state, two dollars; and for all certificates not hereby provided for, five dollars; *provided*, that no fees shall be required to be paid by any religious or charitable society or association or educational association having no capital stock. *As amended, Stats. 1905, 76.*

1204. The secretary of state to compile and publish biennially a list of corporations.

SEC. 103. The secretary of state shall biennially compile from the records of his office, and publish in his report, a complete list, in alphabetical order, of the original and amended certificates or articles of incorporation or of extension or renewal filed during the preceding year, together with the location of the principal office of each in this state, and the name of the agent in charge thereof, the amount of the authorized capital stock, the amount with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue; and shall index each and every paper filed or recorded in his office under or pursuant to this act, so that each can be readily found, placing and keeping those relating to each corporation together, and register every paper so filed in a book kept for that purpose under the heading or title of the corporation or company filing the same or affected thereby, each corporation incorporated under this act to have a separate page which shall show at all times the title or description of each and every paper filed by or on behalf of said corporation with the date of such filing. *As amended, Stats. 1905, 76.*

1205. Meaning of certain terms used in this act.

SEC. 104. The term "principal office," "principal place of business," "principal office in this state," and "registered office," wherever used in this act shall be construed as referring to the office maintained in this state as required by sections 14, 15 and 16 of this act and as synonymous terms; "articles of incorporation" and "certificate of incorporation" shall also be construed as synonymous terms; the words "trustees" and "directors" also shall be construed as synonymous terms wherever used in this act. "Stockholders" or equivalent terms shall include creditors entitled to vote as stockholders unless otherwise provided in this act. The singular number shall include the plural, and the plural shall include the singular, and general terms and powers given herein, and by the use of general terms, shall not be restricted by the use of special terms, or be held to be restricted by any grant of special powers herein contained.

1206. Seal.

SEC. 105. The seal of a corporation shall contain its corporate name and date when incorporated, which date shall be that of the certificate issued by the secretary of state under and pursuant to section 5 of this act. A departure from this provision shall not invalidate any corporate act otherwise valid, and the impression of the corporate seal on paper without wax or adhesive substance shall be a valid seal.

1207. Retaliatory taxation.

SEC. 106. When, by the laws of any other state, country, territory, colony, dependency or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such other or foreign state or nation, territory, colony, dependency, or country the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such other state or nation, country, territory, colony or dependency doing business within this state and upon their agents here; *provided*, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other states or nations transacting business in the state.

**1208. Renewal of charters.**

SEC. 107. Any corporation existing under the laws of this state may, at any time before the expiration of the time limited for its existence, procure a renewal of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing debts, duties and liabilities, secured or imposed by its then existing charter, by filing a certificate of its president and secretary, duly sworn or affirmed to by such officers before any person authorized by the laws of this state to administer oaths or affirmations, with the secretary of state, which certificate must be authorized by two-thirds in interest of the stock in writing, or by a resolution to that effect, and shall set forth:

1. The name of the corporation, which shall be the existing name of said corporation at the time of such renewal.

2. The name of the city, town or place within the county in which its principal office or place of business is located in this state.

3. The date when such renewal is to commence, which date shall be prior to the date of the expiration of the charter desired to be renewed, whether or not such renewal is to be perpetual, and, if not perpetual, the time for which such renewal is to continue.

4. That the corporation desiring to renew, and so renewing its charter, is duly organized and carrying on the business authorized by its existing charter, and desires to renew or continue its existence under and pursuant to and subject to the provisions of this act.

**1209. Filing certificate and recording copy.**

SEC. 108. Such certificate for the renewal and continuance of the existence of any such corporation shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office; said certified copy shall be filed and recorded in the office of the clerk of the county in which the principal office of said corporation is located in this state, in a book kept for that purpose, or in the book provided for recording original articles pursuant to section 3 of this act; and said certificate or a certified copy thereof duly certified under the hand of the secretary of state and his seal of office, accompanied with the certificate of the clerk of the county wherein the same is recorded, under his hand and seal of his office, stating that it has been recorded, the record of the same in the office of the clerk aforesaid, or a copy of said record duly certified by the aforesaid clerk, shall be evidence in all courts of law and equity of this state.

**1210. Renewal continues rights.**

SEC. 109. Any corporation now existing or hereafter incorporated desiring to renew, extend or continue its corporate existence, shall, upon complying with the provisions of sections 102-107 and 108 of this act, be, and continue for the time stated in its certificate of renewal, a corporation, and shall, in addition to the rights, privileges and immunities, conferred by its original charter, possess and enjoy all the benefits of this act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities by this act imposed on such corporations.

**1211. May own stock and bonds of other incorporations.**

SEC. 110. Any corporation organized under the laws of this state, whether created by this act, special act of legislature, or other general law, may guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this state, or any other state, country, nation or government, and while owner

of said stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon. *As amended, Stats. 1905, 77.*

#### 1212. Meetings held by consent without notice.

SEC. 111. The by-laws may also provide that whenever all parties entitled to vote at any meeting, whether of directors or trustees, stockholders or members, consent, either by a writing on the records of the meeting or filed with the secretary, or by presence at such meeting and oral consent entered on the minutes, or by taking part in the deliberations at such meeting without objection, the doings of such meeting shall be as valid as if had at a meeting regularly called and noticed, and at such meeting any business may be transacted which is not excepted from the written consent or to the consideration of which no objection for want of notice is made at the time, and if any meeting be irregular for want of notice or of such consent, provided a quorum was present at such meeting, the proceedings of said meeting may be ratified and approved and rendered likewise void and the irregularity or defect therein waived by a writing signed by all parties having the right to vote at such meeting; and that such consent or approval of members, stockholders or creditors may be by proxy or attorney, but all such proxies and powers of attorney must be in writing.

#### 1213. Waiver of notice.

SEC. 112. Whenever any notice whatever is required to be given under the provisions of this act, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

#### 1214. Amendment of this act.

SEC. 113. This act may be amended or repealed, at the pleasure of the legislature, but such amendment or repeal shall not take away or impair any remedy against any corporation under this act, or its officers, for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every such corporation except so far as the same are inapplicable and inappropriate to the objects of such corporation.

#### 1215. Repealer, certain acts in force; vested rights not impaired.

SEC. 114. All acts and parts of acts, general and special, inconsistent or in conflict with this act are hereby repealed; but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate or articles of incorporation be thereby impaired or limited in any way, and nothing herein contained shall impair or annul, divest or disturb any vested rights, privileges or powers actually exercised and enjoyed in or by any corporation under any law hereby repealed. And provided that all rights and privileges and immunities vested or accrued by or under prior laws, all suits pending, all rights of action conferred and all duties, restrictions, liabilities and penalties imposed or required by or under laws prior hereto, shall not be impaired, diminished or affected hereby. All existing legislation affecting the formation, government and regulation of banks and banking companies, insurance and insurance companies, including life, fire, or accident and mutual insurance companies, surety companies and companies organized or that may be organized for the purpose of transacting business as sureties on bonds and undertakings, railroad companies, or railroad, telephone and telegraph companies, remain unaffected by the provisions of this act and continue in full force and virtue. This act shall not affect the existence of any corporation heretofore formed, but such corporation may continue in existence under the laws heretofore in force, or may elect to renew or continue its existence under this act. No corporation formed or existing prior to the passage of this act is affected

by any of the provisions thereof, except those provisions expressly made applicable to corporations heretofore formed, unless such corporation elects to renew or continue its existence under it, as provided herein, with the consent of two-thirds of its members or of the owners of two-thirds of all its stock. But the laws under which such corporations were formed or exist, are applicable to all such corporations, but are repealed subject to the provisions of this section. This act shall take effect immediately.

*An Act to enable mining corporations to consolidate, and defining the manner of such consolidation.*

Approved February 26, 1883, 46

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| 1216. Mining companies may consolidate—Consent of stockholders—Notice by advertisement—Certificate, where filed, how signed—Certificate, what to contain. | 1217. Stockholders' consent in writing—Proxy.  |
|   | 1218. Foreign corporations may consolidate with domestic corporations—Agent to be appointed, when—Penalty. |

For consolidation of domestic corporations, see secs. 1145–1146, ante.

**1216. Mining companies may consolidate—Consent of stockholders—Notice by advertisement—Certificate, where filed—How signed—Certificate, what to contain.**

SECTION 1. It shall be lawful for two or more corporations formed, or that may be hereafter formed, under the laws of this state for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets and franchises in such a manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such companies so desiring to consolidate their interests; but no such consolidation shall take place without the consent of stockholders representing two-thirds of the capital stock of each company, and no such consolidation shall in any way relieve such companies or the stockholders thereof, from any and all just debts and liabilities; and in case of such consolidation due notice of the same shall be given by advertisement for at least twenty days in one newspaper in the county and state where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said companies shall be; and when the said consolidation is completed a certificate thereof containing the manner and terms of said consolidation shall be filed in the office of the county clerk of the county in which the original certificate of incorporation of any of said companies shall be filed, and a copy thereof shall be filed in the office of the secretary of state. Such certificate shall be signed by a majority of each board of directors of the original companies; and it shall be their duty to call, within thirty days after the filing of such certificate, and after at least ten days public notice in some newspaper in the county where its property is situated, a meeting of the stockholders of all of said companies so consolidated, to elect a board of trustees or directors for the consolidated company for the year next ensuing. Said certificate shall also contain the name of the company, the object for which it, the same, has been formed, which shall be the same as the original corporation, the amount of its capital stock, the time of its existence (not to exceed fifty years), the number of shares of which the capital stock shall consist, the number of trustees or directors who shall manage the affairs of the company for the first year, and the name of the city or town in which the principal place of business of the company is to be located.

**1217. Stockholders' consent in writing—Proxy.**

SEC. 2. When two or more companies may desire to consolidate in accordance with the provisions of section 1 of this act, and shall have given the

required notice, as in said section provided, any stockholder consenting thereto shall be required to give his consent in writing, stating the number of shares held by him, and that he is in favor of such consolidation; *provided*, that any and all stock standing in the name of trustees may be voted by such trustees the same as by the owners thereof, and the consent of such trustees shall be equivalent to the consent of such owners; *and, provided further*, that any person holding the general proxy of any stockholder shall be entitled to give or refuse his consent to such consolidation, the same as the owner of such stock for which said proxy is held.

**1218. Foreign corporations may consolidate with domestic corporations—Agent to be appointed, when—Penalty.**

SEC. 3. The provisions of this act shall be construed to permit and allow foreign corporations, owning mining property in this state, to consolidate with corporations organized under the laws of this state; *provided*, that in all such cases the principal place of business of such consolidation, when effected, shall be located in the State of Nevada, or in the state where such foreign corporation desiring such consolidation resides, as may be determined by a vote of two-thirds of the stockholders of such consolidation after the same shall be completed, and in case it shall be determined upon such vote being had, to remove the principal place of business of such consolidation out of this state, the certificate provided for in section 1 shall be amended so as to show the county and state where the principal place of business is located; *and, provided further*, that in case the principal place of business of such corporation shall be removed out of this state, there shall be an agent of such corporation appointed in this state, in the county where its property is situated, upon whom all legal process may be served, and the failure of such corporation to appoint such agent shall subject it to a fine of fifty dollars per day, to be recovered in the name of the State of Nevada, as in other cases of fines and penalties.

*An Act to provide for the formation of corporations for certain purposes.*

Approved March 10, 1865, 359

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NOTE—In the formation of corporations for most purposes the following act has been superseded by the act of 1903, p. 121, sec. 1105, et seq., which, however, provides in section 1 that insurance, surety and railroad companies for carrying on business in this state are excepted from the operation of the act, and in section 114 that existing legislation affecting the formation and regulation of banking, insurance, surety, railroad, telephone and telegraph companies remains unaffected by its provisions, thereby leaving the following act in force as to these companies except as partly superseded by later legislation, the most recent of which is the banking act of 1911, secs. 616–694, inclusive, herein, regarding the formation and regulation of banks.

**1219. Purposes for which may be formed—Proviso.**

SECTION 1. Corporations for manufacturing, mining, milling, ditching, mechanical, chemical, building, navigation, transportation, farming, banking,

hotel and inn-keeping, and ore reduction purposes, or for the purpose of engaging in any other species of trade, business or commerce, foreign or domestic, may be formed according to the provisions of this act, such corporations, and the members thereof, being subject to all the conditions and liabilities herein imposed, and to none others; *provided*, that nothing in this section shall be so construed as to authorize the formation of banking corporations for the purpose of issuing or circulating money or currency within this state, except the federal currency and the notes of banks authorized under the laws of the Congress of the United States; nor shall bank notes or paper of any kind be permitted to circulate as money in this state, other than the federal currency and the notes of banks authorized by the laws of the Congress of the United States. *As amended, Stats. 1866, 165; 1869, 95.*

See secs. 1 and 114 of the general incorporation act of 1903, secs. 1105 and 1215.

Act adopted from California, State ex rel. Rankin v. Leete, 16 Nev. 257.

Cited, State ex rel. Keith v. Toll Road Co., 10 Nev. 162.

## 1220. Formation, how accomplished.

SEC. 2. Any three or more persons, who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign, and acknowledge, before some person competent to take the acknowledgment of deeds, and file and have recorded in a book provided for that purpose, in the office of the clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy, under the hand of the clerk and the seal of said county, in the office of the secretary of state, a certificate, in which shall be stated the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence—not to exceed fifty years—the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for the first six months, and the name of the city, town, or locality, and county, in which the principal place of business of the company is to be located.

This section clearly limits the term of the trustees selected and named in the certificate to six months from the time of incorporation; at the expiration of that period an election for a new board should be held. State ex rel. Flagg v. L. B. M. Co., 4 Nev. 400-409.

## 1221. Evidence of incorporation.

SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this act, and certified by the county clerk of the county in which it is filed, or his deputy, or by the secretary of state, shall be received in all the courts and places as prima facie evidence of the facts therein stated.

## 1222. Powers and privileges.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic, in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and power:

First—To sue and be sued in any court having competent jurisdiction.

Second—To make and use a common seal, and to alter the same at pleasure.

Third—To appoint such officers, agents, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation.

Fourth—To require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of a majority of the stockholders, as hereinafter provided.

Fifth—To purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require.

Sixth—To make by-laws not inconsistent with the constitution of this state, or constitution of the United States.

Seventh—The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in its articles of incorporation.

Every corporation in this state shall have the power, whenever at any assessment sale of the stock of said corporation no person will take the stock and pay the assessment thereon, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this state which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid, and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the same as they may deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase, a majority of the remaining shares of stock in said incorporation shall be held to be a majority of the shares of the stock in said incorporated company, for all purposes of election or voting on any question before a stockholders' meeting.

A foreign corporation can hold no more land than is allowed to be held by a domestic one, that is, what is necessary to conduct its business and no more. *Whitman M. Co. v. Baker*, 3 Nev. 386, 390.

The by-laws of a corporation are binding, although irregularly adopted, when treated as by-laws by long use. *State ex rel. Corey v. Curtis*, 9 Nev. 325.

The secretary of a corporation is the proper custodian of the corporate seal, and when the secretary affixes it to a mortgage, or other instrument, the presumption is, he did it by direction of the corporation, and it devolves upon those who dispute the validity of the deed, to prove that he acted without authority. *Evans v. Lee*, 11 Nev. 194.

A corporation formed for maintaining a water ditch, keeping it in repair and dividing the water between the several stockholders, is bound to perform the duties prescribed in its charter and trust deed, and for any neglect in this respect, it would be liable to the stockholder injured thereby. *O'Connor v. N. T. Ditch Co.*, 17 Nev. 245 (30 P. 882).

A contract made by a mining corporation to advance a specified sum of money for the

construction of a tunnel to drain its mine, is not ultra vires. Such contracts come within the implied or incidental powers of the corporation. *Sutro T. Co. v. S. B. M. Co.*, 19 Nev. 121 (4 P. 271).

A corporation cannot be held responsible for a contract of its officers, or agents, unless it affirmatively appears that such officers or agents were authorized to make the contract, or that the corporation received the benefits derived from the contract. *Edwards v. Carson Water Co.*, 21 Nev. 469 (34 P. 381).

Every person who enters into a contract with a corporation is bound, at his peril, to take notice of the legal limits of the capacity of such corporation to contract. *George v. N. C. R. Co.*, 22 Nev. 228 (38 P. 441).

If an act of a corporation is in excess of its chartered purposes, such act is outside of the powers delegated to its agent. *Idem.*

The responsibility of a contract, made by promoters of a corporation, if it be within the corporate powers of the corporation, may, when the corporation is organized, be expressly or impliedly assumed or ratified and thus made a valid obligation of the corporation. *Alexander v. Winters*, 23 Nev. 475 (49 P. 116).

## 1223. Powers to be exercised by trustees—Oath—Time and manner of election.

SEC. 5. The corporate powers of the corporation shall be exercised by a board of not less than three trustees—who shall be stockholders in the company—who shall, before entering upon the duties of their office respectively, take and subscribe to an oath, as prescribed by the laws of this state, and who shall, after the expiration of the term of the trustees first elected, be annually elected by the stockholders, at such times and place within the state, and upon such notice, and in such manner as shall be directed by the by-laws of the company; but all elections shall be by ballot, and every

stockholder shall have the right to vote in person or by proxy, the number of shares owned by him for as many persons as there are trustees to be elected, or to cumulate said shares and give one candidate as many votes as the number of trustees 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, and such trustees shall not be elected in any other manner; and the person or persons receiving the greatest number of votes shall be trustee or trustees. Whenever any vacancy shall happen among the trustees by death, resignation, or otherwise, except by removal and the election of his successor, as herein provided, it shall be filled by appointment of the board of trustees. On petition of the stockholders holding the majority of the stock actually issued by any corporation formed under this act, to the district judge of the district where said corporation has its actual place of business, verified by the signers, to the effect that they are severally the holders of to the number of shares set opposite their signatures to the foregoing petition, the district judge shall issue his notice to the stockholders of said company that a meeting of the stockholders will be held at the court room of the district court, in the county in which is said principal place of business, stating the time, not less than five, nor more than ten, days after the first publication of said notice, and the object to be taken into consideration, the removal of officers of said company; which notice, signed by the said district judge, shall be published daily, in a daily newspaper published in said county, for at least five days before the time for the meeting; or, if there be no daily newspaper published in said county, then in such manner as the district judge shall direct. At the time appointed by said notice, the said district judge shall appoint a secretary of the meeting, and shall thereupon hear the proofs of those claiming to be stockholders in said corporation; and only those showing a right to vote, or their proxies, shall take part in the further proceedings. Said judge shall decide who are entitled to vote, in a summary way, and his decision shall be final. If it appears at the time appointed, or within one hour thereafter, holders of less than one-half the whole number of shares actually issued, or their proxies, are present, the meeting shall be dissolved; but, if the holders of more than one-half of the shares actually issued, or their proxies, are present, they shall proceed to vote, the secretary calling the roll, which he shall prepare by setting down the names of persons held to be entitled to vote, and the number of shares held by each, and such persons voting yea or nay, as the case may be. The secretary shall enter the same upon his list, and, when he has added up the list and stated the result, he shall sign the same and hand it to the judge, who shall declare the result. If the result of the vote is that the holders of a majority of all the shares of the company actually issued, or their proxies, are in favor of the removal of one or more of the officers of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the judge, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and, having stated the result of the count, in writing, shall sign the same and hand it to the judge, who shall announce the result to the meeting. The judge shall thereupon issue to each person chosen a certificate, stating that, from the date of such meeting until the next annual election, unless removed under the provisions hereof, he is entitled to exercise and fill the office to which he is chosen; and shall indorse upon, or annex to, said petition a report of the proceedings of said meeting; and an order, requiring that all books, papers, and all property and effects of said corporation be immediately delivered to the officers-elect, and shall sign the same and file it with the clerk of his court; and thereafter any disobedience to said order may be punished as other con-

tempts of court, and obedience thereto may be enforced by the court of said district. The district judge shall preside at said meeting, and put to vote such proper motions as he may be requested to submit to the meeting. In deciding any controverted question that may arise, he shall have the power to administer oaths and take testimony, either orally or by ex parte affidavits. For all the services in these proceedings the county clerk shall receive twenty dollars. *As amended, Stats. 1875, 68; 1881, 34.*

Removal of officers, see sec. 1183.

The election of a trustee to fill a vacancy is a corporate act and must be exercised in the manner required by the charter.

A by-law, in regard to election to fill a vacancy, contrary to the charter, is void. *State ex rel. Corey v. Curtis, 9 Nev. 325.*

The legal right to have an annual election of trustees of a corporation as required by law, belongs to any stockholder, independent of the number of shares of stock owned by him. *State ex rel. Sears v. Wright, 10 Nev. 167, 174.*

A person who "holds" shares of stock, issued in his name, is recognized as a stockholder as well as one who "owns" them. As

to what constitutes one a stockholder, see *State ex rel. Rankin v. Leete, 16 Nev. 242, 249-255.*

*Cited, Orr W. D. Co. v. Reno W. Co., 17 Nev. 169, 170 (30 P. 695).*

An election for trustees must take place substantially every twelve calendar months. A board of trustees, holding office, cannot by a by-law extend their own term for three months beyond the period for which they were originally elected. No elective officer has a right to do any act which would prevent the election of his successor at the time fixed by law for such election. *Curtis v. McCullough, 3 Nev. 203, 224.*

## 1224. Failure of election or qualification of trustees—Procedure.

SEC. 6. If it shall happen, at any time, that an election of trustees shall not be held on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved, but it shall be lawful, on any other day, to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding on the company until their successors shall be elected. Whenever a majority of any newly elected board of trustees shall fail to qualify and file in the office of the company their oath of office, within thirty days from the day of their election, it shall be the duty of any officer of the company upon the request of owners in said company representing not less than one-third of the capital stock of the corporation owned in the company, to call a meeting of the stockholders of said company, which meeting, when assembled, shall have power to elect trustees to supply the place of those who have failed to qualify; but such trustees may qualify and enter upon the duties of their office at any time after the said thirty days, if such meeting for a new election shall not have been called. *As amended, Stats. 1866, 79.*

Where the by-laws of a corporation provide that stockholders' meetings shall be called by the trustees, action of the trustees is necessary to convene a legal meeting, and

the president has no authority to call such meeting. *State ex rel. Guerrero v. Pettineli, 10 Nev. 141, 145.*

## 1225. Quorum.

SEC. 7. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

The trustees represent the corporation, only when assembled together and acting as a board. *Y. J. S. M. Co. v. Stevenson, 5 Nev. 225, 232.*

To constitute ratification of the unauthorized act of the president of a corporation, it is not enough to show knowledge of the

minority of the board of trustees, even if knowledge of all of them in their individual capacity, and not acting as a board, would be sufficient. *Idem.*

The trustees can only bind the corporation, when they are together as a board, acting as such. *Hillyer v. Overman S. M. Co., 6 Nev. 51.*

## 1226. First meeting of trustees.

SEC. 8. The first meeting of the trustees shall be called by a notice signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting; which notice shall be either delivered

personally to each trustee, or published at least twenty days in some newspaper of the county in which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper nearest thereto in the state.

#### 1227. Stock personal estate—Transfer of.

SEC. 9. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, the stock of the company shall be deemed personal estate. Such shares may be transferred by indorsement and delivery of the certificate thereof, such indorsement being by the signature of the proprietor, or his or her attorney, or legal representative; but such transfer shall not be valid except between the parties thereto, until the same shall have been 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. In all cases in which shares of stock in corporations now existing, or hereafter incorporated under any law of this state, are held or owned by a married woman, such shares may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a femme sole. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent, or attorney, in the same manner as if she were unmarried. And it shall not be necessary for her husband to join in the receipt therefor; and any proxy or power given by a married woman, touching any share of stock of any corporation owned by her, shall be valid and be binding, without the signature of her husband, the same as if she were unmarried.

The legal title to mining stock, except as between the parties, can only be acquired by transfer upon the books of the corporation. State ex rel. Guerrero v. Pettineli, 10 Nev. 141, 145.

#### 1228. Powers of trustees—Assessments—Sale of shares.

SEC. 10. The stockholders of any corporation formed under this act, may in the by-laws of the company prescribe the times, manners and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed the trustees shall have power to demand and call in from the stockholders the sums by them subscribed, at such times and in such manner, payments, or installments, as they may deem proper. The trustees shall also have power, at such times and in such amount, as they may from time to time deem the interests of the corporation to require, to levy and collect assessments upon the capital stock of the corporation, as herein provided. Notice of each assessment shall be given to the stockholders personally, or by publication once a week for at least four weeks, in some newspaper published in the county in which the principal place of business of the company is located, and in a newspaper published in the county wherein the property of the company or corporation is situated, and if no paper be published in either of such counties, then in the newspaper published nearest to the said principal place of business in the state. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessments upon all the shares held by him, her or them, together with all costs of advertising and expenses of sale. The sale of said shares shall be made at the office of the company at public auction to the highest bidder, after a notice thereof published for four weeks, as above in this section directed; and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale, for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder. *As amended, Stats. 1891, 71.*

A stockholder in a banking corporation cannot be held liable for his unpaid and uncalled subscriptions, in an action at law against him as the garnishee of the principal debtor. *McKelvey v. Crockett*, 18 Nev. 238, 241 (2 P. 386).

Where subscriptions to the capital stock of a corporation are payable upon the call of the company, it is not necessary that a creditor of such corporation must, before instituting suit to compel the payment of such subscriptions, make an effort to compel the corporation to make the call. *Thompson v. Reno Savings Bank*, 19 Nev. 171, 174 (7 P. 870).

The unpaid subscriptions to the capital stock of a bank corporation is a trust fund for the benefit of the general creditors of

the corporation. *Thompson v. Lake*, 19 Nev. 103 (3 A. S. 797, 7 P. 68).

Cited, *State ex rel. Rankin v. Leete*, 16 Nev. 249-258.

A formal call is not necessary before maintaining a bill in equity to compel payments to subscription of the capital stock. A bill in equity, where there are many parties, is the proper remedy. *Thompson v. Reno Savings Bank*, 19 Nev. 242 (3 A. S. 883, 9 P. 121).

It is no defense to an action for unpaid subscription to capital stock that the by-laws and subscriptions were illegal, because the trustees were not stockholders, the alleged subscribers having acquiesced in the acts of such trustees, and allowed themselves to appear as subscribers. *Ross v. Bank of Gold Hill*, 20 Nev. 191, 197 (19 P. 243).

### 1229. Stock held by executors.

SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder.

### 1230. Pledge of stocks.

SEC. 12. Any stockholder may pledge his stock, by a delivery of the certificates, or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder.

### 1231. Capital stock not to be reduced—Proviso.

SEC. 13. It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this act, and in case of any violation of the provisions of this section, the trustees under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn, or reduced, or paid out; *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain, after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter. *As amended, Stats. 1866, 188.*

Cited, *Thompson v. Lake*, 19 Nev. 112 (3 A. S. 797, 7 P. 68).

### 1232. Debts not to exceed amount of stock paid in—Trustees liable for excess.

SEC. 14. The total amount of debts of the corporation shall not at any time exceed the amount of capital stock actually paid in, and in case of an excess, the trustees 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 board of trustees at the time, and except those not present, when the same did happen, shall, in their individual and private capacities, be liable, jointly and severally, to the said corporation, and in event of dissolution, to any of the creditors thereof, for the full amount of such excess.

### 1233. Not to issue bills, or notes, as money.

SEC. 15. No corporation organized under this act shall, by any implication

or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt, for circulation as money.

#### 1234. Trustees shall keep book for names of members.

SEC. 16. It shall be the duty of the trustees of every company incorporated under this act to keep a book, containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares; which book, and all other books of the company, during the usual business hours of the day, on every day except Sunday and the legal holidays, shall be open for the inspection of stockholders of the company, at the office of the principal place of business of the company; and any stockholder or creditor of the company may have the right to demand and receive from the clerk, or other officer having the charge of such, a certified copy of any entry therein, or to demand and receive from any clerk, or officer, a certified copy of any paper placed on file in the office of the company, and such book or certified copy shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or any one or more of the stockholders.

Cited, *State ex rel. Rankin v. Leete*, 16 Nev. 249.

#### 1235. Penalty for making false entry.

SEC. 17. If at any time the clerk, or other officer having charge of such book, shall make any false entry, or neglect to make any proper entry therein, or having the charge of any papers of the company, shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of not less than one hundred dollars, nor more than one thousand dollars, and all damages resulting therefrom, to be recovered in an action for debt in any court having competent jurisdiction in the county in which the principal place of business of the corporation is located.

#### 1236. Change in capital stock.

SEC. 18. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purpose of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

Cited, *Thompson v. Lake*, 19 Nev. 112 (7 A. S. 797, 7 P. 68).

#### 1237. Increase or decrease of amount of stock, how made.

SEC. 19. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located; or if no newspaper is published in the county, then in some newspaper nearest thereto in the state, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of stock shall be necessary to increase or diminish the amount of the capital stock.

Cited, *Thompson v. Lake*, 19 Nev. 112 (3 A. S. 797, 7 P. 68).

**1238. Idem—Certificate to be made.**

SEC. 20. If at a meeting so called, a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, and signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by the second section of this act; and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

Cited, *Thompson v. Lake*, 19 Nev. 112 (3 A. S. 797, 7 P. 68).

**1239. Powers of trustees after dissolution.**

SEC. 21. Upon the dissolution of any corporation formed under this act, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

**1240. Dissolution, how effected.**

SEC. 22. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the district judge of the district in which the office of the company is located a petition to that effect, accompanied by a certificate of its proper officers setting forth that at a meeting of the stockholders, called for the purpose, it was decided by a vote of a majority of the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time or place appointed, or at any other time or place to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Cited, *Orr W. D. Co. v. Reno W. Co.*, 19 Nev. 66 (6 P. 72).

**1241. Removal of place of business.**

SEC. 23. Any corporation desiring at any time to remove its principal place of business into some other county in the state, shall file in the office of the county clerk of such county a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town, or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of no corporation heretofore formed under this act shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation; *provided*, that within six months from the passage of this act such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest to the city, town, or locality where the principal place of business

of such corporation has in fact been located, designating the city, town or locality, and county where its principal place of business shall be located. On compliance with the provisions of this section, in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town, or locality and county in the state.

[Secs. 24 to 28, inclusive, are omitted as obsolete.]

Removal of officers, see sec. 1183.

*An Act to authorize the formation of corporations for the purpose of transacting business as sureties on all bonds and undertakings required by law, and to prescribe the powers and duties of such incorporations.*

Approved March 8, 1897, 61

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| 1242. Power to incorporate.  | 1245. Stockholder responsible.   |
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### 1242. Power to incorporate.

SECTION 1. Any ten or more persons who are residents and householders in the State of Nevada may, by complying with the provisions of this act, form a company under the general incorporation laws of this state for the purpose of acting as and becoming surety on any bond or undertaking required by the laws of this state.

### 1243. Approval and filing of certificate.

SEC. 2. All certificates of incorporation prepared under the provisions of this act shall be submitted to the attorney-general, and if found to be in accordance with law in all respects, that officer shall certify that fact, which certificate shall be authority for the secretary of state to receive and file such articles of incorporation in accordance with the statutes governing the formation of corporations.

### 1244. Who to be stockholders—Affidavits—Examination of stockholder—Misdemeanor for violation.

SEC. 3. Each and every person before becoming an officer or stockholder in any company organized under this act shall justify before an officer authorized to administer oaths that he is a resident and freeholder or householder within this state and that he is worth double the par value of stock subscribed by him in said company, over and above all his debts and liabilities, in property situated within this state and which is not exempt from sale on execution. If at any time thereafter the assets of any such stockholder shall from any cause be reduced to such an extent as to render him unable to justify as above, it shall be his duty to surrender stock in said company in proportion to such reduction in his assets. If at any time any taxpayer in the state shall make complaint under oath to the district attorney of the county wherein such stockholder resides, that the provisions of this section are being neglected, not complied with, or violated, by any such stockholder, it shall be the duty of such district attorney to cause such stockholder to be examined under oath before some justice of the peace in his county, as to the financial condition of such stockholder, and if it shall appear that such stockholder has violated the provisions of this section he shall forfeit his stock in such corporation and in addition thereto shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than one month nor more than six months, or by both such fine and imprisonment.

**1245. Stockholder responsible.**

SEC. 4. Every stockholder shall be personally responsible to the full amount of the par value of the stock held in the company.

**1246. Liabilities limited.**

SEC. 5. In no case shall the total amount of liabilities incurred by any company exceed the total amount of stock actually held by the members of any incorporation organized under this act.

**1247. To file articles with county recorder.**

SEC. 6. Each company organized under this act shall file a properly certified copy of its articles of incorporation in the office of the recorder of each county in this state in which any bond is furnished by such company, and no bond shall be accepted or approved in any county until such articles of incorporation are so filed.

**1248. Duty of district attorney.**

SEC. 7. It shall be the duty of any district attorney in any county in this state, whenever he may become personally aware that any of the provisions of section 3 of this act are being neglected, avoided or not complied with by any officer or stockholder of any surety company formed under the provisions of this act, to personally cause any such stockholder to be examined under oath concerning the same, before some justice of the peace as in said section 3 provided, and upon the failure of any district attorney so to do, he shall be deemed guilty of a misdemeanor in office and may be proceeded against accordingly.

*An Act to provide for incorporation, operation, and management of cooperative associations.*

Approved March 16, 1901, 73.

1249. Not to issue capital stock.

1250. Interest equal—Qualification for membership and liability.

1251. Formation.

1252. By-laws, how adopted and amended.

1253. By-laws recorded and filed.

1254. Property subject to execution.

1255. Purposes may be changed or modified.

1256. Profits, how divided.

1257. Powers.

1258. Dissolution.

1259. Succession—Deceased members.

1260. "Lawful business" construed.

**1249. Not to issue capital stock.**

SECTION 1. It shall be lawful for five or more persons to form a cooperative association for the purpose of transacting any lawful business. Such associations shall not have or issue any capital stock, but shall issue membership certificates to each member thereof, and such membership certificates cannot be assigned so that the transferee thereof can by such transfer become a member of the association except by the resolution of the board of directors of the association. But by the resolution of consent of the board of directors, such certificates may be transferred, so that the transferee may become a member in lieu of the last former holder thereof.

**1250. Interest equal—Qualification for membership and liability.**

SEC. 2. In such association the rights and interest of all members shall be equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member shall be entitled to cast one vote and no more. All persons above the age of eighteen years, regardless of sex, shall be eligible to membership, if otherwise qualified and elected as the by-laws may provide; *provided*, that minors cannot be empowered to make contracts for the association. The by-laws shall provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually, or

personally liable, for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association may be required to pay any unpaid dues or installments which have before such insolvency become due from such member to the association, pursuant to its by-laws.

### 1251. Formation.

SEC. 3. Every association formed under this act shall prepare articles of association, in writing, which shall set forth: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist (not to exceed fifty years), the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as a membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal. Such articles of association must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged shall be filed in the office of the secretary of state, who shall furnish a certified copy thereof, which shall be filed in the office of the county clerk of the county where the principal business of such association is to be transacted; and from the time of such filing in the office of said county clerk the association shall be complete, and shall have and exercise all the powers for which it was formed.

### 1252. By-laws—How adopted and amended.

SEC. 4. Every association formed under this act must, within forty days after it shall so become an association, adopt a code of by-laws for the government and management of the association, not inconsistent with this act. A majority of all the associates shall be necessary to the adoption of such by-laws, and the same must be written in a book, and subscribed by the members adopting the same; and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment shall be given, as the by-laws may provide. Such association may, by its code of by-laws, provide for the time, place, and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resignation, removal, or otherwise, and the power and authority of such directors, and how many thereof shall be necessary to the exercise of the powers of such directors, or of any officer; the number of the officers, if any, other than the directors, and their term of office, the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise; *provided*, the method shall secure the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications of membership, and on what conditions, and when membership shall cease, and the mode and manner of expulsion or refusal of a member, subject to the right that an expelled or refused member shall have a right to have a board of arbitration consisting of three persons, one selected by the board of directors, one by the expelled or refused member and a third by the other two, appraise his interest in the association in either money, property or labor, as the director shall deem best, and to have the money, property, or labor so awarded him paid or delivered, or performed within forty days after expulsion or refusal; the amount of membership fee, and the dues, installments, or labor which each member shall be required to

pay or perform, if any, and the manner of collection or enforcement, and for forfeiting or selling of membership interest for nonpayment or non-performance; the method, time, and manner of permitting the withdrawal of a member, if at all, and how his interest shall be ascertained, either in money or property, and within what time the same shall be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same shall be paid to his legal representatives in money, or property, or labor, and within what time the same shall be paid, or delivered, or performed; *provided*, that such withdrawing member, or legal representative of deceased member, has the right of a board of arbitration the same as provided for refused members; such other things as may be proper to carry out the purpose for which the association was formed.

#### 1253. By-laws recorded and filed.

SEC. 5. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy certified by the directors, must be filed in the office of the county clerk, where the principal business is transacted.

#### 1254. Property subject to execution.

SEC. 6. The property of such association shall be subject to judgment and execution for the lawful debts of the association. The interest of a member in such association, if sold upon execution, or any judicial or governmental order whatever, cannot authorize the purchaser to have any right, except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors shall choose to pay or settle the matter, as provided in case of refused members, after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine.

#### 1255. Purposes may be changed or modified.

SEC. 7. The purpose of the business may be altered, changed, modified, enlarged or diminished, or the articles of association amended, by a vote of two-thirds of all the members, at a special election to be called for such purpose, of which notice must be given the same as the by-laws shall provide for election of directors. Upon amendment of its articles of association, a copy of its amended articles as amended, shall be duly filed with the secretary of state, and a certified copy filed with the county clerk.

#### 1256. Profits, how divided.

SEC. 8. The by-laws shall provide for the time and manner in which profits shall be divided between the members, and what proportion of the profits, if any, shall be added to the common property or funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or installment of earnings, at their discretion.

#### 1257. Powers.

SEC. 9. Every association formed under this act shall have power of succession by its associate name for fifty years; to, in such name, sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey real and

personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidence of indebtedness or mortgage as its by-laws may provide for; to trade, barter, buy, sell, exchange, and to do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed.

#### 1258. Dissolution.

SEC. 10. Any association formed or consolidated under this act may be dissolved and its affairs wound up voluntarily by the written request of two-thirds of the members. Such request shall be addressed to the directors, and shall specify reasons why the winding up of the affairs of the association is deemed advisable, and shall name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom shall thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors shall cease and the persons appointed shall proceed to wind up the association, and realize upon its assets, and pay its debts, and divide the residue of its money among the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two-thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association shall be deemed dissolved. No receiver of any such association or of any property thereof, or of any right therein, can be appointed by any court, upon the application of any member, save after due process of law.

#### 1259. Succession—Deceased members.

SEC. 11. Any member may upon or subsequent to becoming a member nominate upon his application, or otherwise file with the secretary of any corporation incorporated under this act, and of which he is a member, the person whom he desires shall succeed to his membership and interests in said corporation upon his death; and upon proof of said member's death being made, according to the by-laws and to the satisfaction of said corporation's board of directors, said deceased member's membership and interests in said cooperative corporation shall by the said secretary be transferred to the person or persons so nominated, with the consent of the board of directors, without letters of administration. And in case said board of directors do not consent to said nominee becoming a member, then said corporation shall, within ninety days after proof, pay said nominee the amount which the deceased member has paid on said membership, together with the amount of his other interests in said corporation.

#### 1260. "Lawful business" construed.

SEC. 12. This act being passed to promote association for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, education, industrial, benevolent, social, or political purposes, whether conducted for profit or not, and this act shall not be strictly construed, but its provisions must at all times be liberally construed, with a view to effect its object and to promote its purposes.

*An Act concerning franchises for furnishing electric light, heat and power.*

Approved March 20, 1909, 154.

1261. Must pay percentage of profits.

1263. Appurtenances of best make.

1262. Must keep appliances in good order.

1264. Length of franchise.

**1261. Must pay percentage of profits.**

SECTION 1. Any person, company, corporation or association engaged in supplying electric light, heat or power to the inhabitants of any county, or to the inhabitants of any town or city in any county in the state, and which filed its acceptance of the terms of the provisions of an act entitled "An act granting to persons and corporations the right to supply electric power, heat and light to the inhabitants of counties, cities and counties, cities and towns of the State of Nevada and granting to such persons and corporations the right to construct and maintain poles and wires on the county roads and highways, and in the streets of said cities, cities and counties, cities and towns of this state, and to conduct electricity over said wires and providing for the punishment of obstruction, hindrance or damage thereto," approved March 2, 1901, the same being chapter 25, Laws of 1901, with the county recorder of such county, or which complied with the procedure authorized by chapter 190 of the Laws of 1907, entitled "An act to define the rights and responsibilities of owners of electric light lines and power lines in the State of Nevada," or which applied for and received a formal permit or franchise from the county commissioners of such county prior to the passage of this act, and has since the filing of such acceptance, or the receipt of such franchise, or said compliance, been actually engaged in supplying electric light, heat or power to the inhabitants of any county or of any town or city therein, shall have and there is hereby granted to such persons, company, association or corporation the franchise, rights and privilege to supply electric light, heat and power to the inhabitants of such county, and to the inhabitants of any town or city therein, and that to carry out said purpose, the right, privilege and franchise is hereby granted to such person, association or corporation to construct and maintain poles and wires on the county roads and highways, and in the streets of the said cities and towns, together with all the necessary appurtenances, and to conduct electricity over said wires and appurtenances to any part of said county, and to the towns and cities therein, for the purpose of furnishing electric heat, power, and light to the same extent as if the terms and provisions of said act had originally been fully complied with. But no person, company, corporation or association shall have the benefits of the provisions of this act until there has been paid to such town, city or county two per cent of the net profits made in furnishing or supplying such electric light, heat or power, since the filing of its acceptance of the terms and provisions of chapter 25 of the Laws of 1901, or since such permit or franchise was received from the board of county commissioners, or since such compliance with the procedure authorized by chapter 190 of the Laws of 1907; *provided, however*, that nothing herein shall be so construed as to enlarge the powers or to extend the term granted by any existing franchise; *provided*, that any person, company, association or corporation accepting the benefits of the provisions of this act as hereinafter provided shall pay annually two per cent of its net profits, made in furnishing such electric light, heat and power, to the county or counties in which such person, company, association or corporation is engaged in business; *and provided further*, that this act shall not be held or construed to relieve any such person, company, corporation, or association which has received a franchise from any board of county commissioners in this state prior to the passage of this act from the full performance of the terms and conditions imposed by such franchise;

but that compliance with the terms and provisions of this act shall be required in addition thereto.

See Franchises, secs. 2129-2141.

Chapter 25, Statutes of 1901, and chapter 190, Statutes of 1907, mentioned in foregoing section, repealed by section 2140.

### 1262. Must keep appliances in good order.

SEC. 2. Such persons or corporations shall keep their plants, poles, wires, and necessary appurtenances in good repair, so as not to interfere with the passage of persons or vehicles or the safety of persons or property. Such poles shall be not less than thirty feet in height, and the wires strung thereon shall be not less than twenty-five feet above the ground, and such persons or corporations shall provide a competent electrician at the expense of said persons or corporations, to cut and repair such wires as are necessary for the removal of buildings or other property through the streets of said counties, cities or towns with all due diligence.

### 1263. Appurtenances of best make.

SEC. 3. The appurtenances of said plant shall be of the most approved construction for the comfort and conveniences of the inhabitants of said counties, cities and towns of this state.

### 1264. Length of franchise.

SEC. 4. The franchise and privilege hereby granted shall continue for a period of twenty-five years from and after the date of the filing of the notice of intention and agreement as required by said chapter 25 of the Laws of 1901, or from and after the receipt of such formal permit or franchise, or from and after said compliance with the procedure authorized by chapter 190 of the Laws of 1907. Such person, company, association or corporation shall file annually with the county recorder an affidavit showing the gross receipts and expenditures derived from and expended in the furnishing of such electric light, heat and power; *provided, however*, that no person or persons, company or corporation shall be entitled to any of the benefits or be included within the provisions of this act unless and until such person or persons, company or corporation shall, within ninety days after the passage hereof, file in the office of the secretary of state and in the office of the county recorder of the county in which such person or persons, company or corporation maintains its principal office or place of business, a duly executed and acknowledged acceptance of the terms, conditions and provisions of this act, which acceptance, in the case of a corporation, shall be evidenced by a duly attested or certified copy of a resolution of its board of directors.

See sec. 2140.

## *An Act to grant certain privileges to gas companies and others.*

Approved February 26, 1877, 94

### 1265. May erect buildings and lay pipes.

SECTION 1. Any person, persons, or company desiring to supply the inhabitants of any city or town in this state with illuminating gas, it shall have the license and authority to erect within the limits of such city or town the necessary buildings, works and machinery for the manufacture or production of such gas; to make the necessary excavations in the public streets of such city or town, for the purpose of laying gas pipes therein; to lay all necessary pipes, and to reopen such excavations at any time for replacement, repair, or examination of the pipes; *provided*, that no street shall be obstructed to an unnecessary degree, or for an unnecessary period of time, by any work as aforesaid.

*An Act to license and regulate insurance business in this state.*

Approved February 23, 1881, 50

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**1266. Insurance companies prohibited from doing business without a certificate.**

SECTION 1. No company, corporation, or association organized under the laws of this state, or any other state, or government, or firm, or individual, shall be permitted to transact an insurance business in this state, without a certificate from the state controller authorizing and permitting the transaction of such business.

See note following sec. 1218.

**1267. Insurance companies under laws of this state.**

SEC. 2. Corporations may be formed under the general laws of this state for the transaction of insurance business, but no such corporation shall be permitted to assume any risk as insurer, unless the same shall have at least five directors, who shall be residents and property owners in this state, and stockholders in the corporation; nor until such corporation shall have a paid up, unimpaired cash capital equal to two hundred thousand dollars, in United States gold coin, which shall be invested in this state in state or United States bonds; bonds and mortgages on first-class, otherwise unincumbered, real estate, the market value of which shall be at least double the amount invested in or loaned thereon; bonds of any city or county in this state, the issuance of which was duly authorized by law; bonds of any railroad, wagon road, ditch, or canal incorporation or association; *provided*, that such bonds or securities shall at no time be estimated as assets of such corporation at more than their actual cash market value; and nothing in this act shall be construed to permit any investment in mining stock.

See sections 1 and 114 of the general incorporation act of 1903, and section 1 of the corporation act of 1865, sections 1105, 1215, and 1219.

**1268. Loans prohibited.**

SEC. 3. No loan shall be made to any stockholder by any insurance corporation formed under the laws of this state, nor shall any stockholder be interested in any way in any loan, pledge, security, or property of any insurance company organized under the laws of this state, except as stockholder in said company, and any property claimed as belonging to such company, standing in the name of any person or persons, shall not be admitted as an asset of such company.

**1269. Terms of insurers limited.**

SEC. 4. No association, firm, or individual, whose principal office shall be in this state, shall be permitted to transact business as insurer on terms more favorable than are defined in section 2 of this act.

**1270. Controller to make examinations—Notice to repair capital—Revoke certificate and penalties.**

SEC. 5. The controller of state is hereby authorized and required, upon the receipt of a written request, signed by three citizens of this state, or whenever, from any cause, he shall deem it necessary, to make a thorough examination of the books, accounts, securities, and all property belonging to any company incorporated under the laws of this state, and if he does not find capital paid up to the amount of two hundred thousand dollars, or if he shall find the capital impaired, he shall give notice to such company to immediately repair its capital, and shall refuse or revoke his certificate of authority to such company to do business in this state; and if any company shall refuse to permit such examination, the controller shall refuse or revoke his certificate of authority to such company. If after such notice, refusal, or revocation of his certificate by the controller, such company shall continue to make contracts and issue policies, the officers, or any officer, agent, or other person so violating the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined the sum of five hundred dollars for each offense committed after the receipt of such notice, and in default of payment of such fine shall be imprisoned in the county jail of the county in which the offense was committed for a period not exceeding six months, or until such fine shall be paid.

**1271. Assessment on stock.**

SEC. 6. For the purpose of repairing the capital of insurance companies or corporations, assessments may be levied upon the capital stock thereof, and collected as now provided by law for levying and collecting assessments upon the capital stock of other corporations in this state.

**1272. Controller to have access to books—Duties of companies in facilitating the examination.**

SEC. 7. For the purpose of examination, the controller shall have free access to all books, papers, and property of any insurance company formed under the laws of this state, and shall thoroughly inspect and examine the same, as far as necessary to determine the financial condition and ability of such company to fulfil its engagements, and also to ascertain whether it has complied with all the requirements of this act. And it shall be the duty of such company to permit its books to be opened to the inspection of the controller, and otherwise to facilitate such examination. The controller shall have power to examine any officer, agent, or employee of such company, under oath, and require answers in writing, and if he shall find the books carelessly or improperly kept, or kept with intent to deceive, he shall have power to employ experts to thoroughly examine, rewrite, post and balance the same at the expense of such company; and the controller shall refuse or revoke his certificate of authority to any company refusing to permit such examination, or to pay the legitimate expenses thereof.

**1273. Showings required of companies other than state corporations—Service of notice.**

SEC. 8. No insurance company organized outside the State of Nevada shall be permitted to do business in this state until it shows to the controller, by the reports of the insurance commissioner or insurance officer of some other state having an insurance department, or by a certificate of such insurance officer, that it is possessed of a paid up, unimpaired cash capital of at least two hundred thousand dollars, nor until such company shall have filed with the controller a power of attorney which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company and the principal place of business for the Pacific

coast), which power of attorney shall authorize a citizen and resident of this state to make and accept service in any proceeding in any of the courts of justice of this state, or any of the United States courts herein. If any attorney of any insurance company, appointed under the provisions of this act, shall remove from the state or become disqualified in any manner from accepting service, and if any citizen or resident of this state shall have any claim by virtue of any insurance policy issued by any company not represented by attorney in this state, valid service may be made on such company by service upon the controller; *provided*, that in such case the controller shall immediately notify such company and the principal agent for the Pacific coast, inclosing a copy of the service, by mail, postpaid; *and, provided further*, that in such case no proceedings shall be had within forty days after such service on the controller.

#### 1274. Controller's duties and powers—Violations of law and penalties.

SEC. 9. Upon the written representation of three citizens, and the belief of the controller, that any company organized outside of this state and doing an insurance business in this state has less than two hundred thousand dollars paid up, unimpaired cash capital, it shall be the duty of the controller to make such investigation or require such proof as shall be satisfactory to him concerning the financial condition of such company; *provided, however*, the certificate of the insurance officer of any state having an insurance department, that such company has a paid up, unimpaired cash capital equal to two hundred thousand dollars in United States gold coin, shall be accepted by the controller as satisfactory. If such company does not, within sixty days after demand of the controller, produce such certificate, the controller shall revoke his certificate of authority to such company to do business in this state, and in the meantime may withdraw or withhold his certificate of authority until such certificate is produced. If, after such withholding, refusal, withdrawal or revocation, such company, or any officer, agent or other person, shall write, deliver or agree to deliver any policy in such company, such person so violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties provided in section 5 of this act.

#### 1275. Companies to have deposit.

SEC. 10. No company not incorporated in the United States shall be permitted to transact an insurance business in this state, unless the same shall have deposited or invested for the benefit of its policy-holders in the United States, in at least one state, a sum equal to two hundred thousand dollars, in gold coin, in excess of its liabilities in the United States.

#### 1276. Life companies to appoint agents—Licenses.

SEC. 11. Nothing in this act shall be construed to prevent any life insurance company having outstanding policies in this state from appointing agents to collect premiums thereon; *provided*, such company shall appoint an attorney, as provided in section 8 of this act, and pay five dollars for filing the power of attorney with the controller, and the controller shall issue his certificate authorizing the collection of premiums on outstanding policies only, and no requirement of capital herein shall apply to mutual life insurance companies possessing assets amounting to one million dollars or more.

#### 1277. Controller to estimate in determining liabilities.

SEC. 12. The controller shall, in determining the liabilities of any fire insurance company organized under the laws of this state, estimate and determine all debts and liabilities of such company, and shall calculate the reinsurance reserve for fire risks by taking fifty per centum of the premiums received on all unexpired risks having less than one year to run, and a pro

rata premium on all risks having more than one year to run, and such estimates shall be charged as a liability against such company. The controller shall accept the valuations made by the insurance officer of any state under whose authority any life insurance company is permitted to transact business in that state.

#### 1278. Regulation of licenses.

SEC. 13. This act shall take effect on the first day of June, one thousand eight hundred and eighty-one, and all licenses issued by the controller shall expire on the thirty-first day of December of each year, and shall be issued pro rata for any period less than one year, and all companies having unexpired quarterly licenses shall have the full benefit thereof. Within thirty days after the first day of June, one thousand eight hundred and eighty-one, and within thirty days after the first day of January, one thousand eight hundred and eighty-two, and annually thereafter, each company doing or proposing to do an insurance business in this state shall apply to the controller for a license, and if he shall be satisfied that such company is qualified to do business under the provisions of this act, he shall issue the same, on the receipt in gold coin of the amount required herein, and the admission of any insurance company to do business in this state shall not be denied by the controller when it makes and tenders a full compliance with the provisions of this act.

#### 1279. Licenses and fees from insurance companies.

SEC. 14. The controller shall collect for filing each power of attorney and issuing his certificate, as required by this act, five dollars; for an annual license to each fire insurance company to transact business throughout this state, one hundred dollars; for an annual license to each life insurance company, cooperative insurance association or mutual benefit society, to transact business throughout this state, one hundred dollars; for an annual license to each life and accident insurance company, to transact business throughout this state, one hundred dollars; for an annual license to each casualty and surety company to transact business throughout this state, twenty dollars; *provided, however*, that nothing contained in this act shall be construed to apply to any charitable secret society, organized in this state, or working under or being subordinate to a supreme lodge of a secret society, organized under the laws of another state, or to prevent the same from issuing benefits to its members. For examining the financial condition of any company or association organized in this state, the just and legitimate expenses of such examination which shall be paid by the said company, and the controller shall revoke or refuse his certificate of authority to any company neglecting or refusing to pay such expenses. All fines and penalties recovered under the provisions of this act shall be paid into the state school fund, and all licenses, fees and other collections by the controller shall be paid into the general fund of the state; *provided*, the controller shall be allowed the just and legitimate expenses of the examination hereinbefore mentioned. *As amended, Stats. 1899, 107; 1901, 131.*

#### 1280. Liability of persons acting for companies in any capacity.

SEC. 15. Any person who solicits insurance, receives an application or order to write, renew or procure any policy, collects any premium, or who attempts as middleman to place any fire insurance in this state when such person holds no authority as agent from any insurance company or general agent of such company, shall be deemed an insurance broker, and shall pay to the county where such business is conducted or attempted, in advance, a quarterly license of fifteen dollars, and the license collector of the county shall collect the same. If such broker shall neglect or refuse to procure such license he shall be deemed guilty of a misdemeanor, and, upon conviction,

tion thereof, shall be fined not less than twenty-five dollars, nor more than fifty dollars for each offense, and in default of payment of the fine shall be imprisoned in the county jail not more than twenty-five days.

**1281. Controller can require copies of charters and deeds.**

SEC. 16. The controller may, at any time, require any insurance company doing business in this state to file in his office an authenticated copy of the certificate of incorporation, copy of the law, charter or deed of settlement under which its organization or formation was effected and its business is conducted; *provided, however,* that no company shall be required to file more than one such copy in this state.

**1282. Application of term "Company," and other terms.**

SEC. 17. The provisions of this act under either term or designation of company, corporation, association, firm or individual in either case, or where either term or designation is used, shall apply to any insurer, company, corporation, association, firm or individual engaged as insurers, or who may hereafter engage as insurers in this state, or who may engage in offering or affording indemnity against the casualties of fire or life.

**1283. Fines and penalties.**

SEC. 18. Any officer, agent or employee of any insurance company or other person violating any of the provisions of this act, shall, on conviction thereof, be fined not less than fifty dollars nor more than three hundred dollars, and in default of payment of such fine shall be imprisoned in the county jail not less than ten days nor more than three months, except as otherwise specially provided in this act, and the controller is authorized and directed to cause proceedings to be instituted in the name of the State of Nevada, in any court of competent jurisdiction, to enforce the provisions of this act.

**1284. Unearned premiums to be returned in certain cases.**

SEC. 19. In the event of the total destruction of any insured property on which the amount of the appraised or agreed loss shall be less than the total amount insured thereon, the insuring company or companies, shall return to the insured the unearned premium for the excess of insurance over the appraised, or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid.

See Gerhauser v. North British Ins. Co., 7 Nev. 174.

Part payment and risk accepted binds company. Cooper v. Pacific Mutual Co., 7 Nev. 116.

*An Act to provide for the incorporation of mutual fire insurance companies and to define their powers and duties.*

Approved March 6, 1897. 37

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| <p>1285. Formation mutual fire insurance companies.</p> <p>1286. Certificate to be filed.</p> <p>1287. When to commence business.</p> <p>1288. To hold real estate in certain cases, sale of.</p> <p>1289. Articles of incorporation and by-laws.</p> <p>1290. Investigation and certification.</p> <p>1291. May make by-laws.</p> <p>1292. To make a statement annually to controller—What to show.</p> <p>1293. Controller to investigate—May require company to close up business.</p> <p>1294. Responsible for failure to comply with requirements.</p> | <p>1295. Controller to furnish blanks—Failure to perform duties, guilty of felony.</p> <p>1296. Suits maintained—Assessments.</p> <p>1297. Bodies corporate.</p> <p>1298. May amend articles of incorporation—Attorney-general to certify.</p> <p>1299. Controller to file statement, when—Publication of notice.</p> <p>1300. State controller to examine into affairs.</p> <p>1301. Appointment of receiver—Duties.</p> <p>1302. Receiver to keep account—Bond of receiver.</p> <p>1303. Purpose of formation—Exempt from other insurance laws.</p> |
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**1285. Formation of mutual fire insurance companies.**

SECTION 1. Any number of persons, not less than ten, who shall be residents and householders in the State of Nevada, may associate themselves together and form an incorporated company for the purpose of mutual insurance of the property of its members against loss by fire; which property to be insured shall belong to the members of the company, and embrace dwelling houses, barns, accompanying out-buildings and their contents, creameries, farm implements, hay, grain, wool and other products, live stock, wagons, buggies, carriages, harness, household goods, wearing apparel, provisions, musical instruments, furniture, and libraries being upon farms as farm property or in dwellings, or in accompanying outbuildings. *As amended, Stats. 1901, 110.*

**1286. Certificate to be filed.**

SEC. 2. Such corporation shall be formed under the laws of Nevada, governing the formation of corporations and the certificate of incorporation together with its by-laws shall be filed with the state controller.

See note following sec. 1218.

**1287. When to commence business.**

SEC. 3. The persons so associating, after having perfected such incorporation and filed their certificate of incorporation and by-laws with the state controller as aforesaid, may open books to receive applications for membership and enter into agreements in the manner hereinafter specified; but no company organized by this act shall do any business or take any risks or make any insurance in any state other than the State of Nevada, and no insurance company organized as aforesaid shall commence business until bona fide agreements shall have been entered into for insurance with at least twenty-five individuals, covering property to be insured to the amount of not less than fifty thousand (\$50,000) dollars. *As amended, Stats. 1901, 110.*

**1288. To hold real estate in certain cases—Sale of.**

SEC. 4. No company formed under this act shall purchase or hold real estate except—

First—Such as shall be necessary for its immediate accommodation in transacting business; or

Second—Such as shall have been conveyed or mortgaged to the company in good faith by way of security for debts; or

Third—Such as shall have been conveyed to the company in satisfaction of debts; or

Fourth—Such as shall have been purchased at sale upon judgments, decrees or mortgages in favor of such company or held or owned by it; and all real estate obtained by virtue of any provision of this section, except that mentioned in the first subdivision, shall be sold or disposed of within five years after the title has been perfected in such company unless the company shall procure a certificate from the state controller that the interest of said company will materially suffer by forced sale, in which event the sale may be postponed for such period as the said controller shall direct in said certificate—not to exceed ten years in all.

**1289. Articles of incorporation and by-laws.**

SEC. 5. In addition to the foregoing provisions it shall be the duty of the incorporators or any company organized under the provisions of this act to declare, in its articles of incorporation and by-laws, the mode and manner in which the incorporate power given under and by virtue of this act are to be exercised; the qualification of membership; the mode and manner of electing trustees, who shall all be residents of the State of Nevada; the filling of

vacancies; the county or counties in which the business of the company is to be conducted and confined (if less than the entire state), and may prescribe therein the liabilities of the members to be assessed toward defraying the losses and expenses of the company and the mode and manner of collecting such assessments. *As amended, Stats. 1901, 110.*

### 1290. Investigation and certification.

SEC. 6. The articles of incorporation and by-laws required to be filed by the corporation shall be examined by the attorney-general, and if found to be in accordance with the requirements of this act, he shall certify the same to the state controller, and the state controller may appoint three disinterested persons, all of whom shall be residents of the State of Nevada, who shall certify under oath that the corporation has received and is in actual possession of the premiums or engagements of insurance (as the case may be) to the full extent required in this act; *provided, however*, the state controller may make such examination personally or by his deputy. When satisfied that all the provisions of this act have been fully complied with, it shall be the duty of the state controller to certify such facts to the officers of the corporation, which certificate, upon being filed by them in the county clerk's office, in the county in which the principal place of business of such company is located, shall be authority to receive additional members, issue policies and transact any and all business provided by in its articles of incorporation and by-laws. *As amended, Stats. 1901, 111.*

### 1291. May make by-laws.

SEC. 7. The directors of any company organized under this act shall have power to make such by-laws, not inconsistent with the constitution and laws of this state, as may be deemed necessary for the government of its officers and members and the conduct of its affairs.

### 1292. To make a statement annually to controller—What to show.

SEC. 8. It shall be the duty of the president and secretary of each company organized under this act, annually on the first day of January, or within one month thereafter, to prepare under oath and deposit with the state controller a statement of the condition of such company on the 31st day of December then next preceding, exhibiting the following facts, to wit:

First—The number of members on the last day of December of the previous year, the number of members added during the year, the number of members who have withdrawn or whose policies have been canceled during the year, and the number of members belonging to the company.

Second—The amount of property at risk December 31st of previous year, the amounts of risks added during the year, the number of risks canceled, withdrawn or terminated during the year, and the net amount at risk by the company.

Third—The amount of premium or deposit notes in force, the amount of cash premiums (or assessments) actually on hand, the amount of outstanding assessments not canceled, the nature and amount of all other resources, and the total amount of resources.

Fourth—The claims for losses due and payable, the claims for losses not matured, the claims for losses resisted, the nature and amount of all other claims, due or accrued, and the total amount of liabilities.

Fifth—The amount of premiums or deposit notes taken during the year, the amount of cash premiums received during the year, the amount collected on assessments which were levied during the year, the amount collected during the year on assessments which were levied in previous years, the amount received from membership or policy fees or from other sources constituting an expense to the insured, the amount received from percentage on

increased or decreased insurance, the income from all other sources and the total income.

Sixth—The amount paid for losses during the year, stating the amount of same which was for losses for previous years, the amount of salary and fees paid the officers and directors, the amount of all other expenditures during the year and the total expenditures during the year.

**1293. Controller to investigate—**May require company to close up business.

**SEC. 9.** A copy of every sworn statement and report shall in said month of January be filed in the office of the county clerk of the county where the principal office of the company is located, and another copy thereof shall be published at least twice during said month in a newspaper printed in such county. The officers making such sworn statement or report shall also file with the report herein required to be filed with the state controller, an additional affidavit showing that such report and statement has been published and a copy thereof filed in the office of the county clerk as herein provided; and if upon examination of the affairs of the company as hereinafter provided for, it shall appear to the controller that the losses and expenses of any company incorporated under this act have, during the year, exceeded the cash premiums and assets collected to such an extent as to imply a doubt in his mind as to the solvency of such company and its ability to pay all its losses and other debts, it shall be his duty to serve a notice upon the officers of such company, requiring them, at the expiration of sixty days from the date of such notice, to discontinue issuing policies and proceed to close up its business; unless within that time, the directors of such company shall collect assessments and pay such losses and debts.

**1294. Responsible for failure to comply with requirements.**

**SEC. 10.** If any company shall fail to comply with the requirements of the controller in said notice or if it shall fail to make its annual report to the controller at the time and in the manner herein prescribed therefor, or shall issue any policy or make any insurance, or if such report to the controller shall be imperfect or contain false statements or shall be made as fraudulently to conceal the actual condition or responsibility of the company after the expiration of sixty days or in any manner fail or refuse to comply with the requirements of the controller in said notice, the directors and officers of such company shall be jointly and severally personally responsible for any losses that may thereafter occur in said company or to any person insured therein or thereby; and the person sustaining such losses may sue for and recover the amount of such losses from such directors and officers, or from any one or more of them.

**1295. Controller to furnish blanks—**Failure to perform duties, guilty of felony.

**SEC. 11.** It shall be the duty of the controller on or before the first day of December in each year to furnish all companies organized under this act with blanks for the purpose of making thereon the statement herein required to be filed, which blanks shall be issued by the proper officers in making said statements, which statements shall be full and in accordance with the requirements heretofore set forth, and he may from time to time make such change in the form of such statement as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated. In case the officers or directors of any company shall fail, neglect or refuse to perform the duties required of them by law within the time and in the manner prescribed for the performance of such duty, or shall knowingly make or permit any false or

imperfect statement to be made in any annual or other report or statement required to be made by them, or by any of them, or by the company to the controller, or shall do or aid, or assist in doing, anything which any such company is hereby prohibited from doing or shall in any manner violate any of the provisions of this act, or shall aid in or consent to any violation of the provisions of this act, then, and in every such case, every director or person so offending shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars nor less than five hundred dollars or by imprisonment in the state prison not more than one year, or by such fine and imprisonment, in the discretion of the court; and when such failure, neglect or refusal on the part of the officers of any company is known to the controller it shall be his duty to notify the district attorney of the county where such company is located whose duty it shall be to commence legal proceedings against such persons or officers to enforce the penalty hereby imposed.

#### 1296. Suits maintained—Assessments.

SEC. 12. Suits at law may be maintained by any corporation formed under this act against any of its members for any cause relating to the business of such corporation or by any member against such corporation for claims which may have accrued, if payments are withheld more than sixty days after such claims shall have become due. It shall be lawful for any mutual insurance company, organized under this act, to make assessments upon premium notes, agreements, or the policies issued thereon pro rata according to the amount of such agreements of policies for the payment of the losses and expenses incurred by such company and all such premium notes or assessments shall be a lien upon the property insured to the amount of such notes or assessments, costs, and interest due thereon.

#### 1297. Bodies corporate.

SEC. 13. All companies formed under this act shall be deemed bodies corporate and politic in fact and in name and shall be subject to all the provisions of the statute in relation to corporations as far as they are applicable.

#### 1298. May amend articles of incorporation—Attorney-general to certify.

SEC. 14. Any company formed under this act shall have power to amend the articles of incorporation at any regular annual meeting held in accordance with the provisions of their articles of incorporation, upon giving notice of their intention to do so and of the time and meeting for that purpose; such notice shall be published three successive times in some newspaper published in the county where such company is organized. Said amendments shall be submitted to the attorney-general and his certificate of compliance with the law obtained and shall be filed in the office of the controller and also with the county clerk of the county in which the office of the company is located, before they shall take effect.

#### 1299. Controller to file statement, when—Publication of notice.

SEC. 15. If any insurance company organized under this act shall not, within sixty days after the controller shall have given the notice required by section 9, pay up and discharge all outstanding claims against said company, it shall be the duty of the controller to file a statement with the clerk of the district court of the county where such company has its principal place of business, reciting the fact that the sixty days within which such company was required to proceed to close up its business have expired, and that there are outstanding claims against such company. A copy of said statement shall be published for three successive weeks in a newspaper in such county.  
*As amended, Stats. 1901, 111.*

**1300. State controller to examine into affairs.**

SEC. 16. The state controller, at any time when he deems it advisable, may in person or by deputy visit and examine into the affairs of any mutual insurance company organized under the provisions of this act; and it shall be the duty of the officers or agents of any such company to cause their books to be opened for inspection and otherwise to facilitate such examination so far as it may be in their power to do so, and for that purpose the controller shall have power to examine under oath the officers and agents of any company relative to the standing and condition of said company. All necessary expenses of such examination shall be paid by the company so examined.

**1301. Appointment of receiver—Duties of receiver.**

SEC. 17. At any time after the publication required by section 15 of this act, the controller may appear in court in person or by counsel and move for the appointment of a receiver for said company; and the said company may also be heard, and upon such hearing the report of such company filed in the office of the controller shall be conclusive evidence of the facts therein stated and of the liability of such company, unless such company shall show that they have since paid and discharged the liabilities; and if upon the hearing thereof it shall appear to such court that the statements of the controller are materially true, the said court shall appoint a receiver for said company who is hereby empowered to take possession of all books and papers and personal property of said company, and shall ascertain the amount due from said company or property insured, and shall at once proceed to assess upon all the members and persons insured in said company such sums of money as will in the aggregate be sufficient to pay all the losses and liabilities of said company, together with the services and expenses of such receiver according to and in proportion to the amount of their insurance or interest in such company; and upon payment of such assessment the said members shall be discharged of and from all former assessments made by such company. It shall be the duty of such receiver to give notice of such assessment by publishing in some newspaper published in the county where the company is located, once a week for three successive weeks a general notice stating therein the aggregate amount assessed in said company; and upon application he shall furnish to any person assessed a statement showing the amount of his assessments. In case any member or person so assessed shall neglect for thirty days after such publication to pay the amount of such assessment to said receiver, the receiver may sue for the same in any court of competent jurisdiction for the amount so assessed with costs. If the amount realized by such receiver be insufficient to pay the losses and liabilities therein and for the services and expenses aforesaid he shall proceed to make a second assessment and such further or other assessments as may be necessary to realize a sum sufficient to pay all the losses and liabilities of such company in the same manner and with like effect as herein provided for making the first assessment and shall sue for and collect the same in the same manner. If after paying the losses and liabilities of such company and the services and expenses aforesaid, there shall remain any funds in the hands of the receiver the same shall be paid to the persons assessed in just and equal proportions to the sums contributed and paid by them.

**1302. Receiver to keep account—Bond of receiver.**

SEC. 18. Such receiver shall keep an accurate account of all moneys or other property received by him and shall pay over all money by him collected and the proceeds of all personal property pro rata upon said liabilities, after deducting therefrom for his services and expenses (if the court after making

such appointment shall deem the amount reasonable). The court making such appointment may also require such receiver to give a bond with sufficient sureties in such penal sum as the court shall determine, which said bond shall run to the State of Nevada and be conditioned for the faithful discharge of his duties as such receiver, and be approved by the judge of such court, and said court may from time to time require such receiver to make a report and upon the acceptance of a final report showing a full and faithful performance of such trust may discharge such receiver and his bondsmen from further liability. If any receiver shall be in charge of the business of any company on the last day of December of any year, it shall be his duty, during the month of January following to make a full report to the controller, showing the condition of affairs of such receivership on the thirty-first day of December preceding.

### 1303. Purpose of formation—Exempt from other insurance laws.

SEC. 19. Every mutual fire insurance company organized under the provisions of this act, shall be for the sole purpose of mutually insuring the property of the members thereof and for the purpose of paying any loss incurred by any members thereof by assessment as provided by the constitution and by-laws of such company; and all such companies are hereby exempt from the provisions of the insurance laws of this state, governing foreign corporations and corporations not organized on the mutual plan, and nothing herein shall be so construed as to impair or in any manner interfere with any of the rights and privileges of such companies doing insurance business in this state or to relieve them of any duties and responsibilities now imposed on such companies by law.

*An Act relative to reinsurance and the transaction of business by fire insurance companies or associations otherwise than through resident agents.*

Became a law March 6, 1901, 40

1304. Resident agents to transact business—

Common carriers excepted.

1305. Must be legally authorized.

1306. Cannot transfer risks.

1307. Not reinsure, when.

1308. Affidavit to annual statement.

1309. Penalty— Authority revoked — Reinstatement.

### 1304. Resident agents to transact business—Common carriers excepted.

SECTION 1. It shall be unlawful for any insurance company or association, doing business in the State of Nevada, to write, place, or cause to be written or placed, any policy or contract for indemnity for insurance on property situated or located in the State of Nevada, except through or by the duly authorized agent or agents of such insurance company or association residing or doing business in this state; *provided*, that this act shall not apply to direct insurance covering rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers.

### 1305. Must be legally authorized.

SEC. 2. No fire insurance company or association shall reinsure, in any manner whatsoever, the whole or any part of a risk taken by it on property situated or located in this state in any other company or association not authorized to transact business in this state.

### 1306. Cannot transfer risks.

SEC. 3. No fire insurance company or association shall transfer or cede, in any manner whatsoever, to any company or association not authorized to do business in this state, any risk or liability or any part thereof assumed by it, under any form or contract of insurance, covering property located in this state, including any risk or liability under any general or floating policy, or

any agreement, general, floating or specific, to reinsure excess loss by one or more fires.

### 1307. Not reinsure when.

SEC. 4. No fire insurance company or association shall reinsure, or assume as a reinsuring company, or otherwise, in any manner or form whatsoever, the whole or any part of any risk or liability, covering property located in this state, of any insurance company or association not authorized to transact business in this state.

### 1308. Affidavit to annual statement.

SEC. 5. At the time of the filing of the annual statement of every insurance company or association doing business in this state, with the state controller, there shall be attached thereto the affidavit of the president, manager or chief executive officer in the United States that this act has not been violated.

### 1309. Penalty—Authority revoked—Reinstatement.

SEC. 6. Any insurance company or association wilfully violating, or failing to observe and comply with, any of the provisions of this act shall be subject to and liable to pay a penalty of five hundred dollars for each violation thereto and for each failure to observe and comply with any provisions of this act; such penalty may be collected and recovered in an action brought in the name of the state in any court having jurisdiction thereof. Any insurance company or association which shall neglect and refuse for thirty days after judgment in any such action to pay and discharge the amount of such judgment, shall have its authority to transact business in this state revoked by the state controller and such revocation shall continue for at least one year from the date thereof, nor shall any insurance company or association whose authority to transact business in this state shall have been so revoked be again authorized or permitted to transact business herein until it shall have paid the amount of any such judgment and shall have filed in the office of the state controller a certificate signed by its president or other chief officer to the effect that the terms and obligations of the provisions of this act are accepted by it as a part of the conditions of its right and authority to transact business in this state.

*An Act relating to life, health, accident and annuity or endowment insurance on the assessment plan, and the conduct of the business of such insurance.*

Approved March 23, 1891, 130 \*

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| 1310. "Mutual insurance" defined.   | 1317. Insurable age—Penalty for fraud—<br>False swearing perjury. |
| 1311. Corporations may be formed on conditions.   | 1318. Exempt from attachment.                                     |
| 1312. Must begin business in one year.  | 1319. Report to controller.                                       |
| 1313. May reincorporate, but not obligatory.  | 1320. Controller may call officers to account.                    |
| 1314. Payments, how made and secured.   | 1321. Policy not to lapse without notice.                         |
| 1315. Reserve or emergency fund—Disposition of reserve fund.  | 1322. Fee for license.  |
| 1316. Conditions precedent to foreign corporations—License issued, when may be revoked—Reciprocity. | 1323. Penalties—Expenses, how paid.                               |
|   | 1324. Not to apply to fraternal societies.                        |

### 1310. "Mutual insurance" defined.

SECTION 1. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person or an animal insured thereunder, or for the payment of any sums of money dependent in any degree upon the collection of assessments or dues from persons or owners holding similar contracts, shall be deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that

liabilities of the insured thereunder are not limited to fixed premiums. *As amended, Stats. 1909, 62.*

### 1311. Corporations may be formed on conditions.

SEC. 2. Corporations may be formed under the general laws of this state to carry on the business of mutual insurance upon the assessment plan, and shall be subject only to the provisions of this act. No such corporation shall issue contracts of insurance until at least two hundred (200) persons have applied, in writing, for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand (\$5,000) dollars. This sum shall be invested in bonds or securities, approved by the controller of this state. Said bonds or securities shall be placed, through the state controller, with the state treasurer, and the principal sum shall be held in trust for the contract holders of such corporation, with the right in the corporation to exchange said bonds or securities, for others of like value. Such corporation shall also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the controller that it has complied with the requirements of this act, and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor shall the controller approve any name or title so closely resembling another as to mislead the public.

See note following sec. 1218.

### 1312. Must begin business in one year.

SEC. 3. No corporation formed hereunder shall have legal existence after one year from the date of its articles unless its organization has been completed and business commenced, nor shall any corporation or individual solicit, or cause to be solicited, any business until such corporation shall have complied with the provisions of section 7 and paid the fees required in section 12 of this act.

### 1313. May reincorporate, but not obligatory.

SEC. 4. Any existing corporation, engaged in transacting the business of life, health, accident or endowment insurance, on the assessment plan, may reincorporate under the provisions of the laws of this state and under the provisions of this act; *provided*, that it shall not be obligatory upon such corporation to reincorporate, and any such existing corporation may continue to exercise all rights, powers and privileges conferred by this act the same as if incorporated hereunder.

### 1314. Payments, how made and secured.

SEC. 5. The contracts of insurance issued by such corporations shall specify the sum or sums to be paid upon the happening of the contingency insured against and when such payments will be made. Unless the contract shall have been invalidated by fraud or by breach of its conditions, the corporations shall be obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein named, and such indebtedness shall be a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of such insolvency. Failure to make such payment within thirty days after (notice at the home office by mail, as provided by law, of) final judgment, unless waiver is made by the beneficiary, shall constitute a forfeiture of the right to do business.

### 1315. Reserve, or emergency fund—Disposition of reserve fund.

SEC. 6. Every domestic corporation organized or doing business under this act shall accumulate a reserve or emergency fund, which shall at all

times be not less than the largest benefit contracted to be paid by it to any one person. Every existing domestic corporation must accumulate such fund within one year from the date when this act takes effect, and any corporation organized hereunder within one year from the date of its certificate of incorporation. Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, shall be so invested and deposited, as provided in section 2 hereof, with the right in the corporation to exchange any such sureties for others of equal value. The deposit required by section 2 of this act shall constitute a part of the reserve required by this section, at the option of such corporation. When any corporation doing business hereunder shall discontinue business, this fund shall be returned to such corporation, after expiration of sixty days from the publication of a notice in a newspaper published in such county in which such corporation did business in this state, and on satisfactory proof to the state treasurer that said notice was published as aforesaid, for a period of two weeks, unless said fund has been otherwise disposed of by a district court of this state.

**1316. Conditions precedent to foreign corporations—License issued, when may be revoked—Reciprocity.**

**SEC. 7.** Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance, shall, as a condition precedent to transacting business in this state, deposit with the state controller a certified copy of its charter, or other instrument required by its home authorities, a statement under oath of its president or secretary of its business for the preceding year, in such form as may be required by the state controller; a power of attorney which shall authorize a citizen and resident of this state to make and accept service in any proceeding in any of the courts of justice in this state, or of any of the United States courts herein, as provided in section 8 [*post*, 1273] of "An act to license and regulate insurance business in this state," approved February 23, 1881; a certificate that for the next preceding twelve months it has paid, in full, the maximum amount named in its contracts of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums, and evidence satisfactory to the controller that the corporation has accumulated a fund equal to that required of like corporation[s] of this state, constituting a reserve or surplus fund held in trust for the benefit of its contract holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The controller shall, thereupon, issue a license to such corporation to do business in this state, on payment of the license tax as provided in section 13 of this act. This license shall be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof shall be given by the controller by publication in some newspaper of general circulation published in the state, for two weeks, and no new contracts shall be made by such company in this state. When any other state or country imposes any additional license, fees, taxes or penalties upon any corporation organized or doing business under this act, like license, fees, taxes or penalties shall be imposed upon corporations of the same kind, and their agents, of such state or country doing business in this state.

**1317. Insurable age—Penalty for fraud—False swearing, perjury.**

**SEC. 8.** No corporation doing business under this act (except accidental [accident] or casualty corporations) shall issue a contract of insurance

upon the life of any person under fifteen years of age, or after he or she has passed his or her sixty-first birthday. Every such contract of insurance shall be founded upon written application therefor, and (except when the application is for one hundred dollars life insurance or less) such application shall be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, and showing the applicant to be in good health, and recommending the issuance of a contract of insurance; *provided*, that no medical examination shall be required on any application for accident or casualty insurance only. Any solicitor, agent, employee, examining physician or other person, making a false or fraudulent statement to any corporation doing business under this act, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment in the discretion of the court. And any person who shall make a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract holder in any such corporation, for the purpose of procuring or aiding the beneficiary or beneficiaries or contract holder in procuring the payment of a benefit [named] in the contract, shall be guilty of perjury, and may be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

#### 1318. Exempt from attachment.

SEC. 9. The money, benefit, annuities, endowment, charity, relief, or aid to be paid as provided by the contracts, issued by any corporation doing business under this act, shall not be liable to attachment or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process nor by operation of law, to pay any debts or liabilities of the contract holder or any beneficiary named thereunder.

#### 1319. Report to controller.

SEC. 10. Every domestic and foreign corporation doing business under this act shall, annually, on or before the first day of March, file with the state controller, in such form as he shall prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The controller in person, or by duly authorized deputy, shall have the power of examination into the affairs of any domestic corporation doing business, or claiming to do business under this act, at any time in his discretion, and shall make such examination at least once a year.

#### 1320. Controller may call officers to account.

SEC. 11. If the controller, after examination of the affairs of a corporation, shall find that such corporation is not doing its business in conformity to this act, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot, within three months from the date of (notice of) default, pay its obligations, he shall cite the president, secretary, manager or general agent of said corporation, or all of them, to appear before him (stating the time and place) to show cause why the authority of such corporation to do business shall not be revoked; and if they cannot show cause, then he shall report the facts to the attorney-general of this state, who shall commence proceedings in the proper court to restrain said corporation from doing any further business.

#### 1321. Policy not to lapse without notice.

SEC. 12. No policy or certificate issued by any corporation or association,

doing business under the provisions of this act, shall lapse or be lapsed for the nonpayment of any assessment, dues or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given postoffice address, a notice setting forth the amount to be paid and the time the same is due and payable (and such notice shall be mailed at least fifteen days before the assessment is due); *provided*, that such corporations doing business under this act as collect specific amounts at specific dates, as contained in the contract, shall not be compelled to send such notices; and an affidavit made by the officer, bookkeeper or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records of the office of the said corporation, showing that such notice was mailed and the date of mailing, shall constitute conclusive evidence of the mailing of such notice.

### 1322. Fee for license.

SEC. 13. The state controller shall collect five dollars for filing each power of attorney and issuing his certificate of authority for doing business, and one hundred (\$100) dollars per annum in advance for a license to do business, which shall be in full for all fees for the purposes of this act.

### 1323. Penalties—Expenses—how paid.

SEC. 14. The penalties for any violation of this act shall, except as otherwise provided herein, be the same as provided in "An act to license and regulate insurance business in this state," approved February 23, 1881. [Sec. 1279.] For all lawful expenses under this act, or by reason of any of its provisions, in the prosecution of any suit or proceedings, or otherwise, for the enforcement of its provisions, the controller shall present bills, duly certified by him, and accompanied with vouchers, to the state board of examiners, who shall allow the same, and the controller shall draw warrants therefor on the state treasurer for payment to the controller of said bills, which warrants shall be payable out of the general fund.

### 1324. Not to apply to fraternal societies.

SEC. 15. The provisions of this act shall not apply to secret or fraternal societies, lodges or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils; nor to any mutual or benefit association organized or formed and composed only of members of any such society, lodge or council exclusively.

*An Act prescribing the method for the entrance of insurance companies, engaged in the business of mutual life, health and accident insurance of live stock on the assessment plan, into the State of Nevada.*

Approved March 3, 1909, 50

### 1325. Insurance of live stock.

SECTION 1. Section 7 of an act entitled "An act relating to life, health, accident and annuity or endowment insurance on the assessment plan, and the conduct of the business of such insurance," approved March 23, 1891 [sec. 1316], prescribing the method for the entrance of foreign mutual life insurance companies into the State of Nevada, shall be interpreted to prescribe, and is hereby made to prescribe, the method for entrance into this state, for doing business, of foreign mutual insurance companies engaged in the business of life, health and accident insurance of live stock on the assessment plan.

### 1326. Comply with general law.

SEC. 2. Corporations organized under the laws of any other state or country to transact the business of mutual insurance of live stock on the assessment

plan, shall, upon compliance with the provisions of section 1 of this act, and with the requirements of the general corporation law relative to admission of foreign corporations, be admitted into the State of Nevada for the trans-action of business.

*An Act requiring insurance companies to make annual statements to the state controller.*

Approved February 23, 1889, 40

**1327. Annual statement—What to show.**

SECTION 1. Every insurance company of whatever kind or character, and every mutual life or assessment association, except charitable secret societies issuing benefits to its own members only, shall annually, on or before the first day of March, file in the office of the state controller a statement signed and sworn to by its president and secretary, which shall exhibit its financial condition on the thirty-first day of December of the previous year, and shall include a detailed statement of its assets and liabilities, the amount and character of its business transacted and moneys received and expended during that year, specifying particularly its business transacted in Nevada, and such other information as the state controller may deem necessary to elicit a complete and accurate exhibit of its condition and transactions, and in such form as he may prescribe. The annual statement of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business. The transaction of any new business by any company, or its agents, after neglect to file a statement in the manner herein provided, shall be unlawful. *As amended, Stats. 1891, 32.*

**1328. Failure to file statement—False statement.**

SEC. 2. Any company that neglects to make and file its annual statement in the form and within the time provided by section 1, shall forfeit one hundred dollars for each day's neglect, and upon notice by the state controller to that effect, its authority to do new business shall cease while such default continues. For wilfully making a false annual or other statement it is required by law to make, an insurance company and the persons making oath to or subscribing the same, shall severally be punished by fine of not less than five hundred nor more than five thousand dollars. Any person making oath to such false statement shall be deemed guilty of the crime of perjury.

**1329. Controller to report to governor.**

SEC. 3. The state controller shall annually report to the governor abstracts of all statements received, together with such suggestions as may be pertinent.

*An Act requiring certain mining corporations to file statements with the county recorders and attorney-general, and to mail copies thereof to stockholders; regulating the issuance and sale of certain treasury and promotion stock and defining the same for the purposes of this act; declaring certain acts to be unlawful; providing penalties for the violation thereof, and other matters relating thereto.*

Approved March 5, 1909, 62

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| 1330. Annual statements—Contents—Affidavit. | 1336. Act mandatory—Penalties.   |
| 1331. Statements to stockholders.           | 1337. Idem.  |
| 1332. Must designate kinds of stock.        | 1338. Idem—Attorney-general to prosecute—<br>May not maintain or defend civil<br>action. |
| 1333. Idem.                                 | 1339. Other persons—Misdemeanor.   |
| 1334. Kinds of stock defined.               | 1340. Officers to prosecute.   |
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**1330. Annual statement, contents—Affidavit.**

**SECTION 1.** Every corporation owning, claiming, holding, leasing or engaged in the business of working or developing any mining claim or mining property, or interest therein, in the State of Nevada, and selling or offering for sale, either directly or indirectly, any of its shares or capital stock shall, within sixty days after the expiration of the first six months of its existence as a corporation, and annually thereafter within sixty days after the first day of the month provided by its by-laws for its annual meeting of stockholders, file in the office of the county recorder of each county wherein such mining property is situated, and in the office of the attorney-general of this state, a statement duly subscribed and sworn to before a notary public (or other officer authorized by law to administer oaths), by its president or vice-president and its secretary, if it is a domestic corporation, and also by its resident agent, if a foreign corporation; *provided, however,* that the failure of the by-laws of any such corporation to provide a date for the annual meeting of the stockholders thereof shall not excuse said corporation from filing such a statement once during each calendar year. Said statement shall cover the period of time between that embraced in the previous statement filed in accordance herewith and the first day of the month in which said annual meeting is to be held, or, in the event that such statement is the first statement to be filed by any corporation in conformity with this act, such statement shall cover the first six months of the existence of such corporation. Said statement shall contain the following facts and information:

(a) The name of each mining claim and the total number of such claims or fractions thereof owned or leased, and the number thereof being worked and developed, also the county and mining district (if there be one) wherein said claims are located, and the nearest postoffice and the distance therefrom, as near as can be ascertained.

(b) The nature of the title thereof, or interest therein, whether leasehold or otherwise, also the date each claim or interest therein was purchased, leased or otherwise acquired by such corporation.

(c) The character, value and a general description of all buildings, works, machinery and other improvements on each unpatented claim, and the character, value and a general description of all buildings, works, machinery and other improvements being actually used or operated by such corporation on its patented ground, taken as a whole; *provided, however,* that where several unpatented claims belonging to such corporation are contiguous and are being developed as a group said statement may state the character, value and a general description of all buildings, works, machinery and other improvements on said entire group of unpatented claims.

(d) The total amount and a description of the development work done upon each unpatented claim, if any, and upon the entire patented property, if any, since the work reported in the last statement filed as herein provided, or during the first six months of the existence of said corporation, if the statement be the first one filed in accordance with the provisions of this act, and the total sum of money or other valuable consideration, given or paid out therefor; *provided, however,* that where several unpatented mining claims belonging to such corporation are contiguous, and the development work thereon has been done on one or more of said claims for the benefit of the entire group, said statement may state the amount and description of the work done for the entire group, and the total sum of money or other valuable consideration, given or paid out therefor.

(e) The total number of shares such corporation is by law authorized to issue and the different classes and par value thereof.

(f) The total number of shares of stock originally set aside by such corporation, if any, in its treasury or otherwise to sell or otherwise dispose of for the purpose of working, developing or otherwise improving any patented or

unpatented mining claim, or claims, owned or leased or being worked or developed by such corporation and the total amount of money realized from the sale of any portion thereof since the sales thereof reported in the last statement filed in accordance with the provisions of this act, or during the first six months of the existence of such corporation in the event that such statement is the first to be filed by said corporation in accordance herewith.

(g) The total number of shares of treasury stock sold, and the total sum of money or other consideration received therefor since the sales thereof reported in the last statement filed in accordance with the provisions of this act, or during the first six months of the existence of such corporation in the event that such statement is the first to be filed in accordance herewith, and the number of shares of treasury stock remaining unsold.

(h) The amount of money, if any, actually paid by such corporation to each of its officers, superintendents, or to other persons, exclusive of persons included in subdivisions of this section, as salary or compensation for services rendered such corporation, stating the nature of such services; also, the respective amounts, if any, expended for advertising and as commissions for sales of stock, since the sales thereof reported in the last statement filed in accordance with the provisions of this act, or during the first six months of the existence of such corporation in the event that such statement is the first filed in accordance herewith.

(i) The total value of the ore produced from the property of such company since the production reported in the last statement filed in accordance with the provisions of this act, or during the first six months of the existence of such corporation in the event that such statement is the first to be filed by such corporation in accordance herewith.

The affidavit required by this section shall state in substance as follows:

That affiant is the president (or other officer of such corporation, or other person required to make affidavit) and has read the foregoing statement, and knows the contents thereof; that the same is true and correct to the best of his knowledge and belief. *As amended, Stats. 1911, 408.*

This act does not apply to stock issued prior to April 15, 1909, when such provision went into effect.

As used in this act the words "treasury stock" mean stock set aside for the actual development of the property, while "promotion stock" is that issued to those who may

originally own the mining ground or valuable rights connected therewith in consideration of their deeding the same to the mining company, or such stock as is issued to promoters for incorporating the company. *State ex rel. Moore v. Manhattan Verde Co., 32 Nev. 474 (109 P. 442).*

### 1331. Statement to stockholders.

SEC. 2. At the same time, or within ten days after the sworn statement prescribed by section 1 of this act shall have been filed with the county recorder as in this act provided, the secretary or resident agent, or one officer of such corporation required by this act to subscribe to the same, shall duly mail or cause to be mailed to each person appearing at said time on the books of such corporation as a stockholder therein, a true typewritten or printed copy of such statement, and shall in addition thereto make an affidavit before some officer duly authorized to administer oaths, that a true copy of such statement has been duly deposited in the United States postoffice (giving the name of the postoffice) addressed to each stockholder of such corporation, as appears from the books thereof, at his or her last known address, or place of residence, and that sufficient postage has been prepaid thereon, and thereupon such secretary, or resident agent, or other person making such affidavit shall file the same in the office of such county recorder, who shall attach the same to the original statement previously filed pursuant to section 1 of this act, and to which such affidavit pertains. The county recorder shall charge, as a filing fee, fifty cents for every original statement required by the pre-

ceding section, and fifty cents for filing and attaching the affidavit required by this section, unless the same is attached to said original statement.

### 1332. Must designate kinds of stock.

SEC. 3. From and after the 15th day of April, 1909, every corporation owning, leasing, working or developing any patented or unpatented mining claim in this state, and selling or offering for sale, either directly or indirectly, or authorizing or causing to be issued or sold, any of its stock or shares for the promotion or development of any such mining claim, shall print or stamp across the face of each certificate of its treasury stock or shares (as defined by this act) the words "Treasury Stock" in English letters or characters at least one-half of an inch in height, and not less than one-eighth of an inch in width, said letters or characters to be printed or stamped as aforesaid in ink of a conspicuously different color than the ink used in printing, writing or stamping the body or other matter printed, stamped or written thereon.

### 1333. *Idem*.

SEC. 4. From and after the 15th day of April, A. D. 1909, every corporation owning, leasing, working or developing any patented or unpatented mining claim in this state, and selling or offering for sale, either directly or indirectly, or authorizing or causing to be issued or sold, any stock or shares therein that has not been specifically set aside by such corporation for the purpose of raising money or means for the development of the mineral resources of such mining claim or claims, or for making necessary improvements thereon, shall print or stamp across the face of each certificate so issued or authorized to be issued, sold, or offered for sale, as aforesaid, the words "Promotion Stock" in English letters or characters at least one-half of an inch in height and one-eighth of an inch in width, and said letters or characters to be printed or stamped thereon, as aforesaid, in ink of a conspicuously different color than the ink used in printing, writing or stamping the body or other matter printed, stamped or written thereon.

### 1334. Kinds of stock defined.

SEC. 5. All stocks or shares of every mining corporation doing business in this state that have been, or shall be specifically set aside to sell for money or other valuable consideration, and the proceeds of which are to be used for the actual development of the mineral resources of any mining claim, or claims, or for the purpose of making necessary or useful improvements thereon, or for the purpose of maintaining such corporation, or preserving or enhancing its assets, are hereby deemed and declared to be treasury stock, and all other stock of such corporation is hereby deemed and declared to be promotion stock, within the meaning of this act. *As amended, Stats. 1911, 411.*

### 1335. Stock plainly designated.

SEC. 6. From and after the 15th day of April, 1909, it shall be unlawful for any corporation, or any officer, agent, or director thereof, owning, claiming, leasing or working, or developing any mining property in the state, to issue any written or printed certificate representing one or more shares of its stock, or to sell or offer for sale any certificate thereafter issued by any such corporation, upon which certificate is not stamped or printed the words "Treasury Stock" or "Promotion Stock," as defined and required by the provisions of this act, and it shall be unlawful for any person, or any officer, agent, or director of any corporation subject to this act to so stamp or print any such certificate as "Treasury" stock when in fact the same represents "Promotion" stock, or to stamp or print any such certificate "Promotion" stock when in fact the same represents "Treasury" stock, as said classes of stock are defined by section 5 hereof.

### 1336. Act mandatory—Penalties.

SEC. 7. Each and every provision of this act is hereby declared to be mandatory, and the officer or agent of any mining corporation subject to the provisions hereof who shall fail or neglect to execute and to file the statement or affidavits required by sections 1 and 2 of this act, or to otherwise comply with all other provisions hereof, or who shall wilfully do or perform any act or thing herein declared to be unlawful, shall be deemed guilty of a misdemeanor, and shall upon conviction be fined in any sum not less than \$100 nor more than \$500, or shall be imprisoned in the county jail for a period of not less than fifty days, nor more than six months, or be punished by both such fine and imprisonment.

### 1337. Idem.

SEC. 8. Any person who shall act as agent for any foreign corporation, subject to the provisions of this act, that has not strictly complied with sections 1 and 2 hereof shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than \$100 nor more than \$500, or be confined in the county jail for a term of not less than fifty days nor more than six months, or by both such fine and imprisonment.

### 1338. Idem—Attorney-general to prosecute—May not maintain or defend civil action.

SEC. 9. Every corporation, domestic and foreign, violating any of the provisions or requirements of this act, shall forfeit to the State of Nevada the sum of one thousand (\$1,000) dollars and cost of suit, to be recovered in an action in the name of the state instituted by the attorney-general, or any district attorney at the request of the attorney-general; nor shall any such corporation failing to comply with sections 1 and 2 of this act maintain or defend any action in any court of this state; *provided*, that upon the production of a certificate of the county recorder that the statements and affidavits required by said sections have been duly filed (except as to the time the same was required to be filed) any such action may be maintained or defended; *provided*, that the provisions of this act shall not apply to any action now pending.

### 1339. Other persons—Misdemeanor.

SEC. 10. Any person, other than those mentioned in section 7 of this act, who shall violate any provision hereof shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not less than fifty days nor more than six months, or by both such fine and imprisonment.

### 1340. Officers to prosecute.

SEC. 11. The district attorney of each county in this state shall strictly enforce the provisions of this act, and in the event of the failure or refusal of any such officer so to do when complaint is duly made and sufficient legal evidence is obtainable, he shall be deemed guilty of misdemeanor in office and subject to removal and punishment, as otherwise provided by law, and it shall be the duty of the attorney-general, in such case, to forthwith prosecute such violation of this act, and to proceed to prosecute such district attorney for misdemeanor in office as aforesaid.

### *An Act to encourage the construction of cheap transportation lines.*

Approved March 10, 1875, 157

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| 1341. Corporations authorized—Formation of.     | 1344. Not required to operate more than six months each year. |
| 1342. Powers of.                                |   |
| 1343. Map and description of route to be filed. | 1345. Application of act restricted.                          |

### 1341. Corporations authorized—Formation of.

SECTION 1. Any number of persons, not less than three, in this state or the United States, being subscribers to the stock of any contemplated transportation company, may form themselves into a corporation for the purpose of constructing, owning, operating, and maintaining transportation lines, consisting of railroads, canals, and flumes, or either of them, by complying with the following requirements: Whenever stock to the amount of at least two hundred dollars for each and every mile of such proposed railroad, and stock to the amount of at least one hundred dollars for each and every mile of such proposed canal or flume, shall have been subscribed, and ten per cent in cash of the amount so required to be subscribed shall have been actually and in good faith paid to a treasurer, to be named and appointed by said subscribers from among their number, then the said subscribers, either in person or by written proxy, after having received at least five days' notice from said treasurer of a meeting of said subscribers for the purpose, may adopt articles of association, and may elect from among the subscribers to said articles not less than three nor more than five directors; and by complying with the provisions of an act entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved March twenty-second, one thousand eight hundred and sixty-five, and amendments thereto, approved, severally, February twenty-seventh, one thousand eight hundred and sixty-nine, February ninth, one thousand eight hundred and seventy-one, and February twenty-first, one thousand eight hundred and seventy-one, except as otherwise provided in this act, they, their associates and assigns, shall be entitled to all the rights, privileges, and franchises relating to right of way, depots, acquiring and using property, and other rights which are granted to railroad corporations in said railroad act, approved March twenty-second, one thousand eight hundred and sixty-five, and the several amendments thereto, above mentioned, except as herein provided.

See sec. 3511.

### 1342. Powers of.

SEC. 2. Every corporation so formed shall have power to construct, own, operate, and maintain flumes, canals, and railroads for the transportation of wood, lumber, and other freight adapted to the respective lines of transportation, and may construct said railroads with a single track, or with gage, and of such materials, and may operate such roads with such motive power, as such corporations may determine.

### 1343. Map and description of route to be filed.

SEC. 3. Persons entitled and desiring to incorporate under the provisions of this act, for the purpose of constructing such transportation line between two or more points in this state, may file a sketch map and general description of the proposed route or routes, in the office of the county recorder of the county within or through which such routes may run, and such filing shall confer upon such persons so filing, their associates and assigns, the right to such routes thus designated; *provided*, that such persons, their associates and assigns shall, within thirty days from such filing, proceed to make, without unreasonable delay, an accurate, final or locating survey of such routes, and shall file a map and profile of the same, as required by the before mentioned act, approved March twenty-second, eighteen hundred and sixty-five, and the several amendments thereto.

### 1344. Not required to operate more than six months each year.

SEC. 4. Corporations owning or operating flumes, canals, or railroads under this act, in the mountains, or depending almost wholly on the mountains for

freight, shall not be required to operate the same more than six months per year, nor shall they be obliged to carry passengers.

### 1345. Application of act restricted.

SEC. 5. The provisions of this act, as to the amount of stock to be subscribed, and the amount of cash to be paid in, shall not apply to railroads of a wider gage than three feet.

*An Act to amend an act entitled "An act to require foreign corporations to furnish evidence of their incorporation and corporate name," approved March third, eighteen hundred and sixty-nine.*

Approved January 30, 1877, 57

### 1346. Foreign corporation must file certificate.

SECTION 1. Every incorporated company or association created and existing under the laws of any other state, or of any foreign government, shall file in the office of the county recorder of each county of this state, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the act or law by which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the county recorder wherein such certificate is filed, may be introduced in evidence to prove the fact of the existence of such corporation, without further proof.

See secs. 1348-1350.

### 1347. Penalty—Proviso.

SEC. 2. Any person or persons who shall act as the managing agent or superintendent of any such corporation, in conducting or carrying on any business of such corporation, in any of the counties of this state, without any such certificate having been filed as required by section 1 of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than five hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding six months; *provided*, that in all actions against such corporations, associations, or companies which have neglected to file the proper certificate or act of their incorporation, as heretofore provided, it shall be sufficient to establish the legal existence of such corporation by the proof of their acting as such.

Original act, Stats. 1869, 115, consisted of but two sections, both of which had been amended, and is therefore superseded by this act.

*An Act to require foreign corporations to qualify before carrying on business in this state, regulating and prescribing the manner thereof, other matters pertaining thereto, and repealing all other acts in conflict herewith.*

Approved March 20, 1907, 190

### 1348. Copy of charter to be filed.

SECTION 1. Every corporation organized under the laws of another state, territory, the District of Columbia, a dependency of the United States or foreign country, which shall hereafter enter this state for the purpose of doing business therein, must, before commencing or doing any business in this state, file in the office of the secretary of state of the State of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental acts, or other

instrument or authority by which it was created, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business in this state is located.

When a complaint alleged that plaintiff was a corporation organized under the laws of a foreign state, it was reversible error to dismiss the complaint on the motion to set it aside on the allegations therein, since whether plaintiff was entitled to do business in the state was a matter on which it was entitled to be heard and to have a day in court before its action was summarily dismissed.

Nor was the unsworn motion of defendant's attorney to dismiss the complaint upon the allegations thereof sufficient to warrant the court in taking such judicial notice of such motion as to deprive plaintiff of its constitutional right of being heard upon the merits of the motion, in a proper proceeding, as to whether it had complied with the law before doing business in the state. *Symons-Kraussman Co. v. Reno Liquor Co.*, 32 Nev. 241 (107 P. 96).

### 1349. Fees for filing articles.

SEC. 2. On filing certified articles, papers, or other instruments of incorporation, as required in section 1 of this act, said corporation shall pay the same fees to the secretary of state as are paid by corporations organized under the laws of this state.

See sec. 1203.

### 1350. Duties of officers—Fines.

SEC. 3. Every such corporation which shall fail or neglect to comply with the provisions of this act shall be subject to a fine of not less than five hundred dollars, to be recovered in a court of competent jurisdiction, and shall not be allowed to commence, maintain, or defend any action or proceeding in any court of this state until it shall have fully complied with the provisions of this act; and any person or persons who shall act as agent within this state of any such corporation, which shall fail for a period of ten days after the taking effect of this act to comply with the provisions herein, shall also be personally and individually liable to a fine of not less than five hundred dollars; and it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of this act, to report them to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal place of business, or the attorney-general of the state, or both, as soon as practicable, to institute proceedings to recover the fine or fines provided for in this section.

### *An Act requiring foreign corporations doing business in the State of Nevada to publish annual statements.*

1351. Publish annual statements.

1353. Penalty for neglect.

1352. File copy with assessors.

1354. Officers to bring suit.

Approved March 28, 1901, 118

### 1351. Publish annual statements.

SECTION 1. All foreign corporations doing business in the State of Nevada shall during the month of May of this year and in each succeeding year in the month of January, publish a statement of their last year's business in some daily newspaper in the State of Nevada for a period of one week.

### 1352. File copy with assessors.

SEC. 2. The secretary of the company publishing the statement shall file a copy with the assessor of each county of the State of Nevada, in which said company is doing business. *As amended, Stats. 1907, 39.*

### 1353. Penalty for neglect.

SEC. 3. Any corporation coming within the provisions of this act who shall neglect or refuse to file a statement as required by section 1 of this act,

shall be liable to a penalty of \$100 for each month that the published statement remains unfiled with the several assessors of the state.

#### 1354. Officers to bring suit.

SEC. 4. Any district attorney in the state is competent to sue to recover the penalty, or the attorney-general. The first county suing through its district attorney shall secure the penalty, and if no suit is brought for the penalty by any district attorney the state shall have the right to recover through its attorney-general.

*An Act to give foreign corporations the benefits of the statute of limitations of this state on certain conditions.*

Approved March 29, 1907, 361

#### 1355. Statute applies to foreign corporations under certain conditions.

SECTION 1. Every foreign corporation doing business in the State of Nevada, which complies with all the provisions of the laws of this state, with reference to or concerning such corporations, is and shall be thereafter entitled to the benefit of the laws of this state, limiting the time for the commencement of civil actions, but no such corporation is or shall be entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of this state, until such corporation has complied with all the said laws of this state.

*An Act for the regulation of foreign building and loan societies doing business in the State of Nevada.*

Approved March 13, 1905, 141

1356. Annual license.

1357. Annual statement filed.

1358. Penalty.

1359. Commissioner to examine business.

1360. Disposition of moneys.

#### 1356. Annual license.

SECTION 1. All foreign building and loan societies doing business in the State of Nevada shall pay into the office of the state insurance commissioner an annual license of \$100.

See secs. 1361, 1372.

#### 1357. Annual statement filed.

SEC. 2. They shall file with the insurance commissioner before the 1st day of March of each year an annual statement of all business done by them for the previous year either in Nevada or elsewhere, and the same shall be published as the statements of other corporations.

See secs. 1351, 1354.

#### 1358. Penalty.

SEC. 3. Any person soliciting business for a foreign building and loan society in this state which has not paid the license mentioned in section 1 of this act shall be deemed guilty of a misdemeanor, and, on conviction thereof, be fined \$100 or confined for fifty days in the county jail or both such fine and imprisonment.

#### 1359. Commissioner to examine business.

SEC. 4. The insurance commissioner is authorized to examine into the business of any corporation doing business in Nevada under this act, but shall not be allowed more than his actual expenses while so doing. His bills for such expenses shall be submitted to the state board of examiners, and when allowed the state controller shall draw his warrant for the same.

**1360. Disposition of moneys.**

SEC. 5. All moneys received by the general [insurance] commissioner under this act shall be paid into the insurance [general] fund.

[Words in brackets not in enrolled bill.]

*An Act requiring nonresident joint-stock companies, associations and corporations doing a building and loan business to furnish security before doing business in this state, and prescribing a penalty for a failure to do so.*

Approved March 20, 1911, 284

1361. Must deposit collateral with state treasurer.

1363. Misdemeanor.

1364. Conditions precedent.

1362. To file annual statement.

**1361. Must deposit collateral with state treasurer.**

SECTION 1. From and after the passage of this act no joint-stock company, association or corporation heretofore or hereafter organized under the laws of any other state, territory or foreign country, for the purpose of engaging in the building and loan business, or to borrow, loan or invest money, or dealing in investment certificates, or other similar business, except a banking business, shall be allowed to continue or to do business, without having first deposited with the state treasurer the sum of ten thousand dollars in money or United States or municipal bonds of this state, or in first mortgages upon real estate located within this state, or in first mortgages upon real estate of some other state or territory of the United States, and in addition thereto when the amount due upon investment certificates issued to residents of this state shall exceed one hundred thousand dollars, an additional deposit equal to ten per cent of such excess over one hundred thousand dollars so issued; such securities so deposited to be approved by the state treasurer, as a guaranty fund for the protection and indemnity of residents of the State of Nevada; with whom such companies, associations or corporations shall do business; the fund so deposited to be paid by the custodian thereof to the residents of Nevada only; and not then until proof of claim of unsatisfied final judgment has been filed with the custodian of such fund against such foreign company, association or corporation. Any of the securities so deposited may be withdrawn at any time upon other herein provided for, in like amount, being substituted in lieu thereof.

See secs. 1356-1360.

**1362. To file annual statement.**

SEC. 2. All joint-stock companies, associations or corporations transacting business in this state, under the provisions of this act, shall, on or before the first day of January of each year, file with the state treasurer a statement duly sworn to, showing the amount then due from them on investment certificates to residents of this state, which shall be the basis for the amount of money or securities, to be by them deposited as specified in section 1 of this act.

**1363. Misdemeanor.**

SEC. 3. Any person or persons who shall be found in this state as agent, or any other capacity, representing such nonresident or foreign company, association or corporation, which has not complied with the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

**1364. Conditions precedent.**

SEC. 4. Any company, association or corporation subject to the provisions of this act, which has not fully complied with the terms thereof, shall not

be permitted to commence, prosecute or maintain any action in any court of this state.

**FRATERNAL, BENEVOLENT, LITERARY, RELIGIOUS AND  
ELEMOSYNARY SOCIETIES**

*An Act to provide for the incorporation of religious, charitable, literary, scientific, and other associations.*

Approved March 2, 1867, 70

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| 1365. Certain associations may incorporate.                    | 1369. Sale of real estate—How made.   |
| 1366. Certificate of election to be filed—<br>What to contain. | 1370. Descent of property—Trust.      |
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**1365. Certain associations may incorporate.**

SECTION 1. It shall be lawful for all churches, congregations, religious, moral, beneficial, charitable, literary, or scientific associations or societies, by such rules or methods as their rules, regulations, or discipline may direct, to appoint or elect any number, not less than three nor more than fifteen, as trustees or directors, to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof.

**1366. Certificate of election to be filed—What to contain.**

SEC. 2. Upon the appointment or election of such trustees or directors, a certificate of such appointment or election shall be executed by the person or persons making the appointment, or the judges holding the election, or the secretary of the association or society, stating the names of the trustees or directors. The name by which the association or society shall thereafter forever be called and known shall be particularly mentioned and specified. *As amended, Stats. 1879, 102.*

**1367. Certificate, how acknowledged.**

SEC. 3. Such certificate shall be acknowledged by the person making the same, or proved by a subscribing witness thereto, before some officer authorized to take acknowledgments of deeds, and recorded, together with the certificate of such acknowledgment or proof, by the clerk of the county within which such church, congregation, religious, moral, beneficial, charitable, literary, or scientific society or association shall be situated.

**1368. Powers of trustees.**

SEC. 4. Such trustees or directors may have a common seal, and may alter the same at pleasure; they may take into their possession and custody all the temporalities of such corporation, whether given, granted, or devised, directly or indirectly, to such society or association, or to any person or persons for their use; they may sue and be sued, may receive and hold all the debts, demands, rights, and privileges, all churches, burying places, halls, school houses, hospitals, or other buildings, all the estates and appurtenances belonging to such association or society; they may have, lease, and improve the same, erect all houses or buildings that are necessary to carry out the objects of the society or association, and perform all duties imposed on them by the regulations, rules, or discipline of such organization.

**1369. Sale of real estate—How made.**

SEC. 5. The district court of the county in which any such association or corporation shall have been constituted, on application by petition of the trustees thereof, if they shall deem it proper and beneficial to such association or corporation, shall make an order for the sale of any real estate belonging to such association or corporation, and direct the application of the

moneys arising from such sale to such uses as the said association or corporation, with the approval of such court, shall deem to be for the best interests of such association or corporation; and in like manner such court may make an order authorizing such association or corporation to mortgage any of its real estate for such purposes as shall appear to be for the interest or benefit thereof. Any order made pursuant to the provisions of this section shall be subject to rehearing and to appeal to the supreme court, as in other civil cases; but a party having the right of such appeal may waive the same by filing such waiver in writing, and on filing the same the right to appeal shall no longer exist.

### 1370. Descent of property—Trust.

SEC. 6. All lands, tenements, and hereditaments that have been, or may hereafter be, lawfully conveyed by devise, gift, grant, purchase, or otherwise, to any persons or trustees in trust for the use of any such organization, shall descend, with the improvements, in perpetual succession to, and shall be held by such trustees in trust for such organization.

### 1371. Limitation of property.

SEC. 7. The real estate held by such association or corporation, shall in no case exceed one block in any town or city, and ten acres in the country; nor shall any portion thereof used for ordinary business purposes, and connected with the objects of such association or corporation, or rented for profit, be exempted from taxation; *provided*, that the grand lodges of the orders of Free and Accepted Masons, and of the Independent Order of Odd Fellows, and subordinate lodges thereof, may acquire and hold such real and personal property as may be deemed necessary by the proper authorities thereof to carry out their charitable, educational, or ceremonial objects; and such association or corporation may sue and be sued, and have such other general powers as are by the laws of this state granted to corporations; *and provided further*, that all real and personal property owned by such association or corporation prior to the passage of this act, notwithstanding any of the provisions thereof, may be still held, owned and enjoyed by them.

### 1372. Trustees to make annual report.

SEC. 8. It shall be the duty of the said trustees annually to make a full report of all property, real and personal, held in trust by them, and the condition of the corporation, to the society or association by which they have been appointed or elected, a copy of which report shall be filed in the county clerk's office, where the original certificate is filed, with an affidavit of the truth of such report, and also that such association or corporation has not been engaged, directly or indirectly, in any other business than such as is set forth in the original certificate on file.

### *An Act for the more effectual prevention of cruelty to animals.*

Approved March 7, 1873, 141

1373. Society for prevention of cruelty.

1374. By-laws of society.

1375. Officers—Reports.

1376. Peace officers may arrest.

1377. Arrests, by whom made—Society badge—Resistance.

1378. What considered cruelty—Property may be seized—Maimed animal not to run at large.

1379. Punishment.

1380. Prosecutions.

1381. Law inapplicable to certain cases.

### 1373. Society for prevention of cruelty.

SECTION 1. Any three or more citizens of the State of Nevada, who shall incorporate as a body corporate under the general laws for incorporations in this state, for the purpose of preventing cruelty to animals, may avail themselves of the privileges and benefits of this act; *provided*, that the corporate

body first forming as aforesaid in any county shall be the only one so entitled to the benefits and privileges of this act in said county.

#### 1374. By-laws of society.

SEC. 2. The said societies may make and adopt by-laws governing the admission of associates and members, providing for all meetings, and assistant and district or local officers; providing, also, for means and systems for the effectual attainments of the objects contemplated by this act, for the regulation and management of its business affairs, and for the effectual working of the societies; prescribing, also, the duties of all their officers, for the outlay of all moneys, and the auditing of all accounts; *provided*, that such by-laws shall not in any wise conflict with the laws of the State of Nevada or of the United States, or any provision of this act.

#### 1375. Officers—Reports.

SEC. 3. Said societies shall elect officers and fill vacancies according to the provisions of their by-laws. They shall make such reports of elections as is by law required of all corporations, and shall, in addition, report to the legislature of the State of Nevada, at each of its regular sessions, a full account of all their acts.

#### 1376. Peace officers may arrest.

SEC. 4. All sheriffs, constables, police, and peace officers are empowered to make arrests for the violation of any of the provisions of this act, and are hereby also empowered to make arrest without warrant, for the violation of any provision of this act which by this act is denominated a misdemeanor, when said misdemeanor is committed in the presence of said officers.

#### 1377. Arrests, who may make—Society badge—Resistance.

SEC. 5. All members and agents, and all local and district officers of each or any of the societies so incorporating, as shall by the trustees of said societies be duly authorized in writing, approved by the county judge of the county, and sworn in the same manner as are constables and peace officers, may make arrests for the violation of the provisions of this act in the same manner as is provided herein for other officers; *provided*, that all such members shall, when making such arrests, exhibit and expose a suitable badge, to be adopted by said society. All persons resisting said specially appointed officers, as such, shall be punished for said resistance in the same manner as is provided for the punishment of resistance to other officers.

#### 1378. What considered cruelty—Property may be seized—Maimed animal not to run at large.

SEC. 6. Every person who shall overdrive, overload, torture, torment, or deprive of sufficient and necessary sustenance, or unmercifully or cruelly beat or mutilate any living creature, shall, on conviction, be deemed guilty of a misdemeanor. Every person who shall, by his act or neglect, maliciously maim, wound, injure, torture, or cruelly beat any animal belonging to himself or to another, shall, on conviction, be deemed guilty of a misdemeanor. Any person who shall cause any animal, bull, bear, dog, cock, or other creature to fight, worry, or injure each other, or any person who shall permit the same to be done on premises under his charge or control, and any person who shall aid, abet, or be present at such fighting and worrying of such animals as a spectator for an admission fee, shall, on conviction, be deemed guilty of a misdemeanor; *provided*, that this shall not apply to officers of said society, peace, or police officers, or to witnesses authorized by the board of trustees of said society to be present at such fight for the purpose of giving evidence before the police judge, magistrate, or the

grand jury of the county in which the offense was committed. Every person who, carrying or transporting, or causing to be carried or transported on any vehicle, railroad car, steamer, or sailing vessel, any living creature, shall unnecessarily torture, injure, torment, beat, wound, or deprive of necessary sustenance, or cause unnecessary pain to them, or any person who shall pluck the feathers from any living fowl or bird, geese and tame ducks excepted, shall on conviction, be deemed guilty of a misdemeanor; and whenever such person shall be taken into custody, or placed under arrest, by any officer or person authorized to take into custody and to arrest for said unlawful acts, such person so arresting may take charge of the vehicle and its contents, in which such unlawful carrying is committed, and keep the same in some safe place, to be by the owner or person controlling said vehicle designated, or if such place be not designated, then to deliver the same into the custody of the sheriff or constable, to be safely kept until such person so arrested, shall be admitted to bail or shall claim the same, when it shall be delivered to the owner, or person entitled to the possession thereof, upon the payment of all charges of detention and keeping. Every owner, driver, or possessor of any maimed or diseased horse, mule, ox, or cow, or other domestic animal, who shall permit the same to go loose in any street, alley, or vacant lot of any town or city for more than three hours after knowledge thereof, shall, on conviction, be deemed guilty of a misdemeanor; *provided*, this shall not apply to owner keeping such animal, belonging to him, on his own premises, with proper care. Every sick, disabled, infirm, or crippled horse, ox, mule, cow, or other domestic animal, which shall be abandoned on the public highway, or in any open space in any city or town, may, after due search by a peace officer of said society, and no owner can be found therefor, be destroyed by such officer, and it shall be the duty of all police and peace officers to cause the same to be done on information of such fact of abandonment of such creatures.

See sec. 6715.

### 1379. Punishment.

SEC. 7. Every person convicted of any misdemeanor under this act shall be punished as is by law provided for the punishment of misdemeanors.

See sec. 6285.

### 1380. Prosecutions.

SEC. 8. All prosecutions for violation of any of the provisions of this act shall be conducted and prosecuted in a court of competent jurisdiction; and any member of said societies, authorized as is provided in section 5 of this act, may appear and prosecute in any of said courts, for any violation of the provisions of this act, whether or not he be an attorney and counselor at law; *provided*, that all such prosecutions shall be conducted in the name of the people of the State of Nevada.

[Sec. 9, providing that fines may be paid to society, is omitted as unconstitutional.]

### 1381. Law inapplicable to certain cases.

SEC. 10. No part of this act shall be deemed to interfere with any of the laws of this state known as the game laws, or any laws for the destruction of certain birds; nor shall this act be deemed to interfere with the right to destroy any venomous reptiles or animals, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals and fowls used for food; nor shall this act be deemed to interfere with any scientific or physiological experiments conducted or prosecuted for the advancement of science or medicine.

*An Act to provide for the organization and maintenance of historic and other literary societies.*

Approved March 20, 1865, 409

1382. Purposes for which may be created.

1383. How formed.

1384. Certified copy of certificate prima facie evidence.

1385. Powers and privileges.

1386. Election of directors.

1387. Time of election—Quorum.

1388. Notice of first meeting.

1389. Limitation of indebtedness.

**1382. Purposes for which may be created.**

SECTION 1. Corporations may be created for the organization and maintenance of gymnastic, athletic, historic, scientific and other literary societies designed to promote the diffusion of useful knowledge. *As amended, Stats. 1893, 116.*

**1383. How formed.**

SEC. 2. Any five or more persons, who may desire to form an association for any one or more of the purposes specified in the preceding section, may make, sign and acknowledge, before some officer authorized by law to take the acknowledgment of deeds, and file in the office of the secretary of state, and also file a copy thereof in the recorder's office of the county in which the meeting is held, and the general business of such association, or society, is to be transacted, a certificate, in which shall be stated the corporate name of the society, or association, the objects for which the same shall be formed, the time of its existence—which shall not exceed fifty years—the number of directors and their names, who shall manage the business of the society, or association, for the first six months, and the name of the city or town in which the principal business of the society, or association, is to be transacted. The directors of any such society, or association, shall not be more than five nor less than three.

**1384. Certified copy of certificate prima facie evidence.**

SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this act, and certified by the secretary of state, or the recorder of the county in which the same may be filed, as provided in the foregoing section, shall be received in all courts and places as prima facie evidence of the matter therein stated.

**1385. Powers and privileges.**

SEC. 4. When the certificate and copy thereof shall have been filed, as hereinbefore provided, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by that name have succession for the period limited, and shall have power: First, to sue and be sued, and prosecute and defend in any court. Second, to devise, adopt and use a seal, and change the same at pleasure. Third, to purchase, accept by grant, gift or devise, hold, sell and convey such real and personal property, or estate, as the purpose of the society or association shall require. Fourth, to appoint, or elect and remove such officers, agents and servants as the business of the society, or association, may require, to define their powers, prescribe their duties and fix their compensation. Fifth, to make by-laws not inconsistent with the constitution and laws of this state, for the transaction of the business of such society, or association, the management of its property, the regulation of its affairs, the admission and expulsion of members, and generally for the transaction of all such business as may be within the scope of its organization and original design.

### 1386. Election of directors.

SEC. 5. Directors, after the expiration of the term first selected and named in the certificate of such organization, shall be annually elected by the members of such society, or association, at such time and place, and upon such notice and in such mode, as may be directed by its by-laws.

### 1387. Time of election—Quorum.

SEC. 6. If it should happen, at any time, that an election of directors shall not be made on the day designated by the by-laws of the society or association, the corporation shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for directors, in such manner as shall be provided in the by-laws of the society or association, and all acts of the directors shall be valid and binding on the society or association, until the election and qualification of their successors. A majority of the whole number of directors shall form a board for the transaction of business, and a majority of the whole number of members of the society or association, represented in person or by proxy, shall be necessary to transact business; and any decision of a majority of the persons assembled as a board, or as a meeting of the society or association, shall be valid.

### 1388. Notice of first meeting.

SEC. 7. The first meeting of the directors shall be called by a notice signed by a majority of the persons named as directors, in the certificate setting forth the time and place of the meeting, which notice shall be given personally to each director, or published at least one week in some newspaper of the county where such meeting is to be held.

### 1389. Limitation of indebtedness.

SEC. 8. No such association, or society, shall ever contract indebtedness which, in the aggregate, shall exceed the sum of one thousand dollars over and above the assets of such association, or society; and no corporation, or association, organized under this act shall, by any implication, or construction, be deemed to possess the power of issuing bills, notes or other evidence of debt for circulation as money.

### *An Act for the incorporation of hospitals or asylums in certain cases.*

Approved March 4, 1867, 79

1390. How incorporated.

1391. What articles to contain.

1392. Trustees, how elected and powers.

1393. May hold real and personal property—  
Limitation.

1394. Trustees not to have compensation.

1395. Funds, how to be used.

1396. Property exempt from taxation.

1397. Reports to be made—Penalty.

### 1390. How incorporated.

SECTION 1. In all cases where lands or any other property, amounting in value to one thousand dollars or upwards, have been or shall hereafter be given, granted, devised or bequeathed to one or more trustees, or persons acting in the capacity of trustees, for the purpose of founding or endowing a hospital, or other charitable asylum within this state, for the care or relief of orphan children, or of sick, infirm or indigent persons, and it shall, for the more effective and perfect administration of such trust, be deemed expedient by such trustee[s] to organize themselves as a corporation, then the trustees, or persons acting as trustees in whom said lands, or other property, are for the time being invested, may become incorporated by executing under their hands, and acknowledging before some person in this state authorized to take the acknowledgment of deeds, duplicate articles of incorporation, one of which shall be filed in the office of the secretary of state, and one recorded

in the clerk's office of the county in this state in which the office of such incorporation or association may be located, and upon the execution and acknowledgment of such articles, the signers thereof shall become, and be a body politic and corporate, for the object and purposes set forth in said articles; and they, their successors and associates shall continue to be such body corporate and politic, and may sue and be sued, take, hold and convey real and personal estate, subject to the limitations hereinafter contained; may adopt a common seal, and change the same, and may exercise all the powers, and shall be subject to all the responsibilities by law conferred and imposed.

### 1391. What articles to contain.

SEC. 2. Said articles shall contain and declare:

First—The name of such corporation, the city, town or county in which such hospital or asylum is, or is to be located, and the period for which it is incorporated.

Second—The objects of said corporation, which shall be stated with all the convenient fullness and certainty.

Third—The names of the trustees thereby incorporated.

Fourth—The number of persons who shall constitute the permanent board of trustees of such corporation, the mode of the election or appointment of the first board of trustees, the time for which the trustees shall be elected or appointed, and the mode in which their successors shall be elected or appointed.

Fifth—Such other officers of the corporation as may be deemed necessary.

Sixth—The time of holding the annual meeting.

### 1392. Trustees, how elected, and powers.

SEC. 3. The affairs of said corporation shall be managed by a board of trustees, not less than three, nor more than fifteen in number, who shall be chosen or appointed in such manner as is fixed in the articles of the incorporation; such trustees shall hold for the term or time in such articles fixed, and until their successors are chosen; *provided*, that when the number of trustees and the mode of the appointment of their successors, is fixed in a deed, will, or other instrument of the original founder, the provisions relating thereto shall govern in said corporation, so far as consistent with the laws of this state. The other officers of said corporation shall be chosen by the trustees from their own numbers or otherwise, as the trustees shall determine. A majority of such trustees shall form a quorum and may make by-laws, and alter the same, for the more orderly transaction of their business, and for the regulation of the care or relief to indigent and other sick and infirm persons. As soon as such corporation shall be duly organized, the individual trustees who hold or possess the lands or other property so given, granted, devised or bequeathed, shall forthwith convey and deliver the same to such corporation by deed or other proper mode of transfer, and said corporation shall thereupon and thereafter hold, possess and enjoy the same to the same extent, and for the same purposes as designed and declared by the original donor.

### 1393. May hold real and personal property—Limitation.

SEC. 4. Such corporation may by gift, grant, devise, or bequest, take, receive, and hold any property, real or personal, but only for the purposes for which it is incorporated; *provided*, that said corporation shall not hold any land except such as shall be necessary for the direct and reasonable use or convenience of a hospital or asylum, for a longer period than ten years.

### 1394. Trustees not to have compensation.

SEC. 5. No trustees of said corporation shall be entitled to any compen-

sation except under some special employment by the board, or authority expressed in the original deed or instrument of trust.

### 1395. Funds, how to be used.

SEC. 6. All the funds of said corporation shall be faithfully and exclusively used for the purposes thereof, as set forth in its articles, and the same shall be wholly used within this state. Said corporation may invest its funds by loan, on mortgage security, or by purchase of any city, county, state or United States bonds, or by loan on pledge by the same; *provided*, that no loan of such funds shall be made to any trustee, officer, or servant of such corporation.

### 1396. Property exempt from taxation.

SEC. 7. The property on which said asylum or institution building stands, together with said buildings, shall, while occupied for the objects and purposes thereof, be exempt from taxation.

### 1397. Reports to be made—Penalty.

SEC. 8. Such corporation shall report yearly, to the county commissioners of the county wherein such corporation is situated and biennially to the legislature, a full statement of its affairs, under the oath of one or more of its trustees; and for any neglectful report when required, each one of its officers, and all the trustees so neglecting, shall be liable to a penalty of five hundred dollars each, to be recovered by action of debt, in the name of the people of the State of Nevada.

### *An Act to authorize the incorporation of rural cemetery associations.*

Approved March 1, 1865, 176

1398. Association, how formed.

1399. Certificate to be filed.

1400. Powers.

1401. May purchase real estate for cemetery.

1402. Election of trustees.

1403. Trustees to make annual report.

1404. Powers of association.

1405. Penalty for wilful injury to property.

1406. Bequests, disposition of.

1407. Exempted from taxation.

1408. Property of lot owners inalienable.

1409. Purchase of former cemetery—Owners in.

### 1398. Associations, how formed.

SECTION 1. Any number of persons residing in this state, not less than five, who shall desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery, or place for the burial of the dead, may meet at such time and place as they, or a majority of them, may agree, and appoint a chairman or secretary by a vote of the majority of the persons present at the meeting, and proceed to form an association, by determining on a corporate name by which the association shall be called and known, by determining on the number of trustees to manage the concerns of the association, which number shall not be less than six nor more than twelve, and thereupon may proceed to elect, by ballot, the number of trustees so determined on, and the chairman and secretary shall immediately after such election divide the trustees, by lot, into three classes; those in the first class to hold their office one year, those in the second class two years, and those in the third class three years; but the trustees of each class may be reelected if they shall possess the qualification hereinafter mentioned. The meeting shall also determine on what day in each year the future annual elections of trustees shall be held.

### 1399. Certificate to be filed.

SEC. 2. The chairman and secretary of the meeting shall, within three days after such meeting, make a written certificate and sign their names thereto, and acknowledge the same before an officer authorized to take proof

and acknowledgment of conveyances in the county where such meeting shall have been held, which certificate shall state the names of the associates determined upon by the majority of the persons who met, the number of trustees fixed on to manage the concerns of the association, the names of the trustees chosen at the meeting and their classification, and the day fixed on for the annual election of trustees, which certificate it shall be the duty of the chairman and secretary of such meeting to cause to be filed and recorded in the office of the county clerk of the county in which the cemetery grounds are situated, in a book to be appropriated to the recording of certificates of incorporation.

#### 1400. Powers.

SEC. 3. Upon such certificate duly acknowledged and filed as aforesaid being recorded, the association mentioned therein shall be deemed legally incorporated, and shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name have succession and power: First, to sue and be sued in any court; second, to make and use a common seal, and alter the same at pleasure; third, to purchase, hold, sell and convey, such real and personal estate as the purposes of the incorporation shall require; fourth, to appoint such officers, agents and servants, as the business of the corporation shall require; to define their powers, prescribe their duties and fix their compensation; fifth, to require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees, on a written request signed by one-half of the lot owners; sixth, to make by-laws not inconsistent with the laws of this state for the organization of the company, the management of the property, regulation of its affairs, and for the carrying on all kinds of business within the object and purposes of the company. The affairs and property of such associations shall be managed by the trustees, who shall annually appoint from among their number a president and vice-president, and shall also appoint a secretary and treasurer, who shall hold their places during the pleasure of the board of trustees, and the trustees may require the treasurer to give security for the faithful performance of the duties of his office.

#### 1401. May purchase real estate for cemetery.

SEC. 4. Any association incorporated cemetery, under this act, may take by purchase or devise, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding three hundred and twenty acres of land, to be held and occupied exclusively for a cemetery, for the burial of the dead. Such land, or such parts thereof, as may from time to time be required for that purpose, shall be surveyed and subdivided into lots or plats of such size as the trustees may direct, with such avenues, paths, alleys and walks, as the trustees deem proper; and a map, or maps, of such surveys shall be filed in the office of the county recorder of the county in which the land shall be situated; and after filing such maps, the trustees may sell and convey the lots or plats designated upon such maps, upon such terms as shall be agreed upon, and subject to such conditions and restrictions, to be inserted in, or annexed to, the conveyances, as the trustees shall prescribe; the conveyances to be executed under the common seal of the association, and signed by the president or vice-president, and the treasurer, of the association. Any association incorporated under this act may hold personal property to an amount not exceeding five thousand dollars, besides what may arise from the sale of lots and plats.

#### 1402. Election of trustees.

SEC. 5. The annual election for trustees, to supply the place of those

whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees shall direct; at which election shall be chosen such number of trustees as will supply the places of those whose term expires or has become vacant. The trustees chosen at any election subsequent to the first shall hold their places for three years, and until others shall be chosen to succeed them. The election shall be by ballot, and every person of full age, who shall be the proprietor of a lot or plat in the cemetery of the association containing not less than two hundred square feet of land, or if there be more than one proprietor of any such lot or plat, then such one of the proprietors as the majority of joint proprietors shall designate to represent such lot or plat, may, either in person or by proxy, give one vote for each plat or lot of the dimensions aforesaid; and the persons receiving a majority of all the votes given at such election shall be trustees, to succeed those whose term of office expires. But in all elections after the first the trustees shall be chosen from among the proprietors of lots or plats, and the trustees shall have power to fill any vacancy in their number occurring during the period for which they hold their office. Public notice of the annual elections shall be given in such manner as the by-laws of the corporation shall prescribe.

#### 1403. Trustees to make annual report.

SEC. 6. The trustees, at each annual election, shall make reports to the lot proprietors of their doings, and of the management and condition of the property and concerns of the association. If the annual election shall not be held on the day fixed in the certificate of incorporation, the trustees shall have power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place, at which time the election may be held with like effect as if holden on the day fixed on in the certificate; the office of the trustees, chosen at such time, to expire at the same time as if they had been chosen at the day fixed by the certificate of incorporation.

#### 1404. Powers of association.

SEC. 7. After its formation, in the manner provided in the preceding sections, the corporation shall proceed to purchase suitable grounds for the proposed cemetery, and to the vendor thereof they are authorized to issue the bonds of the corporation for the amount of the purchase money, bearing interest, not exceeding the rate of twelve per cent per annum, but payable out of sixty per cent of the proceeds of the cemetery, as the same shall be realized, and not otherwise. Sixty per cent, at least, of the proceeds of all sales of lots, plats or graves, shall be first appropriated to the payment of the said bonds and interest aforesaid, payable at least once in three months to the bond holders, until all are paid, and the residue thereof to be used in preserving, improving and embellishing the said cemetery grounds and the avenues or roads leading thereto, and to defraying the incidental expenses of the cemetery establishment; and after payment of the purchase money and interest, as aforesaid, and all debts contracted therefor, and for surveying and laying out the land, the proceeds of all future sales shall be applied to the improvement, embellishment and preservation of such cemetery, and for incidental expenses, and to no other purpose or object.

#### 1405. Penalty for wilful injury to property.

SEC. 8. Any person who shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, gravestone, building or other structure placed in any cemetery of any association incorporated under this act; or any fence, railing or other work for the protection or ornament thereof; or of any tomb, monument or gravestone; or other structure aforesaid; or of any plat or lot within such cemetery; or shall wilfully destroy, cut, break or injure any tree, shrub or plant within the limits of such cemetery, shall be

deemed guilty of a misdemeanor and such offender shall also be liable in an action of trespass, to be brought in all such cases, in the name of such association, to pay all such damages as shall have been occasioned by his unlawful act or acts. Such money, when recovered, shall be applied by the trustees to the reparation or restoration of the property so destroyed or injured.

See sec. 6759.

#### 1406. Bequests, disposition of.

SEC. 9. Any association incorporated pursuant to this act, may take and hold any property, real or personal, bequeathed or given upon trust, to apply the income thereof, under the direction of the trustees of such association, for the improvement or embellishment of such cemetery, or the erection or preservation of any buildings, structures, fences or walks erected, or to be erected, upon the lands of such cemetery association, or upon the lots or plats of any of the proprietors, or for the repair, preservation, erection or removal of any tomb, monument, gravestone, fence, railing or other erection on or around any cemetery, lot or plat; or for planting or cultivating trees, shrubs, flowers or plants in or around any such lot or plat, or for improving or embellishing such cemetery, or any of the lots or plats in any other manner or form consistent with the design and purposes of the association, according to the terms of such grant, devise or bequest.

#### 1407. Exempted from taxation.

SEC. 10. The cemetery lands and property of any association formed pursuant to this act, shall be exempt from all public taxes, rates and assessments, and shall not be liable to be sold on execution or be applied in payment of debts due from any individual proprietors; but the proprietors of lots or plats in such cemeteries, their heirs or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purpose of a cemetery; and during that time no street, road, avenue or thoroughfare shall be laid through such cemetery, or any part of the lands held by such association for the purposes aforesaid, without the consent of the trustees of such association and of four-fifths of the lot owners.

#### 1408. Property of lot owners inalienable.

SEC. 11. Whenever the said lands shall be laid off into lots or plats, and such lots or plats, or any of them, shall be transferred to individual holders, and after there shall have been an interment in a lot or plat so transferred, such lot or plat, from the time of such interment, shall be forever thereafter inalienable, and shall, upon the death of the holder or proprietor thereof, descend to the heirs at law of such holder or proprietor, and to their heirs at law forever; *provided, nevertheless*, that any one or more of such heirs at law may release to any other of the said heirs at law his, her, or their interest in the same, on such conditions as shall be agreed on and specified in such release, which release shall be recorded with the county recorder of the county within which the said cemetery shall be situated; *and provided further*, that the body of any deceased person shall not be interred in such lot or plat, unless it be the body of a person having, at the time of such decease, an interest in such lot or plat, or the relative of some person having such interest, or the wife of such person, or her relative, except by the consent of all persons having an interest in such lot or plat.

#### 1409. Purchase of former cemetery—Owners in.

SEC. 12. In case the grounds purchased for cemetery purposes, in accordance with section 7 of this act, shall have been used as a cemetery previous to such purchase, then, those who are lot owners at the time of the purchase shall have, and be entitled to, all the privileges they would be entitled to by purchase from a corporation formed as aforesaid.

*An Act to incorporate the Ancient Order of Hibernians.*

Approved February 25, 1873, 91

1410. Lodges incorporated.

1411. Powers.

1412. Powers of trustees.

1413. Certificate of election to be recorded.

1414. Division of property upon dissolution.

1415. Reports by trustees.

**1410. Lodges incorporated.**

**SECTION 1.** The lodges of the Ancient Order of Hibernians, located in the State of Nevada, shall be deemed bodies corporate and politic.

**1411. Powers.**

**SEC. 2.** The said lodges of the Ancient Order of Hibernians shall have power in their corporate capacity:

First—To sue or be sued, in any court having competent jurisdiction.

Second—To make and use a seal, and to alter the same at pleasure.

Third—To acquire by purchase, bequest, or donation, directly or indirectly, hold in perpetuity, sell and convey such property, real or personal, as may be deemed necessary by the proper authorities thereof to carry out the charitable purposes of said lodges, or for the establishment and endowment of a school or schools, hospital or hospitals, cemetery or cemeteries, in said state, and for the necessary uses, purposes, and ceremonies of said orders.

Fourth—To elect or appoint, according to their respective regulations and customs, not less than three, nor more than fifteen, persons to serve as trustees, who shall have charge of all real and personal property belonging thereto, and transact all business relative thereto.

Fifth—And generally be entitled to all the rights, privileges, and immunities usually had or enjoyed by such corporations.

**1412. Powers of trustees.**

**SEC. 3.** The corporate powers of said lodges of the Ancient Order of Hibernians shall be vested in boards of trustees, elected or appointed, as provided in section 2 of this act; such boards being subject to such rules and regulations as may be adopted according to the rules and customs of said orders or lodges for the government of said boards of trustees. They shall hold office until their successors are appointed or elected, and the certificate filed, as provided in section 4 of this act. Vacancies in the board of trustees shall be filled as provided by the regulations of said lodges. Said trustees shall give such bonds as may be required of them, conditioned for the faithful performance of their duties.

**1413. Certificate of election to be recorded.**

**SEC. 4.** Upon the election or appointment of trustees, as provided in this act, a certificate of such election or appointment shall be executed by the person or persons making the appointment, or the judges holding the election, duly acknowledged before a competent officer, and shall be filed and recorded in the office of the clerk of the county in which such order or lodge is located; or, in case of grand lodges, in the office of the secretary of state.

**1414. Division of property upon dissolution.**

**SEC. 5.** Where any lodge, or order, incorporated under the provisions of this act, shall disincorporate or disband, by their own act, the proceeds of all property, real or personal, shall, after paying all just dues or demands against such lodge or order, be divided pro rata among the charitable institutions of the county where such lodge or order be located.

**1415. Reports by trustees.**

**SEC. 6.** It shall be the duty of said boards of trustees, annually, or semi-annually, accordingly to their terms of office, to make a full report of all

property, real and personal, held in trust by them, and the conditions of the corporation, a copy of which shall be filed in the office in which, according to section 4, their certificate of election has been filed, with an affidavit of the truth of said report.

*An Act to incorporate the Grand Lodge of Knights of Pythias and their subordinate lodges in this state.*

Approved February 2, 1883, 26

1416. Made body corporate.

SECTION 1. The Grand Lodge of the Knights of Pythias of the State of Nevada, and its subordinate lodges, shall be deemed bodies corporate and politic, the grand lodge from the date of its organization, and the lodges subordinate thereto from the date of their charters from the grand lodge.

1417. Certain acts applicable.

SEC. 2. All the provisions contained in an act entitled "An act to incorporate the Grand Lodge of Free and Accepted Masons, the Grand Lodge of the Independent Order of Odd Fellows and their subordinate lodges in this state," approved March 3, 1865, and in the act amendatory thereof, March 11, 1867, are hereby made applicable to the incorporation of the Grand Lodge of Knights of Pythias of the State of Nevada and its subordinate lodges.

*An Act to incorporate the Grand Lodge of Free and Accepted Masons, the Grand Lodge of the Independent Order of Odd Fellows, and their subordinate lodges in this state.*

Approved March 3, 1865, 188

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| 1418. Grand and subordinate lodges incorporated. | 1421. Certificate of election to be filed.              |
| 1419. Powers granted.                            | 1422. Subordinate lodge dissolved, property reverts to. |
| 1420. Powers vested in trustees.                 | 1423. Trustees to report all property.                  |

1418. Grand and subordinate lodges incorporated.

SECTION 1. The Grand Lodge of the Ancient Order of Free and Accepted Masons in the State of Nevada, and its subordinate lodges, and the Grand Lodge of the Independent Order of Odd Fellows, and its subordinate lodges, shall be deemed bodies corporate and politic; the grand lodges, from the date of their organization and by their corporate names; the lodges subordinate thereto, from the date of their charters from their respective grand lodges, or from the date of their resolutions filed with their respective grand secretaries that they have become subordinate thereto. *As amended, Stats, 1867, 102.*

1419. Powers granted.

SEC. 2. The said grand lodges, and their subordinate lodges, shall have power in their corporate capacity—First, to sue, or be sued, in any court having competent jurisdiction; second, to make and use a common seal, and to alter the same at pleasure; third, to acquire by purchase, bequest or donation, directly or indirectly, hold in perpetuity, sell and convey such property, real and personal, as may be deemed necessary by the proper authorities thereof, to carry out the charitable purposes of said grand lodges, or the subordinate lodges thereof; or for the establishment and endowment of a college, school or schools, hospital or hospitals, cemetery or cemeteries, in said state; and for the necessary uses, purposes, and ceremonies of said order; fourth, to elect or appoint, according to their respective regulations and customs, not less than three, nor more than fifteen persons, to serve as trustees, who shall have charge of all the real and personal property belonging thereto, and transact all business relative thereto; fifth, and generally be entitled to

all the rights, privileges and immunities, usually had or enjoyed by such corporations.

#### 1420. Powers vested in trustees.

SEC. 3. The corporate powers of said grand and subordinate lodges shall be vested in a board of trustees, elected or appointed as provided in section 1 of this act, said board being subject to such rules and regulations as may be adopted, according to the uses and customs of said orders, for the government of said boards of trustees. They shall hold office until their successors are appointed or elected, and the certificate filed, as provided in section 4 of this act. Vacancies in the board of trustees shall be filled as provided by the regulations of said grand or subordinate lodges. Said trustees shall give such bonds as may be required of them, conditioned for the faithful performance of their duties.

#### 1421. Certificate of election to be filed.

SEC. 4. Upon the election or appointment of trustees, as provided in this act, a certificate of such election or appointment shall be executed by the secretary of the lodge making the appointment, duly acknowledged before a competent officer, and shall be filed in the office of the clerk of the county in which the subordinate lodge is located, or in the case of the grand lodges, in the office of the secretary of state. *As amended, Stats. 1867, 103.*

#### 1422. Subordinate lodge dissolved, property reverts to grand lodge.

SEC. 5. Where any subordinate lodge, hereby incorporated, shall be dissolved by its own act, or the forfeiture of its charter, according to the rules, regulations, constitution or customs of the grand lodge to which it is subordinate, the property, real and personal, belonging to said subordinate lodge, shall revert to, and become the property of the grand lodge of which it was a subordinate lodge, subject to the conditions of any bequest or grant under or through which said subordinate lodge became the owner of said property; *provided*, that all just and equitable indebtedness of said subordinate lodge shall be paid before said reversion, and that the said grand lodges shall not be liable for any indebtedness of any of its subordinate lodges.

#### 1423. Trustees to report all property.

SEC. 6. It shall be the duty of the said board of trustees, annually, to make a full report of all property, real and personal, held in trust by them, and the condition of the corporation, to such grand or subordinate lodge, a copy of which shall be filed in the office in which, according to section 4, their certificate of election or appointment has been filed, with an affidavit of the truth of said report.

*An Act to extend the provisions of an act entitled "An Act to incorporate the Grand Lodge of Free and Accepted Masons, the Grand Lodge of the Independent Order of Odd Fellows, and their subordinate lodges in this state," approved March third, eighteen hundred and sixty-five.*

Approved March 5, 1877, 169

#### 1424. Provisions extended to certain societies.

SECTION 1. The provisions of the above-entitled act are hereby extended to the Grand Chapter of Royal Arch Masons, the Grand Encampment of the Independent Order of Odd Fellows, in the State of Nevada, and their subordinates, the Irish American Benevolent Society, and to the grand and subordinate bodies of all other benevolent societies in this state, by whatever name they may be called and known; and all the rights, powers, and privileges heretofore conferred and enjoyed under and by virtue of said act, by the bodies therein named, shall be held and enjoyed by all the bodies named in this act.

*An Act for the incorporation of the Protestant Episcopal Churches in the United States of America in the Territory of Nevada.*

Approved December 19, 1862, 69

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| 1425. Corporate name.                       | 1429. Idem.                        |
| 1426. Wardens and vestrymen, how elected.   | 1430. Duties of trustees.          |
| 1427. Vestry.                               | 1431. Sale of real estate.         |
| 1428. Annual election—Vacancies, how filled | 1432. Limitation on annual income. |
| —Quorum.                                    | 1433. Churches already organized.  |

**1425. Corporate name.**

SECTION 1. The corporate name and style of any church or religious congregation in communion with the Protestant Episcopal Church, incorporated under this act, shall be "The Rector, Church Wardens, and Vestrymen of \_\_\_\_\_ Church, in \_\_\_\_\_."

**1426. Wardens and vestrymen, how elected.**

SEC. 2. It shall be lawful for the male persons, of full age, of any church or congregation in communion with the Protestant Episcopal Church, in this territory, who shall have belonged to such church or congregation for the last six months preceding such election, and who shall have been baptized in the Episcopal Church, or who shall have been received therein, either by the rite of confirmation, or by receiving the holy communion, or by purchasing or hiring a pew or seat in said church, or by some joint act of the parties and of the rector whereby they shall have attached themselves to the Protestant Episcopal Church, and who are not already incorporated, at any time to meet for the purpose of incorporating themselves under this act, and by a majority of voices, to elect two church wardens, and not less than three nor more than twelve vestrymen, and to determine upon what day of the week called Easter week the said officers, called church wardens and vestrymen, shall annually thereafter cease, and their successors in office be chosen; of which first election notice shall be given, in the time of morning service, on two Sundays previous thereto, by the rector; or, if there be none, or he be necessarily absent, then by any other person belonging to such church or congregation, and the said rector, or if there be none, or he be necessarily absent, then any other person called to the chair, shall preside at such first election, and, together with two other persons duly selected, shall make a certificate, under their hands and seals, of the church wardens and vestrymen so elected, of the day of Easter week so fixed upon for the annual election of their successors, and of the name or title by which such church or congregation shall be known in law; which certificate being duly acknowledged and proved by one or more of the subscribing witnesses, before the judge of any court of competent jurisdiction in the county where such church or place of worship of such congregation shall be situated, shall be recorded in the office of the recorder of such county.

**1427. Vestry.**

SEC. 3. The rector, together with the church wardens and vestrymen so elected, or, if there be no rector, then such church wardens and vestrymen shall form a vestry, and be the legal trustees of such church or congregation, and such trustees and their successors shall be a body corporate, under the name and style expressed in the certificate.

**1428. Annual election—Vacancies, how filled—Quorum.**

SEC. 4. The persons qualified as aforesaid shall in every year thereafter, on the day in Easter week fixed upon for such purpose, elect the church wardens or vestrymen, and whenever any vacancy shall happen before the stated annual election either by death or otherwise, among such church

wardens or vestrymen, the trustees may appoint a time for holding an election to supply such vacancy, of which notice shall be given in the time of divine service, at least ten days previously thereto, and such election, as well as the stated annual election, shall always be holden immediately after the morning service of the church. At all such elections the rector, or, if there be none, or he be absent, one of the church wardens or vestrymen, shall preside and receive the votes of the electors, and shall be the returning officer, and shall enter the proceedings of the election in the book of the minutes of the vestry, and sign his name thereto, and offer the same to as many of the electors present as he shall deem proper to be by them also signed and certified to. And the church wardens and vestrymen chosen at any of the said elections shall hold their offices until the expiration of the year for which they shall be elected or chosen, and until others shall be elected in their stead; and they shall have power to call and induct a rector to such church or congregation as often as there shall be a vacancy therein. A majority of the whole number of trustees, one at least of whom shall be a church warden, shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act. And at all meetings of the board of such trustees, the rector, if there be one, and he be present, and if there be not, or he be absent, then a church warden shall preside, and shall have a casting vote; *provided, however*, that no special meeting of the board other than a regular monthly meeting, which may be provided for by standing resolution, shall be held, unless at least three days' notice thereof shall be given in writing under the hand of the rector or one of the church wardens; and that at any such special meeting no such board shall be competent to transact any business unless the rector, if there be one, be present. *As amended, Stats. 1869, 76.*

#### 1429. *Idem.*

SEC. 5. Any election held in the manner provided for in this act, at any time other than that hereinbefore specified, shall not be deemed to invalidate this act of incorporation.

#### 1430. Duties of trustees.

SEC. 6. The trustees of every church or congregation hereinabove mentioned, and their successors, shall, respectively, have and use a common seal, and may renew and alter the same at their pleasure, and are hereby authorized and empowered to take into their possession and custody all the temporalities belonging to such church, congregation, or society, whether the same consists of real estate, or of personal estate, and whether the same shall have been given, granted, or devised, directly to such church or congregation, or to any person or persons for their use; and also, by their corporate name or title, to mortgage real or personal property, to sue and be sued in all courts of law and equity, and to recover, hold, and enjoy all the debts, demands, rights, and privileges, and all churches, rectories and burial places, with the appurtenances, and all estates belonging to such church or congregation, in whatsoever manner the same may have been acquired, or in whosoever name the same may be held, as fully and amply as though the right or title thereto had originally been vested in the said trustees; and also to purchase and hold other real and personal property, and to devise, lease, and improve the same for the use of such church or congregation, or for other pious uses; *provided*, that the entire real and personal property shall not exceed the annual value of ten thousand dollars. They shall also have power to build churches, rectories, schoolhouses, and other buildings for the use of such church or congregation, and to repair and alter the same; to make rules and orders for managing the temporal affairs of such church or congregation, and to dispose of all moneys belong-

ing thereto, and to regulate and order the renting of pews in their churches; to have control over all matters pertaining to their burial places; to appoint a clerk and treasurer of their board, and a collector to collect and receive all rents and revenue due them, and to regulate the fees to be allowed to such officers, and them, or either of them, to remove at pleasure, and appoint others in their stead; and such clerks shall enter all rules and orders made by such trustees, and payments made by them, in a book to be kept for that purpose.

1431. Sale of real estate.

SEC. 7. It shall be lawful for any court of competent jurisdiction, upon the application of any religious corporation, in case the judge thereof shall deem it proper, to make an order for the sale of any real estate belonging to the corporation, and to direct the application of the moneys arising therefrom by the said corporation to such uses as the corporation with the consent and approbation of the court shall conceive to be the most for the interest of the church or congregation to which the real estate so sold did belong.

1432. Limitation on annual income.

SEC. 8. When the annual income of the real or personal estate of any church or congregation, incorporated under this act, shall exceed in value the sum of ten thousand dollars, the treasurer of such church or congregation shall make a report, subscribed to under oath, that the such report is correct, and file such report with the auditor of the county in which the church or congregation is situated, and shall pay over to the county treasurer, for the benefit of the common school fund, any excess over and above the said sum of ten thousand dollars; and any violation of the provisions of this section shall be deemed a forfeiture of all rights and privileges held under this act.

1433. Churches already organized.

SEC. 9. Any church or congregation, organized by the election of a vestry before the passage of this act, may avail itself of the provisions of this act by filing with the county clerk a certificate, setting forth its corporate name, the names of its church wardens and vestrymen, the day in Easter week on which all future elections shall be held, and by complying with the conditions specified in the second section of this act in the matter of elections hereafter to be held.

*An Act to incorporate the Woman's Christian Temperance Union of Nevada.*

Approved March 12, 1903, 86

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| 1434. May incorporate, how.                                    | 1437. Certified copy of record prima facie  |
| 1435. Idem.  | evidence.                                   |
| 1436. Articles to be filed—Limitation as to value of property. | 1438. May erect and own certain property.   |
|  | 1439. Subject to general incorporation law. |

1434. May incorporate, how.

SECTION 1. That the State Woman's Christian Temperance Union of Nevada may be incorporated in pursuance to the provisions of this act.

1435. Idem.

SEC. 2. The president, vice-president, secretary and treasurer of the Woman's Christian Temperance Union of Nevada, and any number of persons being members of the Woman's Christian Temperance Union of Nevada, may make and execute an article of association under their hands and seals, which articles of association shall be acknowledged before some officer of this state authorized to take acknowledgments of deeds and shall set forth:

First—The names of persons associating and their places of residence.

Second—The corporate name by which the corporation shall be known.

Third—The object and purpose of such association and the period for which it is incorporated, which shall not exceed fifty years.

**1436. Articles to be filed—Limitation as to value of property.**

SEC. 3. A copy of said articles of incorporation shall be filed in the office of the secretary of state and thereupon the persons who shall sign such articles of incorporation, their associates and successors shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession and shall be persons in law capable to purchase, take and receive, hold and enjoy, to them and their successors, estates, real and personal, of suing and being sued, and they and their successors may have a common seal, which may be changed and altered at their pleasure; *provided*, that the value of their real and personal property shall not exceed the sum of one hundred thousand dollars and that they and their successors shall have authority and power to give, grant, sell, lease, devise, mortgage, and dispose of said real and personal estate or any part thereof, at their will and pleasure, and the proceeds, rents, and increase shall be devoted to the charity and benevolent purposes of the Woman's Christian Temperance Union. Such corporation shall have full power and authority to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporation, not contrary to the laws of the state and of the United States, and to designate, elect or appoint from among their members such officers under the names and style as shall be in accordance with the constitution or charter of such society, who shall have the supervision, control and management of said corporation.

**1437. Certified copy of record prima facie evidence.**

SEC. 4. A copy of the record of such articles of incorporation under the seal of the state and duly certified to by the secretary of state shall be prima facie evidence in all counties of this state of the existence and organization of such incorporation.

**1438. May erect and own certain property.**

SEC. 5. Any corporation formed in pursuance with this act may erect and own suitable edifices, buildings or halls as such corporation shall deem suitable, and for that purpose may create a capital stock of not more than one hundred thousand dollars, and any such corporation may take, purchase, hold and own a suitable lot or parcel of ground in any lawful established cemetery, for the interment of the deceased members of said incorporation, and all property belonging to the said incorporation shall be exempt from taxation.

**1439. Subject to general incorporation law.**

SEC. 6. Any corporation formed under the provisions of this act shall be subject to the provisions of the general laws of this state relating to corporations so far as the same may be applicable to corporations formed under this act.

**1440. *Below are references to several acts relating to corporations, which, although apparently in force, are not of general interest, and are of so little importance that it was deemed best not to reprint them:***

An Act concerning banking associations formed in this state, under the laws of the United States, 1864-5, 353.

An Act to regulate rafting and running timber and wood on the rivers in the State of Nevada, 1866, 198; amended, 1875, 61. (Act upheld, *Mandelbaum v. Russell*, 4 Nev. 551.)

An Act to aid in carrying out the provisions of the Pacific railroad and telegraph act of Congress, and other matters relating thereto, 1866, 254.

An Act to provide for the incorporation of the Grand Lodge of the Independent Order of Good Templars, and its subordinate lodges, 1869, 66.

An Act to promote the introduction and use of steam power for transportation purposes on common roads in the state, 1871, 62.

An Act to provide for the incorporation of wire suspension tramway companies, 1871, 133.

An Act to provide for the consolidation of domestic and certain foreign corporations, 1883, 121.

An Act to incorporate the Grand Lodge of Benevolent Bachelor Brothers and their subordinate lodges in this state, 1893, 79.

## COUNTIES

### CREATION, BOUNDARIES, COUNTY-SEATS

- Churchill County, sections 1449, 1453.  
 Clark County, sections 1456, 1457.  
 Douglas County, sections 1442, 1450.  
 Elko County, section 1458.  
 Esmeralda County, sections 1441, 1450, 1461.  
 Eureka County, sections 1462, 1464, 1465.  
 Humboldt County, sections 1448, 1466.  
 Lander County, section 1469.  
 Lincoln County, sections 1471-1473.  
 Lyon County, sections 1445, 1477, 1478.  
 Mineral County, sections 1479, 1480.  
 Nye County, sections 1481, 1482.  
 Ormsby County, sections 1443, 1450.  
 Storey County, sections 1446, 1450.  
 Washoe County, sections 1444, 1447, 1450, 1483-1485.  
 White Pine County, sections 1486-1488.  
 Survey and establishment of county boundaries, sections 1490-1495.  
 Removal of county-seats, sections 1496-1500.  
 See County Government, secs. 1501-1701.
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| 1441. Esmeralda County.                                    | 1466. Humboldt county-seat located.                          |
| 1442. Douglas County.                                      | 1467. Line between Humboldt and Lander Counties established. |
| 1443. Ormsby County.                                       | 1468. Boundaries of Nye and Lander.                          |
| 1444. Washoe County.                                       | 1469. Lander County created and boundaries.                  |
| 1445. Lyon County.   | 1470. Boundaries of Lander County.                           |
| 1446. Storey County.                                       | 1471. Lincoln County boundaries.                             |
| 1447. Lake County.   | 1472. Part of Nye detached and added to Lincoln.             |
| 1448. Humboldt County.                                     | 1473. Lincoln county-seat located.                           |
| 1449. Churchill County.                                    | 1474. Changing boundary lines of Lyon County.                |
| 1450. Location of county-seats.                            | 1475. Boundaries affected by change.                         |
| 1451. Boundary line between Nye, Churchill, and Esmeralda. | 1476. Part of Esmeralda detached and added to Lyon.          |
| 1452. Meridian of longitude, how ascertained.              | 1477. Boundaries of Lyon confirmed.                          |
| 1453. Churchill county-seat located at Fallon.             | 1478. County-seat located.                                   |
| 1454. Boundaries of Churchill County.                      | 1479. Mineral County created and boundaries.                 |
| 1455. Boundary line between Churchill and Lander.          | 1480. Location of county-seat.                               |
| 1456. Boundaries of Clark County.                          | 1481. Nye County boundaries.                                 |
| 1457. County-seat located.                                 | 1482. Nye county-seat located at Tonopah.                    |
| 1458. Boundaries of Elko County.                           | 1483. Washoe county-seat located at Reno.                    |
| 1459. Idem.  | 1484. Lake County organized.                                 |
| 1460. Resolution to organize Esmeralda County.             | 1485. Washoe and Roop Counties consolidated.                 |
| 1461. County-seat located at Goldfield.                    | 1486. White Pine County created and boundaries.              |
| 1462. Eureka County created and boundaries.                | 1487. Part of Nye detached and added to White Pine.          |
| 1463. County-seat located.                                 | 1488. White Pine county-seat located at Ely.                 |
| 1464. Part of Elko detached and added to Eureka.           |  |
| 1465. Part of White Pine detached and added to Eureka.     |  |

*An Act to create counties, and establishing the boundaries thereof.*

Approved November 25, 1861, 50

**1441. Esmeralda County.**

SECTION 1. There shall be a county, to be known as Esmeralda County, to include all that part of the territory within the boundaries described as follows: Beginning at a point where the thirty-seventh degree of north latitude intersects the one hundred and sixteenth meridian, and running west along said thirty-seventh degree, to the California line; thence, along said line, in a northwesterly direction, to the summit of the divide, between the east and west forks of Walker River; thence, along said divide, in a northerly direction, to the headwaters of Desert Creek; thence, following down the middle of said creek, to a point where it debouches from the mountain; thence, following the base of the mountain, to the west branch of Walker River; thence, across said river, to the base of the mountain; thence, following the base of the mountain in a direct line, as near as may be, to Mason's ranch; thence, due east to the one hundred and sixteenth meridian; thence, south along said meridian, to place of beginning.

See secs. 1451, 1452, 1460.

County of Mineral carved out of, sec. 1479.

**1442. Douglas County.**

SEC. 2. There shall be a county, to be known as Douglas County, to include all that part of the territory within the boundaries described, as follows: Beginning at Mason's ranch, on Walker River, and running westerly, in a straight line, to the mouth of Clear Creek; thence, along the middle of said creek, to its source; thence, due west to the California line; thence, south, and southeasterly along said line, to the western boundary of Esmeralda County; thence, northerly along said boundary, to the place of beginning.

In addition to the above (sec. 1442), special acts in relation to this county have been enacted as follows:

To create a county building fund, 1864, 67; to provide for payment of outstanding indebtedness, 1864-5, 170; to authorize the levy of a special tax for building purposes, 1873, 118; fixing compensation of sheriff and assessor, 1891, 77; to authorize the issuance of bonds for road purposes, 1895, 26; to submit question of consolidation with certain other counties to a vote, 1897, 110; authorizing issuance of bonds for constructing, improving and maintaining roads and bridges, 1907, 294; to prevent stock running at large, 1909, 69; authorizing issuance of bonds for liquidating and paying outstanding indebtedness, 1911, 25.

**1443. Ormsby County.**

SEC. 3. There shall be a county, to be known as Ormsby County, to include all that part of the territory within the boundaries described, as follows: Beginning at the northwestern corner of Douglas County, and running easterly along the north boundary thereof, to a point where it crosses Eldorado Canyon; thence, down the center of said canyon to a point thereon due east of Brown & Company's dam, on Carson River; thence, in a westerly direction, crossing Carson River at said dam; thence, to the Half-way House, between Carson and Silver City; thence, northwesterly, to the summit of the mountains east of Washoe Lake; thence, in a westerly course along said summit, to the tops of the Sierras; thence, due west, to the California line; thence, south, along said line to the place of beginning.

In addition to the above (sec. 1443), special acts in relation to this county have been enacted as follows:

Authorizing creation of a jail building fund, 1862, 65; to regulate finances, 1864, 92 (act sustained, Trustees v. Ormsby Co., 5 Nev. 334); this act partly repealed, 1866, 253; to consolidate and pay certain indebtedness, 1866, 255; amended, 1867, 81; 1869, 57; 1871, 51 (construed, Haydon v. Ormsby Co., 2 Nev. 371); to authorize the issuance of bonds to the V. & T. R. R. Co., 1869, 43; amended, 1873, 117 (act sustained, Gibson v. Mason, 5 Nev. 283); authorizing trustees of school district No. 1 to issue school warrants to cover certain indebtedness, 1873, 51; to incorporate Carson City, 1875, 87; amended, 1877, 117; 1879, 67; 1889, 68; 1895, 37; 1905, 200; 1907, 53, 344 (sustained, State ex rel. Rosenstock v. Swift,

11 Nev. 128, cited, *Parsons v. Carson*, 33 Nev. —, 110 P. 3); authorizing trustees of school district No. 1 to issue warrants to pay certain indebtedness, 1879, 70; to authorize the purchase of land and building a courthouse and to issue bonds to pay indebtedness thereby created, 1879, 96; to provide for issuance of bonds for the payment of bonds now outstanding, 1883, 93; to regulate the compensation of officers, 1887, 126 (sustained, *Comstock M. & M. Co. v. Allen*, 21 Nev. 325, 31 P. 434, cited, *State ex rel. Westerfield v. Tyrrell*, 22 Nev. 425, 41 P. 145); to authorize the issuance of certain bonds, 1889, 88; to consolidate certain offices and fix compensation of other offices, 1891, 26; amended, 1893, 76; 1899, 104; 1907, 344; to authorize Carson City to issue bonds for constructing and maintaining a sewerage system, 1891, 29; to authorize the issuance of certain bonds, 1891, 55; authorizing Carson City to contract for water supplies for sewers, fires, and other municipal purposes, 1893, 25; to authorize trustees for school district No. 1 to issue bonds, 1893, 71; to provide for issuance of bonds, 1897, 13; fixing fees of county clerk, for making out naturalization papers, 1897, 19; to submit question of consolidation with certain other counties to a vote, 1897, 110; fixing salary of constable in Carson Township, 1897, 115; amended, 1907, 72; repealing a certain act to provide for the issuance of bonds, 1899, 18; fixing salary of justice in Carson Township, 1899, 30; amended, 1907, 184; to provide for issuance of bonds, 1899, 43; to provide for issuance of bonds, 1899, 45; to authorize trustees of district No. 1 to sell certain school property and to issue bonds for school purposes, 1905, 20; to provide for deputies in the office of sheriff and county clerk, 1907, 72; fixing rate of compensation for work on public roads, 1907, 92; fixing and regulating salary of district attorney, 1909, 7; authorizing appointment of deputy sheriff, 1909, 13; authorizing issuance of bonds, 1909, 28; empowering Carson to borrow money on its notes, 1911, 102; fixing and regulating salaries of certain officers, 1911, 110.

#### 1444. Washoe County.

SEC. 4. There shall be a county, to be known as Washoe County, to include all that part of the territory within the boundaries described as follows: Beginning at the northwest corner of Ormsby County, and running easterly along the northern boundary of said county, to the summit of the mountains east of Washoe Lake; thence, in a northerly course along the summit of said mountains, to the lower end of the Big Meadows, on Truckee River; thence, down said river, to its lower crossing; thence, east, along the Immigrant Road to the summit of the mountains lying east of said river; thence, north, on the main summit of said mountains, to a point from which, running direct west, would intersect the Truckee River at its mouth in Pyramid Lake; thence, due west, to the California line; thence, south, to the place of beginning.

Washoe and Lake (Roop) Counties consolidated, secs. 1447, 1485.

#### 1445. Lyon County.

SEC. 5. There shall be a county, to be known as Lyon County, to include all that part of the territory within the boundaries described, as follows: Beginning at the southeast corner of Washoe County; thence, following the north line of Ormsby County in a southeasterly direction, to the Half-way House, between Silver City and Carson City; thence, following the said line of Ormsby County to Douglas County; thence, following the northerly boundary of Douglas County to the one hundred and nineteenth meridian of west longitude; thence, north, five miles; thence, by direct line, northwesterly, to a point on Carson River, one mile below Reed's Station; thence, north three miles; thence, westerly by a direct line, to the southern boundary of the Gold Hill mining district, but running so as to include in this county the Devil's Gate toll house; thence, continuing westerly in the same course, to the eastern boundary of Washoe County, and thence, southerly, along the eastern boundary of said county, to the place of beginning.

See secs. 1474-1476, changing boundaries.

See *Lyon County v. Storey County*, 33 Nev. —.

#### 1446. Storey County.

SEC. 6. There shall be a county, to be known as Storey County, to include all that part of the territory within the boundaries described, as follows: Beginning at the northwestern corner of Lyon County, and running thence,

in an easterly direction, along the northern boundary of Lyon County, to the northeastern corner thereof; thence, north, in a straight line, to the road leading from the lower crossing of the Truckee to the Sink of the Humboldt; thence, westerly, along said road, to the Truckee River; thence, up the middle of said river, to the eastern line of Washoe County; thence southerly, along said line, to the place of beginning.

In addition to the above (sec. 1446), special acts in relation to this county have been enacted as follows:

To authorize county recorder to appoint a deputy, 1862, 60; increasing salary of probate judge, 1864, 123; to incorporate the town of Gold Hill, 1864, 131; to create the office of coroner, 1864, 138; to provide for payment of outstanding indebtedness of Virginia, 1864-5, 121; amended 1864-5, 325; 1871, 104 (held partly void, State ex rel. Arick v. Hampton, 13 Nev. 439); to provide payment of outstanding warrants, 1864-5, 158; amended, 1864-5, 186; to authorize issuance of bonds to the V. & T. R. R. Co., 1869, 49 (cited, State ex rel. School Trustees v. Storey Co., 17 Nev. 99, 28 P. 122); to authorize payment of certain claims, 1871, 129; relative to surplus general fund, 1875, 85; to repeal an act authorizing issuance of bonds for school purposes, 1875, 99; to legalize certain contracts made by Virginia, 1877, 48; to authorize Virginia to pay a certain claim, 1877, 67; to authorize issuance of bonds for certain purposes, 1877, 95; to authorize issuance of bonds for school purposes, 1877, 203; to legalize certain contracts, 1879, 13; to amend an act to reincorporate the city of Virginia, 1879, 128; to disincorporate the town of Gold Hill, 1881, 67; to disincorporate the city of Virginia, 1881, 79 (construed, State ex rel. Fredericks v. Canavan, 17 Nev. 422, 30 P. 1079); to authorize apportionment of moneys derived from poll taxes, 1887, 121; to fix the compensation of the sheriff for services of a jailer, 1897, 76; relating to the duties, salaries and compensation of officers, 1897, 85; amended, 1899, 22; to submit to a vote the question of consolidation with certain other counties, 1897, 110; relating to duties, salaries and compensation of officers, 1899, 79; amended, 1901, 21; 1909, 167; authorizing county commissioners to employ additional help for various county officers, 1909, 60.

This section describing boundaries of Storey County was repealed by Stats. 1895, p. 73 (sec. 1481), but said act was declared unconstitutional in *Schweiss v. District*

Court, 23 Nev. 226 (34 L. R. A. 602, 45 P. 289).

See *Lyon Co. v. Storey Co.*, 33 Nev. —.

#### 1447. Lake County.

SEC. 7. There shall be a county, to be known as Lake County, to include all that part of the territory within the boundaries described, as follows: Beginning at the northwest corner of Washoe County, and running easterly along the northern boundary of said county to the mouth of Truckee River; thence, due east to the summit of the first range of mountains east of said river; thence, in a northerly direction, along said range, and the main granite range of mountains, to the Oregon line; thence, west, along said line, to the summit of the Sierra; thence, south, along said summit, to the place of beginning.

See sec. 1484.

Name changed to Roop by Stats. 1862, p. 6.

Consolidated with Washoe County, sec. 1485.

#### 1448. Humboldt County.

SEC. 8. There shall be a county, to be known as Humboldt County, to include all that part of the territory within the boundaries described, as follows: Beginning at the northeast corner of Storey County; thence running easterly along the Immigrant Road leading to the Sink of the Humboldt, to the fortieth degree; thence, east, along said line, to the eastern boundary of the territory; thence, north, along the eastern boundary to the northern boundary of the territory; thence, west, along said boundary line, to the northeastern corner of Lake County; thence, south, along the boundary lines of Lake and Washoe Counties, to the point of beginning.

See sec. 1467.

#### 1449. Churchill County.

SEC. 9. There shall be a county, to be known as Churchill County, to include all that part of the State of Nevada within the boundaries described

as follows: Beginning at the southeast corner of Lyon County, and running thence east along the northern line of Esmeralda County to the northeast corner of said Esmeralda County; thence northeast to the southwest corner of Lander County; thence north along the western line of said Lander County to the fortieth degree of north latitude; thence west along said fortieth degree north latitude to where it strikes the summit of a range of mountains marking the eastern boundary line of Roop County; thence southerly along said range to the northeast corner of Washoe County; thence southerly along the eastern boundary of Washoe County to a point one hundred feet north of the Central Pacific Railroad; thence northeasterly along the north side of said Central Pacific Railroad and parallel thereto, at a distance therefrom of one hundred feet, to a point sixteen miles from the east side of the bridge across the Truckee River, belonging to the Central Pacific Railroad Company, at the town of Wadsworth; thence southerly to a point on the Carson River three miles below Honey Lake, Smith's old station; thence southerly to the point of beginning. *As amended, Stats. 1869, 88.*

See secs. 1451, 1452, 1454, 1455.

This act does not conflict with art. 4, sec. 17, of the constitution (sec. 275, supra). *Humboldt Co. v. Churchill Co.*, 6 Nev. 30-36.

*An Act defining the judicial districts, fixing the terms of the supreme and district courts of the territory, locating the county-seats of the several counties of the territory, and providing for the transfer and trial of actions.*

Approved November 29, 1861, 289

[Secs. 1 to 13, inclusive, not relating to location of county-seats, omitted. These sections will be found elsewhere in this work.]

#### 1450. Location of county-seats.

SEC. 14. The county-seats of the counties of this territory are hereby located as follows: In the county of Esmeralda, at Aurora; in the county of Douglas, at Genoa; in the county of Ormsby, at Carson City; in the county of Washoe, at Washoe City; in the county of Storey, at Virginia City; in the county of Churchill, at Buckland's; in the county of Humboldt, at Unionville; in the county of Lake, at such point as shall be decided by a vote of a majority of the voters of said county at the first election to be held therein; and in the county of Lyon, at Dayton.

County-seat of Churchill County located at Fallon, sec. 1453.

County-seat of Esmeralda County located at Goldfield, sec. 1461.

County-seat of Humboldt County located at Winnemucca, sec. 1465.

County-seat of Lyon County located at Yerington, sec. 1478.

County-seat of Washoe County located at Reno, sec. 1483.

*An Act to better define and establish the boundary line between the county of Nye and the counties of Churchill and Esmeralda.*

Approved February 26, 1875, 102

#### 1451. Boundary line.

SECTION 1. The boundary line between the county of Nye and the counties of Churchill and Esmeralda shall be as follows: Beginning at the intersection of the meridian of longitude, forty degrees and seven minutes west from Washington with the eastern boundary line of California; thence, northerly along said meridian of longitude to its intersection with the thirty-eighth parallel, north latitude; thence northwesterly to the Hot Springs, on the Wellington and Reese River road; thence northerly to the thirty-ninth parallel of north latitude; thence easterly to O'Donnell's Pass, on the Ione and Westgate road; and from thence the said boundary line shall remain as heretofore established by law.

See secs. 1441, 1449, 1482.

**1452. Meridian of longitude, how ascertained.**

SEC. 2. Said meridian of longitude shall be established from the official survey made by Colonel A. W. Von Schmidt, of the state line between the States of California and Nevada, to be ascertained by his astronomical observations, and also from the mile posts set by him on said survey; and if it be found necessary to ascertain by calculations from Colonel A. W. Von Schmidt the said meridian of longitude, all expenses attaching thereto shall equally be borne by said counties of Nye and Esmeralda.

*An Act to remove the county-seat of Churchill County from the town of Stillwater to the town of Fallon.*

Approved March 5, 1903, 47

**1453. County-seat located at Fallon.**

SECTION 1. From and after the first Monday in January, A. D. one thousand nine hundred and four, the county-seat of Churchill County shall be located at the town of Fallon in said county.

[Remainder of act, not relating to boundary or county-seat, is omitted.]

*An Act to organize the county of Churchill, and for other purposes.*

Approved February 19, 1864, 86

**1454. Boundaries.**

SECTION 1. The county of Churchill is, with its western boundary, fixed on the line of longitude 41 degrees 40 minutes west, as established by Degroote's map of Nevada Territory, published in A. D. eighteen hundred and sixty-three, and with its other boundaries as established by law, is hereby organized into a distinct county, with all the rights, privileges and immunities thereunto belonging.

[Other portions of act, not relating to boundaries, are omitted.]

Cited, *Sadler v. Tatti*, 17 Nev. 433 (30 P. 1882).

See secs. 1449, 1455.

In addition to above, special acts in regard to this county were enacted as follows:

Authorizing citizens to construct bulkhead in Old River, 1866, 66; to provide for payment of outstanding warrants, 1867, 48; act supplementary to an act entitled, etc., "An act to create counties and establish boundaries thereof, 1871, 57; to provide for transfer of certain money from indigent sick and contingent funds to general fund, 1871, 79; to provide for payment of outstanding indebtedness, 1871, 140; amended, 1877, 63; to appropriation payment of salary of district judge between Churchill and Nye, 1873, 102; to provide for county hospital, 1887, 59; to provide for storage and distribution of water, 1889, 63; to authorize county commissioners to purchase telegraph lines, 1889, 66; regulating compensation of county officers, 1897, 78; fixing salaries and compensation of officers, 1903, 54; authorizing issuance of bonds for creating a fund for erection of county buildings, 1903, 59; authorizing issuance of bonds for erection of county jail, 1905, 37; fixing salaries and compensation of officers, 1905, 44; authorizing issuance of bonds for establishing, construction and maintenance of county high school at Fallon, 1905, 144; to supply the town of Wonder with water and to define the boundaries of said town, 1907, 70; to authorize trustees of school district No. 4, in the town of Fallon to issue bonds for building a school house, 1907, 95; fixing salaries and compensation of county officers, 1907, 215; fixing salaries of justice and constable in Hot Springs Township, 1907, 300; to incorporate the town of Fallon, 1907, 302; repealed by acts, 1911, 23; to authorize issuance of bonds for construction and maintenance of toll road from Fallon to Wonder, 1907, 348; to authorize issuance of bonds for equipping and furnishing county high school building in Fallon and liquidating existing indebtedness, 1907, 352; authorizing issuance of bonds by trustees of school district No. 4. for equipping school house, 1909, 57; fixing and regulating salaries of certain officers, 1909, 145; authorizing issuance of bonds for purpose of obtaining premises and erection and furnishing of a county telegraph and telephone building, 1911, 50; concerning certain officers, fixing their salaries and compensation, and allowing certain deputies and providing for their salaries and compensation, 1911, 52; fixing salaries of justice and constable in Hot Springs Township, 1911, 108; validating incorporation of Fallon, 1911, 111; fixing salaries of justices and constables in certain townships, 1911, 140; authorizing the issuing of bonds for construction of county roads and bridges, 1911, 144.

*An Act to establish and define the dividing line between the counties of Churchill and Lander.*

Approved March 5, 1869, 128

**1455. Dividing line defined.**

SECTION 1. The east line of the county of Churchill, and the west line of the county of Lander, being the dividing line between said counties, shall be established and defined in this act, to wit: Commencing at a point where a line drawn due north and south through the Mount Airy station would strike the south line of the county of Humboldt, if extended; thence, in a southern-westerly direction, to the dividing ridge or center of Cone's Pass—a pass so-called—in a range of mountains extending south of and including New Pass station, called the New Pass Mountains; thence, in a southerly course, along the center of said range of mountains, to a point on the north line of Esmeralda County, immediately north of the town of Ellsworth; said line to be so fixed and established along and over the course before mentioned, as to place on the easterly [westerly] side thereof, and which shall be included in the county of Churchill, all lands which shed or flow their waters into or towards the Edwards Creek Valley, and on the easterly side thereof, and which shall be included in the county of Lander, all lands which shed or flow their waters into or towards the Smith or Smith's Creek Valley, or the Reese River Valley.

*An Act creating and organizing the county of Clark out of a portion of Lincoln County and providing for its government, and to regulate the affairs of Lincoln County and Clark County.*

Approved February 5, 1909, 8

**1456. Boundaries.**

SECTION 1. The county of Clark is hereby erected out of the following territory, to wit: All that portion of Lincoln County lying south of the third (3d) standard parallel south of the Mount Diablo base line is hereby detached from Lincoln County, and the county of Clark erected therefrom.

See secs. 1471, 1472.

**1457. County-seat located.**

SEC. 2. The place known officially as Clark's Las Vegas Townsite, being the town, railroad station and postoffice of Las Vegas, is hereby made the county-seat of Clark County, at which place shall be erected and maintained the county and judicial offices and the necessary county buildings.

Remainder of act, not relating to boundaries or county-seats, omitted.

In addition to above, special acts in relation to this county have been enacted as follows: Amending an act creating the county of Clark, 1909, 52; to provide for the compensation and payment of grand and trial jurors and fixing fees, 1909, 128; to regulate salaries of certain county officers, 1911, 116; to incorporate the town of Las Vegas, 1911, 145.

*An Act to create the county of Elko, and to provide for the organization thereof.*

Approved March 5, 1869, 153

**1458. Boundaries.**

SECTION 1. All that portion of the present county of Lander lying within the following boundaries, to wit: East of a line drawn north and south through a point on the Central Pacific railroad track, three miles west of the machine shops of the Central Pacific Railroad Company, situated in the town of Carlin, and north of a line drawn east and west through the most northerly part or portion of the military post or camp known as Camp Ruby (being the northerly line of the proposed county of White Pine), is hereby created a new county, to be known as the county of Elko. The county-seat of said county is hereby located at Elko; *provided*, the proprietors of said

town, or other persons, shall within one month from the date of the passage of this act, convey by proper deed to said county of Elko, free and clear of all incumbrances, a plat of ground suitably located, and of sufficient dimensions for a court house and jail, and other necessary county buildings; the same to remain the property of the county so long as used for county purposes. If no such conveyance be made to the approval and acceptance of a majority of the board of county commissioners, then the county-seat of said county shall be selected by the board of county commissioners first elected under the provisions of this act. If the conveyance aforesaid be accepted, entry of such fact shall be noted in the minutes of proceedings of the board of county commissioners, appointed herein, and the deed shall be filed and recorded in the proper county recorder's office; and thereafter vest the title of the land conveyed in the county as in this section provided.

Remainder of act, not relating to boundary or county-seat, omitted.

Cited, State ex rel. McGuire v. Waterman, 5 Nev. 323, 327.

Cited, State ex rel. Clarke v. Irwin, 5 Nev. 123.

*An Act to define and establish the boundary lines of Elko County, Nevada.*

Approved March 1, 1871, 92

**1459. Boundaries.**

**SECTION 1.** The boundary lines of the county of Elko are hereby defined and established as follows, to wit: Commencing at the northwest corner of Utah Territory and running thence south along the western boundary of said Utah Territory to the present southeast corner of Elko County, as established by an act of the legislature of the State of Nevada, approved March fifth, eighteen hundred and sixty-nine, then east [west] along the south boundary of said Elko County to the present southwest corner of Elko County; thence north along the east boundary of Lander County to the forty-first parallel of north latitude; thence west with said parallel to the east boundary of Humboldt County; thence north along the east boundary of Humboldt County to the south boundary of Oregon; thence east along the south boundary lines of Oregon and Idaho Territory to the place of beginning.

Remainder of act, not relating to boundary, omitted.

Part of this county detached and attached to Eureka County, see sec. 1464.

In addition to the above, special acts in relation to this county have been enacted as follows:

To submit to a vote a proposition to give county aid to a railroad, 1869, 160; to consolidate and fund indebtedness, 1871, 70; to amend an act to create the county of Elko, 1873, 50; to supply the town of Elko with water, 1873, 134; to authorize the issuance of bonds payable from the building fund, 1873, 150; to legalize the issuance of certain bonds, 1875, 60; to authorize trustees of district No. 1 to issue bonds for the purpose of providing additional school buildings, 1877, 200; to authorize the issuance of bonds for the construction of a jail, 1879, 100; to refund a portion of the bonded debt, 1881, 13; to reimburse the sheriff, 1881, 139; to create the office of road supervisor, 1889, 95; fixing salaries and compensation of officers and consolidating certain offices, 1891, 33; fixing salaries and compensation of officers and consolidating certain offices, 1893, 51; amended, 1899, 62; 1905, 97; 1907, 137; authorizing trustees of school district No. 1 to issue bonds, 1893, 64; authorizing and directing the issuance of bonds to establish, conduct and maintain a county high school, 1895, 59; authorizing issuance of bonds to equip and furnish county high school, 1897, 69; authorizing issuance of bonds for providing additional school room, 1903, 75; authorizing trustees of district No. 1 to issue bonds for providing additional school room, 1905, 149; to segregate the office of district attorney and superintendent of public schools, 1905, 237; to authorize school trustees to issue bonds for providing additional school room, 1907, 93 (act construed, State ex rel. Henderson Banking Co. v. McBride, 31 Nev. 62, 99 P. 705); to create the office of road supervisor, 1907, 141; amended, 1911, 278; to segregate certain officers and fixing their salaries, 1907, 278; amended, 1909, 75, 176; 1911, 53, 55; authorizing issuance of bonds for erection of court house and jail, 1907, 335 (act construed, State ex rel. Henderson Banking Co. v. Lytton, 31 Nev. 67, 99 P. 855); to regulate the salary of constable of Wells Township, 1909, 90; to regulate the salary of constable of Carlin Township, 1909, 311; authorizing county commissioners to reestablish boundaries of school districts, voting precincts and townships, 1911, 49; to regulate the salary of justices of Wells and Carlin Townships, 1911, 57; regulating salary of constable

of Jarbidge Township, 1911, 58; authorizing county commissioners to acquire Jarbidge toll-road, 1911, 121; fixing fees and mileage of witnesses in criminal cases, 1911, 361.

*Concurrent Resolution to organize Esmeralda County.*

Stats. 1862, 193

**1460. Governor to organize and appoint officers.**

*Resolved, by the Council, the House of Representatives concurring,* That the governor of the territory be and he is hereby requested to organize the county of Esmeralda, as soon as practicable, by the appointment of county officers pursuant to statute.

See secs. 1441, 1451, 1452.

*An Act to remove the county-seat of Esmeralda County from the town of Hawthorne to the town of Goldfield.*

Approved February 4, 1907. 20

**1461. County-seat located at Goldfield.**

SECTION 1. From and after the first day of May, in the year of our Lord one thousand nine hundred and seven, the county-seat of Esmeralda County shall be located at the town of Goldfield, in said county.

Balance of act, not relating to county-seat, omitted.

In addition to the above, special acts in relation to this county have been enacted as follows:

Defining salary of prosecuting attorney, 1864, 160; to increase salary of probate judge, 1864, 140; to repeal an act "An act to authorize the incorporation of the town of Aurora," 1866, 71; amended, 1869, 59; to provide for payment of indebtedness, 1867, 76 (construed, *Youngs v. Hall*, 9 Nev. 212); to provide for payment of indebtedness, 1869, 58 (construed, *Youngs v. Hall*, 9 Nev. 212); to create a current expense fund, 1877, 98; to authorize the issuance of certain bonds, 1877, 198; amended, 1879, 20; to fund indebtedness, 1883, 69; to remove county-seat from Aurora to Hawthorne, 1883, 95; to authorize issuance of bonds for erection of county building, 1883, 104 (cited, *State ex rel. Cardwell v. Glenn*, 18 Nev. 37, 1 P. 186); to authorize trustees of district No. 13 to issue bonds for school purposes, 1889, 56; to consolidate certain county offices, 1891, 96; amended, 1893, 120; 1895, 57 (construed, *Bradley v. Esmeralda County*, 32 Nev. 159, 104 P. 1058; to fund bonded indebtedness, 1893, 55; to authorize issuance of bonds for payment of bonded indebtedness, 1895, 31 (cited, *State ex rel. Holley v. Boerlin*, 30 Nev. 479, 98 P. 402); regulating compensation of a county officer, 1903, 77; to authorize issuance of school bonds, 1905, 56; regulating compensation of county officers, 1905, 210 (construed, *Bradley v. Esmeralda County*, 32 Nev. 159, 104 P. 1058, cited, *Tilden v. Esmeralda County*, 32 Nev. 319, 107 P. 881); authorizing issuance of bonds for erecting and furnishing county buildings, 1907, 57 (cited, *State ex rel. Holley v. Boerlin*, 30 Nev. 473, 98 P. 402); authorizing issuance of bonds for erecting and furnishing county buildings, 1907, 57; to fix salary of the justice of Rawhide Township 1909, 18; to fix salary of constable of Rawhide Township, 1909, 19; to fix salary of constable of Goldfield Township, 1909, 130; pertaining to compensation of county officers, regulating appointments, number and compensation of deputies and attaches, 1909, 269; pertaining to compensation of officers, 1909, 291; fixing fees and mileage of witnesses in criminal cases, 1911, 361.

*An Act to create the county of Eureka and provide for its organization.*

Approved March 1, 1873. 107

**1462. Boundaries.**

SECTION 1. The county of Eureka is hereby created, with the following boundaries, to wit: All that portion of the State of Nevada bounded and described as follows, viz: Beginning at a point on the north boundary line of Lander County, equidistant between the northeast and northwest corners of said Lander County; thence running due south from said initial point to the south boundary line of said Lander County; thence running east along said south boundary line of Lander County to the southeast corner of said Lander County; thence running north along the east boundary line of said Lander County to the northwest corner of White Pine County; thence run-

ning west along the south boundary line of Elko County to the southwest corner of said Elko County; thence running along the west boundary line of Elko County to the northeast corner of said Lander County; thence running west along the north boundary line of said Lander County to the place of beginning. The county of Eureka shall employ and pay some competent surveyor to establish the boundary line between the said counties of Lander and Eureka.

See secs. 1464, 1465.

### 1463. County-seat located.

SEC. 2. The county-seat of said county is hereby located at the town of Eureka, a court house, jail, and other necessary county buildings, shall be provided by the county commissioners of said county.

Cited, State ex rel. Hetzel v. Eureka Co., 8 Nev. 309, 310, 359, 361.

Eureka County was created with reference to the fixity of the northwest corner of Lander County as then established. The intention of the legislature must be ascer-

tained from facts existing at the time it created Eureka County, and not from those which arose afterwards: Eureka Co. v. Lander Co., 21 Nev. 144, 148 (24 P. 871).

*An Act to detach a portion of the territory of Elko County from said county, and to attach the same to Eureka County.*

Approved February 7, 1877, 64

### 1464. Territory detached.

SECTION 1. The following-described territory, now a portion of Elko County, Nevada, is hereby detached from said Elko County, and is hereby attached to and made a part of Eureka County, Nevada, to wit: All that territory embraced within the following boundaries: Commencing at a point where the Central Pacific Railroad crosses the east boundary line of Eureka County, and running thence southerly to a point where the one hundred and sixteenth (116) meridian crosses the east and west line between Eureka and Elko Counties; thence westerly along said east and west line to the southwest corner of Elko County; thence northerly along the present dividing line between Eureka and Elko Counties, to the place of beginning; the same embracing and transferring from Elko County to Eureka County all that portion of territory commonly known as the "Mineral Hill Strip," and the line surveyed by the county surveyor of Eureka County during the year A. D. eighteen hundred and seventy-five, commencing at a point where the Central Pacific Railroad crosses the east boundary line of Eureka County, and running thence southerly to a point where the one hundred and sixteenth (116) meridian crosses the east and west line between Eureka and Elko Counties, is hereby fixed and established as the boundary line between said counties. In consideration of this cession of territory by Elko County to Eureka County, the latter shall, within one year from the date of the passage and approval of this act, pay to the former the sum of twelve hundred dollars, gold coin of the United States.

Remainder of act, not relating to boundaries, omitted.

This act supersedes act of 1875, 66, which was declared unconstitutional in State ex rel. Chase v. Rogers, 10 Nev. 250.

*An Act to detach a portion of the territory of White Pine County from said county and attach the same to Eureka County.*

Approved March 2, 1881, 104

### 1465. Territory detached.

SECTION 1. The following-described territory, now a portion of White Pine County, Nevada, is hereby detached from said White Pine County and is hereby attached to and made a part of Eureka County, Nevada, to wit: All that territory lying west of the following boundaries, to wit: Commenc-

ing at a point on the summit of the Diamond range of mountains, where the present east boundary line of Eureka County and the west boundary line of White Pine County cross said summit, thence following the summit of said Diamond range of mountains to the south line of Elko County the same transferring from White Pine County to Eureka County all that portion of White Pine County west of the above-described summit of the Diamond range of mountains.

Remainder of act, not relating to boundaries, omitted.

In addition to above, special acts in regard to this county have been passed as follows:

To provide for support and maintenance of public schools, 1873, 113; to provide for payment of current expenses, 1873, 115; to authorize issuance of certain bonds, 1875, 96; to create a current expense fund, 1875, 100; to authorize the issuance of certain bonds, 1877, 47; to authorize the construction of a court house, 1879, 45 (construed, Sadler v. Eureka Co., 15 Nev. 39); to fix the salary of the district attorney, 1879, 89; to authorize trustees of Eureka school district to issue bonds, 1879, 97; to fix the salaries of county commissioners, 1881, 90; fixing salaries of certain county officers, 1885, 126; relating to fees of sheriff, 1887, 110; fixing salaries and defining duties of certain county officers, 1889, 80 (construed, State ex rel. Dunkle v. Beard, 21 Nev. 218, 29 P. 531); amended, 1891, 36; 1891, 78; 1893, 80 (this amendment declared void in Singleton v. Eureka Co., 22 Nev. 91, 30 P. 833); to authorize the levying of a tax for benefit of Eureka road district, 1891, 16; fixing salaries of certain county offices and consolidating certain offices, 1893, 65; amended, 1895, 61; fixing salary of treasurer, 1895, 13; authorizing issuance of warrants for all persons who have complied with section 1 of an act in regard to forest trees, 1895, 22; to levy a tax to pay off indebtedness of a fire department fund of the town of Eureka, 1895, 63; to consolidate certain offices and fix their compensation, 1895, 67; requiring county assessor to pay his own deputy, 1897, 46; fixing salaries of certain county officers, 1897, 47; fixing salary of justices of the peace, 1901, 78; fixing salaries of certain offices, 1907, 430; fixing salaries and compensation of officers, 1909, 44; authorizing county commissioners to regulate compensation of justices of the peace and constables, 1911, 128; fixing fees and mileage of witnesses in criminal cases, 1911, 361.

### *An Act to remove the county-seat of Humboldt County.*

Approved February 17, 1873, 59

#### 1466. County-seat located.

SECTION 1. From and after the first day of May, one thousand eight hundred and seventy-three, the county-seat of Humboldt County shall be located at the town of Winnemucca, in said county.

Balance of act, not relating to location of county-seat, omitted.

The word "week" in this section does not May 1, 1873. Evans v. Job, 8 Nev. 322, 323, 324, 333, 341, 342, 344.  
mean the week ending at 10 o'clock on Saturday night, but the seven days prior to

### *An Act to define and establish the boundary line between Humboldt and Lander Counties.*

Approved March 7, 1873, 189

#### 1467. Description of established line.

SECTION 1. The boundary line between Humboldt and Lander Counties is hereby defined and established as follows, to wit: Beginning at the north-west corner of Lander County and running due south on the present line between Humboldt and Lander Counties, to a point due west of Battle Mountain station; thence, due west twelve miles; thence, in a direct line to the present northeast corner of Churchill County.

See Eureka Co. v. Lander Co., 21 Nev. 149, under Eureka County.

In addition to above, special acts in regard to this county have been passed as follows:

For submitting question of removal of county-seat to a vote, 1862, 3; providing for the appointment of a district attorney, 1862, 12; to incorporate the city of Star, 1864, 115; to provide for the payment of outstanding indebtedness, 1869, 91; amended, 1885, 18; 1889, 62; to provide for the payment of certain indebtedness, 1871, 60; to authorize the issuance of certain bonds, 1875, 120; to reimburse sheriff, 1881, 139; to authorize trustees of school district No. 7 to issue bonds for school purposes, 1889, 19; fixing salaries and compensation and consolidating certain offices, 1891, 30; amended, 1899, 41; 1903, 213; 1905, 219; 1907,

214; 1911, 118, 131 (construed, State ex rel. Dunn v. Humboldt Co., 21 Nev. 435, 29 P. 974); authorizing the issuance of certain bonds, 1893, 54; amended, 1895, 57; authorizing school trustees of district No. 3 to issue bonds for school purposes, 1895, 24; authorizing and defining mileage of county commissioners, 1901, 96; authorizing imprisonment of certain prisoners in branch county jail at Lovelock, 1903, 98 (held void in Wolf v. Humboldt Co., 32 Nev. 174, 105 P. 286); authorizing issuance of bonds on the property of Lovelock for protection against fire, 1905, 51; authorizing issuance of bonds for purchase of land and erection of suitable buildings for care of the indigent, 1905, 258; amended, 1907, 21; to create the office of road supervisor, 1907, 139; fixing fees and compensation of witnesses in criminal cases, 1907, 213; repealed, 1911, 361, which is a new act relative to same subject; authorizing issuance of bonds for erection and equipment of a new jail, 1907, 292; empowering appointment of janitor of court house and county jail, 1907, 346; fixing and regulating salary of district attorney, 1909, 7; regulating and fixing compensation of justices and constables in certain townships, 1909, 144; authorizing payment from county general fund of certain salaries and expenses in the county high schools, 1909, 159; fixing compensation of certain county officers, 1909, 160; amended, 1911, 130; authorizing issuance of bonds on the property of Lovelock for the establishment of a sewerage system, 1909, 169; authorizing county commissioners to regulate compensation of justices and constables in certain townships, 1911, 19; authorizing issuance of bonds for purchase of site and construction of a high school building at Winnemucca, 1911, 118; authorizing school trustees of district No. 7 to issue bonds for building additional school rooms, 1911, 141; fixing fees and mileage of witnesses in criminal cases, 1911, 361.

*An Act concerning the boundaries of the counties of Nye and Lander.*

Approved March 1, 1866, 183

**1468. Boundaries may be added to.**

SECTION 1. Whenever by consent of Congress, additional territory shall be added to the State of Nevada, on its eastern or southern border, or both, then, until further provided by law, all such added territory, lying east of Lander County, shall be a part of said Lander County. And all such part of added territory, lying south or east, or both, of Nye County, shall be a part of said Nye County; *provided*, that if any new county or counties shall be created, or organized, in the eastern or southern part of this state, then any part of such new additional territory lying directly east or south of such new county or counties, shall belong, respectively, to such new county or counties.

*An Act to create the county of Lander.*

Approved December 19, 1862, 53

**1469. Boundaries.**

SECTION 1. The county of Lander is hereby created, to include all that portion of the territory within the boundaries described as follows: Beginning at the point of intersection of the fortieth meridian of longitude west from Washington with the forty-second degree of north latitude, or northern boundary line of Nevada Territory; thence running south on the line of said fortieth meridian of longitude, through the counties of Humboldt and Churchill, to the thirty-ninth degree of north latitude, or northern boundary line of Esmeralda County; thence east, along the said northern boundary line of Esmeralda County, to the eastern boundary line of the territory; thence north, following the eastern boundary line of the territory, to the northern boundary line of the territory aforesaid; thence west, along said northern boundary line to the place of beginning.

Balance of act, not relating to boundary, omitted.

See sec. 1470.

See Eureka Co. v. Lander Co., 21 Nev. 128 (24 P. 171), under Eureka County.

*An Act enlarging the boundaries of Lander County and definitely defining the same.*

Approved February 20, 1864, 147

**1470. Boundaries of Lander County.**

SECTION 1. All that portion of the Territory of Nevada within the limits

hereinafter described, is hereby included within the limits of Lander County; commencing at the intersection of the thirty-ninth degree, with a line drawn due north and south from the Mount Airy Station; thence north to the fortieth degree of latitude of northern boundary of Churchill County; thence east along said fortieth degree of latitude west from Washington, to the fortieth degree of meridian of longitude; thence north on said fortieth degree of longitude to the northern boundary of Nevada Territory; thence east along said boundary line to the one hundred and fifteenth degree of longitude west from Greenwich, or the eastern boundary of Nevada Territory; thence south along said eastern boundary to the thirty-ninth degree of north latitude; thence west along said thirty-ninth degree north latitude to the place of beginning.

Balance of act, not relating to boundaries, omitted.

For boundary line between Lander and Churchill, see sec. 1455; Lander and Eureka, sec. 1462; Lander and Humboldt, sec. 1467; Lander and Nye, sec. 1468.

In addition to above, special acts in regard to this county have been passed as follows:

To provide for the payment of outstanding indebtedness, 1864-5, 88; in relation to late Austin City recorder's court, 1866, 134; to incorporate Treasure City, 1869, 122; authorizing transfer of certain records and suits from Lander County to White Pine, 1869, 137 (act sustained, State ex rel. Hooten v. McKenney, 5 Nev. 194); to incorporate Shermantown, 1869, 175; to incorporate the city of Austin, 1875, 75; to disincorporate the city of Austin, 1881, 66; authorize the issuance of certain bonds, 1885, 15; relating to county assessors, 1885, 96; to continue the right and grant conferred under "An act to supply the town of Austin with water," 1893, 37; to authorize the issuance of bonds to purchase the franchise and water works that supply the town of Austin with water, 1893, 67; to authorize the sheriff to appoint a night watchman of the town of Austin, 1893, 87; to regulate the herding or grazing of sheep within four miles of Austin, 1897, 22; to grant right of way and to provide electric lights for Austin, 1897, 30; separating the offices of sheriff and assessor, 1901, 25; fixing salary and compensation of officers, 1901, 71; 1905, 233; fixing salary of the constable of Battle Mountain Township, 1905, 234; fixing salaries of officers, 1907, 148; to regulate salary of the constable of Argenta Township, 1907, 185; fixing salary and compensation of justice of Argenta Township, 1909, 44; fixing fees and compensation of witnesses in criminal cases, 1909, 78; fixing salary and compensation of justice of Austin Township, 1911, 20; authorizing issuance of bonds for liquidating and paying outstanding indebtedness, 1911, 30.

*An Act amendatory of and supplemental to an act entitled "An act to create the county of Lincoln, and provide for its organization," approved February 26, 1866.*

Approved March 18, 1867, 129

#### 1471. Boundaries.

SECTION 1. All that portion of the State of Nevada situate within the following boundaries shall be, and constitute the county of Lincoln, viz: Beginning at the Red Bluff Springs (about fifteen miles east of Reveille District) and running thence due east to the state line of this state; thence south along said state line to the southerly boundary line of this state; thence along said southerly boundary line to a point due south of Red Bluff Springs; thence north to the place of beginning.

Balance of act, not relating to boundaries, omitted.

See sec. 1472.

Cited, State ex rel. Leake v. Blasdel, 6 Nev. 40-44; State ex rel. Hubbard v. Gorin, 6 Nev. 276, 278.

*An Act to detach a portion of the territory of Nye County from said county and to attach the same to Lincoln County.*

Approved February 20, 1875, 80

#### 1472. Territory detached.

SECTION 1. The following-described territory, now a portion of Nye County, Nevada, is hereby detached from said Nye County and is hereby attached to and made a part of Lincoln County, Nevada, to wit: All that territory embraced within the following boundaries: Commencing on the

north line of Lincoln County, at a point where the one hundred and fifteenth parallel of longitude crosses said line; thence due north forty-five miles, more or less, to a point due west of the north line of A. Prairie's farm (northeast of Patterson Station); thence from said point west of A. Prairie's farm due east fifty-one miles, more or less, to the east line of the state; thence south along said state line forty-five miles, more or less, to the present north line of Lincoln County; and thence west along the said north line of Lincoln County to the place of beginning.

Balance of act, not relating to boundaries, omitted.

Clark County carved out of Lincoln County, sec. 1456.

*An Act to temporarily fix the county-seat of Lincoln County.*

Approved February 24, 1871, 75

**1473. County-seat located.**

**SECTION 1.** The county-seat of Lincoln County is hereby temporarily located at the town of Pioche, for a period not to exceed three months from the passage of this act.

**NOTE**—Stats. 1871, 64, provided for election to definitely fix the county-seat, and the compilers understand it was so fixed at Pioche, but there is no statute otherwise so fixing it.

Balance of act, not relating to location of county-seat, omitted.

In addition to above, special acts in regard to this county have been passed as follows:

To submit to a vote a proposition to aid railroad, 1869, 160; to provide for removal of county-seat, 1871, 64 (cited, Evans v. Job, 8 Nev. 341); to consolidate and fund indebtedness, 1873, 54; amended, 1877, 46 (construed, State ex rel. Davis v. Lincoln County, 23 Nev. 262, 45 P. 982, cited, Davis v. Simpson, 25 Nev. 129, 58 P. 146); to provide for payment of floating indebtedness, 1875, 129; amended, 1883, 82; create a current expense fund, 1877, 193; fixing salaries of officers, 1885, 124; to encourage the construction of railways, 1887, 14; fixing salaries of officers, 1887, 63; amended, 1889, 25; 1891, 19; 1897, 37; 1901, 92; 1905, 239; relating to payment of expenses of sheriff, 1889, 75; to make provision for payment of certain indebtedness, 1897, 47 (sustained, Thompson v. Turner, 24 Nev. 292, 53 P. 178); to submit the question of division of county to vote, 1897, 112; to create a special jury fund, 1899, 29; amended, 1903, 30; 1905, 81; to encourage the construction of railways, 1899, 128; consolidating certain offices, 1901, 94; to refund bonded indebtedness, 1903, 102; to consolidate offices of district attorney and county superintendent of schools, 1903, 210; authorizing appointment of extra deputy sheriffs, 1905, 149; authorizing trustees of Caliente district to issue bonds for erection of school buildings, 1905, 200; to segregate certain county officers, 1905, 215; to authorize trustees of Bunkerville district to issue bonds for completion of school buildings, 1905, 239; fixing fees and compensation of justices, coroners, and constables, 1907, 58; authorizing funding and refunding of existing indebtedness, 1907, 64; fixing fees and compensation of witnesses in criminal cases, 1907, 150; fixing compensation of county officers, 1907, 347; creating and confirming Las Vegas school district, 1909, 41; fixing compensations of county officers, 1909, 81; to fix salary of justice of Caliente Township, 1911, 59; to consolidate certain county offices, 1911, 124; to authorize board of fire commissioners of Caliente to issue bonds for paying off outstanding indebtedness, 1911, 125; create a salary fund, 1911, 129.

*An Act changing the boundary lines of Lyon County, and for other purposes.*

Approved February 20, 1864, 148

**1474. Change of boundary.**

**SECTION 1.** That the eastern boundary line of Lyon County be and is hereby changed from the present boundary as established by law, to the line of longitude forty-one degrees, forty minutes, west from Washington, as laid down on De Groot's map of Nevada Territory, published A. D. eighteen hundred and sixty-three.

**1475. Boundaries affected by change.**

**SEC. 2.** All other boundaries of Lyon County, affected by the change of the eastern boundary, shall follow the lines of that portion of Churchill County ceded to Lyon, as established by law.

Balance of act, not relating to boundaries, omitted.

Lyon County v. Storey County, 33 Nev.—.

See sec. 1445.

*An Act to detach a portion of Esmeralda County, and to annex the same to Lyon County.*

Approved March 1, 1883, 99

**1476. Territory detached.**

SECTION 1. All that portion of Esmeralda County lying west of a line commencing at a point on the boundary line between California and Nevada where the counties of Esmeralda and Douglas corner, and running thence in a northeasterly direction to a point on the north boundary line of Esmeralda County where the Carson and Colorado Railroad crosses said line, is hereby detached from Esmeralda County and annexed to Lyon County.

Remainder of act, not relating to boundaries, omitted.

See secs. 1445, 1474, 1475.

Cited, *Esmeralda Co. v. District Court*, 18 Nev. 438, 439 (5 P. 64); *Lyon Co. v. Esmeralda Co.*, 18 Nev. 166-170 (1 P. 839).

*An Act to definitely fix and establish the boundaries of Lyon County.*

Approved March 6, 1899, 41

**1477. Boundaries confirmed.**

SECTION 1. The territory over which Lyon County has exercised jurisdiction for the period of five years last past, in the assessment and collection of taxes, in the selection of grand and petit jurors, in the establishment of voting precincts and the holding of elections therein, is hereby declared to be within the boundary of that county.

See secs. 1445, 1474-1476.

*Lyon Co. v. Storey Co.*, 33 Nev. —.

*An Act to provide for the removal of the county-seat of Lyon County from the town of Dayton to the city of Yerington.*

Approved February 9, 1911, 7

**1478. County-seat located.**

SECTION 1. From and after the first day of May, nineteen hundred and eleven, the county-seat of Lyon County shall be located at the city of Yerington, in said county.

Balance of act, not relating to location of county-seat, omitted.

Act sustained, *Quilici v. Strosnider*, 33 Nev. — (115 P. 177).

In addition to above, special acts in regard to this county have been passed as follows:

Providing for building a court house and jail, 1864, 153; for the purpose of placing the finances upon a permanent cash basis, 1869, 52; amended, 1871, 91; 1873, 176; 1877, 166; to issue certain bonds to the V. & T. R. R. Co., 1869, 62 (construed, *V. & T. R. R. v. Lyon Co.*, 6 Nev. 68); to incorporate Silver City, 1877, 134; to authorize the issuance of certain bonds, 1881, 157; to provide for the issuance of bonds, 1887, 49; amended, 1893, 11; to provide a county hospital, 1887, 98; consolidating certain offices and regulating compensation of officers, 1891, 52; amended, 1893, 27; 1895, 112 (cited, *State ex rel. Lyon Co. v. La Grave*, 24 Nev. 148); 1897, 73; 1905, 216; 1907, 205; 1909, 22, 159; 1911, 137; authorizing issuance of certain bonds, 1897, 74; authorizing trustees of school district No. 9 to issue bonds for school purposes, 1897, 93; to submit the question of consolidation with certain other counties to a vote, 1897, 110; to authorize the issuance of certain bonds, 1903, 181; to incorporate the town of Yerington, 1907, 150; to authorize the issuance of bonds for reconstruction and repair of bridges, 1907, 297; authorizing issuance of bonds to establish, construct, and maintain a high school at Yerington, 1909, 145; authorizing issuance of bonds for erection and furnishing of county building, 1914, 29; to segregate the office of sheriff and assessor, 1911, 107.

*An Act creating and organizing the county of Mineral out of a portion of Esmeralda County, and providing for its government and to regulate the affairs of Esmeralda County and Mineral County.*

Approved February 10, 1911, 10

**1479. Boundaries.**

SECTION 1. The county of Mineral is hereby erected out of the following

territory, to wit: All that portion of Esmeralda County lying northerly of a line drawn, commencing at the intersection of the Mount Diablo base line with the Von Schmidt's survey of the boundary line between Nevada and California, running thence east to the southeast corner of township one north, range thirty-two east on said Mount Diablo base line; thence northeasterly to the southwest corner of township seven north, range thirty-eight east, Mount Diablo base and meridian; thence continuing in the same direction intersecting the boundary line between the counties of Nye and Esmeralda, which said territory is hereby detached and set aside from Esmeralda County, and the county of Mineral erected therefrom.

See sec. 1441, boundaries of Esmeralda County.

#### 1480. Location of county-seat.

SEC. 2. The place known officially as Hawthorne, being the town and postoffice of Hawthorne, is hereby designated and made the county-seat of Mineral County, at which place shall be maintained the county and judicial offices, and the necessary county buildings.

Balance of act, not relating to boundaries or county-seat, omitted.

In addition to above, special acts in regard to this county have been passed as follows:

Authorizing issuance of bonds for repairing and furnishing county buildings, 1911, 47; fixing fees and mileage of witnesses in criminal cases, 1911, 61.

*An Act to amend an act entitled "An act to create the county of Nye."*

Approved March 9, 1865, 352

#### 1481. Boundaries.

SECTION 1. The county of Nye is hereby created, to include all that portion of the State of Nevada within the boundaries described as follows: Beginning at the thirty-seventh degree of north latitude with the one hundred and fifteenth meridian of longitude west from Greenwich, and running thence west, along the northern boundary of the Territory of Arizona, to its intersection with the California line; thence northwesterly along the California line to the meridian of longitude one hundred and seventeen degrees thirty minutes west from Greenwich; thence due north to the boundary line of Churchill County; thence in an easterly direction to the O'Donnell Pass on the West Gate and Ione road; thence in an easterly direction to the mound in Reese River Valley, about three miles southwesterly from the town of Washington; thence due east to the eastern boundary of the state; thence south, along the eastern boundary of the state to the place of beginning.

Section 1, original act, Stats. 1864, 143, defining boundaries, omitted, and above section, amending said section 1, substituted.

Boundary line between Nye, Churchill, and Esmeralda Counties established, sec. 1451.

See act concerning boundaries of Nye and Lander Counties, sec. 1468.

Portion of Nye detached and annexed to Lincoln County, sec. 1472.

Portion of this county detached and added to White Pine County, sec. 1487.

*An Act to remove the county-seat of Nye County, from the town of Belmont to the town of Tonopah.*

Approved February 6, 1905, 18

#### 1482. County-seat located.

SECTION 1. From and after the first day of May, in the year of our Lord one thousand nine hundred and five, the county-seat of Nye County shall be located at the town of Tonopah, in said county.

Balance of act, not relating to location of county-seat, omitted.

In addition to above, special acts in regard to this county have been passed as follows:

To create the county of Nye, 1864, 143; amended; 1864-5, 352; to change the county-seat, 1867, 47 (cited, *Evans v. Job*, 8 Nev. 341); to provide for the payment of outstanding indebtedness, 1869, 99; to submit to Elko, White Pine, Nye and Lincoln, a proposition to aid railroad, 1869, 160; apportioning payment of salary of district judge, 1873, 102; to create a current expense fund, 1877, 159; amended, 1879, 66; to fund the court house

bonds, 1881, 46; authorizing the negotiation of a loan, 1881, 159; to provide for payment of certain indebtedness, 1887, 17; to empower commissioners to transfer surplus moneys from certain funds to other funds, 1893, 14; to fund the court house bonds, 1895, 34; to authorize exchange of new court house bonds for other bonds, 1897, 88; regulating compensation of officers, 1903, 42; to incorporate the city of Tonopah, 1903, 163; concerning sittings of court, 1903, 198 (declared void, *Ex Parte Wonacott*, 27 Nev. 102, 73 P. 661); to authorize issuance of bonds for erection and furnishing of county buildings, 1905, 39; to authorize trustees of Tonopah school district to issue bonds for erection of school buildings, 1905, 146; relating to compensation of county officers, 1905, 214; relating to compensation of county officers, 1907, 29; authorizing issuance of bonds for improvement and enlargement of court house, 1907, 110; fixing fees and compensation of witnesses in criminal cases, 1909, 158; fixing compensation of county and township officers, 1909, 223; amended, 1911, 134; authorizing refunding of existing indebtedness, 1909, 301; authorizing issuance of bonds for liquidating and paying outstanding indebtedness, 1911, 103.

*An Act to change the county-seat of the county of Washoe.*

Approved February 17, 1871, 59

**1483. County-seat located.**

SECTION 1. From and after the third day of April, A.D. one thousand eight hundred and seventy-one, the county-seat of Washoe County shall be located at the town of Reno, in said county.

This act upheld, *Hess v. Pegg*, 7 Nev. 23, 26, 29.

*Concurrent Resolution organizing Lake County.*

Approved December 2, 1862, 193

**1484. Governor to organize and appoint officers.**

*Resolved by the Council, the House of Representatives concurring,* That the governor of the territory be and he is hereby requested to organize the county of Lake by the appointment of all necessary officers, pursuant to statute.

See secs. 1447, 1485.

Name changed to Roop by Stats. 1862, p. 6.

*An Act to consolidate the counties of Washoe and Roop.*

Approved January 18, 1883, 12

**1485. Counties consolidated.**

SECTION 1. The counties of Washoe and Roop shall hereafter form but one county, to be known as Washoe County. Said county shall embrace the territory within the present boundaries of Washoe and Roop Counties, and shall constitute the seventh judicial district.

See secs. 1444, 1447.

Name of Lake County changed to Roop County. Stats. 1862, p. 6.

In addition to above, special acts in regard to this county have been passed as follows:

Defining salary of probate judge, 1864, 159; to establish an agricultural and mechanical college, 1864-5, 349; to fund the hospital debt, 1873, 87; to provide for transferring and replacing money of certain funds, 1873, 89; to authorize the temporary use of moneys levied and collected for building fund, 1873, 92; authorizing trustees of school district No. 10 to issue bonds for building a schoolhouse, 1873, 174; authorizing issuance of bonds for certain purposes, 1875, 101; authorizing issuance of bonds for construction of county bridge across the Truckee River at Reno, 1877, 71; authorizing trustees of school district No. 10 to issue bonds for providing additional school buildings, 1877, 196; authorizing issuing of bonds for certain purposes, 1877, 199; to authorize trustees of school district No. 10 to issue bonds for school purposes, 1879, 38; amended, 1887, 133; authorizing issuance of bonds for construction of bridge across the Truckee River at Wadsworth, 1879, 107; authorizing trustees of school district No. 10 to issue bonds for school purposes, 1881, 64; authorizing issuance of bonds for construction of bridge across Truckee River near Verdi, 1883, 76; authorizing issuance of certain bonds, 1885, 74; authorizing issuance of bonds for construction of bridges across the Truckee River, 1887, 48; authorizing issuance of bonds to pay for construction of sewers in Reno, 1889, 41; authorizing issuance of certain bonds, 1889, 58; fixing and regulating salaries of officers, 1891, 52; authorizing issuance of bonds

for public parks in Reno, 1891, 86; authorizing issuance of bonds for construction of sewers in Reno, 1891, 90; authorizing issuing of bonds on the property of the town of Wadsworth for protection against fire, 1893, 29; authorizing issuance of a bond for a public park in Reno, 1893, 35; authorizing trustees of school district No. 10 to issue bonds for school purposes, 1895, 47; directing the submission of certain questions to the electors of Reno election precincts at the general election of 1896, 1895, 72; fixing salaries and compensations and defining duties of certain officers, 1897, 99; to provide for the purchase of land for an agricultural experiment station, 1889, 23; to authorize the trustees of school district No. 11, in Wadsworth, to issue bonds for school purposes, 1899, 49; to issue bonds on the property of the town of Wadsworth for protection against fire, 1899, 56; to purchase reservoir sites for the storage of water, 1899, 81; to disincorporate the city of Reno, 1899, 84 (construed, *State ex rel. Osburn v. Beck*, 25 Nev. 68, 56 P. 1008); to authorize issuance of bonds on the property of the town of Reno for fire purposes, 1901, 28; providing for the establishment of a free public kindergarten in Reno school district, 1901, 31; regulating salaries of certain officers, 1901, 86; amended, 1905, 19; to incorporate the town of Reno, 1901, 100; to authorize trustees of district No. 10 to sell certain property within their district and to purchase real estate, 1903, 35; authorizing the issuance of bonds to provide for the payment of certain outstanding indebtedness, to pay for construction of hospital and to pay for repairing and improving court house, 1903, 89; prescribing and defining the duties of the county commissioners, sitting as a board of equalization, in relation to property situated within the corporate limits of Reno, 1903, 110; providing for the appointment of a deputy sheriff, 1903, 175; amended, 1905, 41; providing for a special election in the town of Reno, 1903, 180; to incorporate the town of Reno, 1903, 184; amended, 1905, 98 (sec. 20, sub. 8, sustained, *Wallace v. Reno*, 27 Nev. 71, 103 A. S. 747, 63 L. R. A. 337, 93 P. 528; sec. 20, sub. 9, held unconstitutional, *State ex rel. Reno v. Boyd*, 27 Nev. 249, 74 P. 654); requiring county commissioners to apportion certain funds, 1903, 210; authorizing trustees of district No. 29 in the town of Sparks to acquire a schoolhouse site and to erect school buildings, and to issue bonds for said purposes, 1905, 60; fixing salary and compensation of justices and constables in certain townships, 1905, 81; authorizing issuance of bonds for removal and reconstruction of bridge in Reno, to construct a new bridge across the Truckee River and to construct and repair other bridges, 1905, 155; to incorporate the town of Sparks, 1905, 158; amended, 1907, 146; 1909, 113; regulating and fixing salaries of certain officers, 1905, 220; fixing and regulating salaries of county commissioners and county clerk, 1905, 233; authorizing sheriff to appoint a jailer, 1905, 252; to authorize trustees for school district No. 10 to sell certain school property and to purchase a schoolhouse site, and to issue bonds for school purposes, 1905, 261; to authorize trustees of Reno school district No. 10 to issue bonds for school purposes, 1907, 17; to authorize the disposal of certain lands belonging to Reno, 1907, 23; fixing and regulating salaries of certain officers, 1907, 102; pertaining to compensation of sheriff and deputy sheriff, 1907, 104; fixing and regulating salaries of certain officers, 1907, 181; authorizing issuance of bonds by city council of Reno for the construction of a bridge across the Truckee River, 1907, 203; to amend the title and to amend an act entitled "An act to incorporate the town of Reno," 1905, 98; amended, 1907, 341; 1909, 297, 329; 1911, 5, 57, 113; authorizing issuance of bonds for constructing, laying out, improving and maintaining public roads, 1907, 298; fixing and regulating salaries and fees of certain officers, 1907, 355; amended, 1909, 21; to provide for the appointment of deputies and copyists for officers in cases of emergency, 1907, 356; fixing and regulating salary of district attorney, authorizing the appointment of assistant and fixing salary of same, and providing for allowance of certain expenses, 1909, 31; providing salary for county surveyor in lieu of all fees, 1909, 46; authorizing issuance of bonds for altering, improving and repairing court house, 1909, 92; fixing and regulating salaries of certain officers, 1909, 194; to regulate fees and compensation of county clerk, 1909, 196, amended, 1911, 374; fixing and regulating salaries and fees of justice and constable of Gerlach township, 1911, 4; providing for the establishment of a free public kindergarten in Sparks school district No. 29, 1911, 36; authorizing the trustees of school district No. 10 to dispose of certain school property, 1911, 109; authorizing issuance of bonds for construction of bridge across Truckee River, 1911, 113.

*An Act to create the county of White Pine, and provide for its organization.*

#### 1486. Boundaries.

Became a law March 2, 1869, 108

SECTION 1. The county of White Pine is hereby created with the following boundaries, to wit: All that portion of the State of Nevada lying east of a line running due north and south through the most westerly part of the house known as Shannon's Station, on the westerly slope of Diamond Mountains, in Lander County, on the road from Austin to Hamilton in said county, and south of a line running due east and west through the most northerly

part of Camp Ruby, and north of the present line between the counties of Nye and Lander, as located by Thomas J. Reed, county surveyor of Lander County, made in 1868.

See sec. 1487.

Balance of act, not relating to boundaries, omitted.

Cited, County of White Pine v. Ash, 5 Nev. 281.

This act upheld, State ex rel. Clarke v. Irwin, 5 Nev. 111-131.

Cited, Hooten v. McKinney, 5 Nev. 200; White Pine Co. v. Ash, 5 Nev. 279.

Cited, State ex rel. Davenport v. Loughton, 19 Nev. 208, 210 (8 P. 344).

*An Act to detach a portion of the territory of Nye County from said county, and to attach the same to White Pine County.*

Approved February 26, 1875, 103

**1487. Territory detached from Nye.**

SECTION 1. The following-described territory, now a portion of Nye County, Nevada, is hereby detached from said Nye County, and is hereby attached to and made a part of White Pine County, Nevada, to wit: All that territory embraced within the following boundaries: Commencing at a point now known as the southeast corner of Eureka County; thence running due east along the south line of White Pine County ninety (90) miles more or less to the east line of the State of Nevada; thence running south along the said state line thirty (30) miles more or less to a point due east from the north line of A. Prairie's farm; thence from said point due west fifty-two (52) miles more or less to the one hundred and fifteenth (115th) meridian west of Greenwich; and thence northwesterly sixty (60) miles more or less to the place of beginning.

Balance of act, not relating to boundaries, omitted.

Portion of this county detached and added to Eureka, see sec. 1465.

*An Act to remove the county-seat of White Pine County from the town of Hamilton to the town of Ely.*

Approved January 28, 1887, 27

**1488. County-seat located.**

SECTION 1. From and after the first day of August, in the year of our Lord one thousand eight hundred and eighty-seven, the county-seat of White Pine County shall be located at the town of Ely, in said county.

Balance of act, not relating to location of county-seat, omitted.

In addition to above, special acts in regard to this county have been passed as follows:

Authorizing transfer of certain records and suits of Lander County to White Pine County, 1869, 137; submitting to the people of Elko, White Pine, Nye and Lincoln a proposition to give county aid to railroad, 1869, 160; to provide for the payment of the indebtedness of Treasure City, 1871, 48; to provide for the payment of indebtedness, 1871, 75; to repeal "An act to incorporate the town of Hamilton," 1871, 95; to consolidate and fund indebtedness, 1873, 146; to disincorporate the town of Hamilton, 1875, 154; to provide for payment of indebtedness known as the Hamilton debt, 1877, 54 (construed, Mau v. Liddle, 15 Nev. 273); to create a current expense fund, 1877, 195; amended 1879, 88; to provide for payment of certain indebtedness, 1879, 43; fixing compensation of county recorder, 1885, 45; authorizing issuance of certain bonds, 1885, 55; authorizing construction of court house and county hospital, 1887, 33; to make provisions for payment of certain indebtedness, 1877, 131; amended, 1889, 14; consolidating certain county offices, 1891, 49; amended, 1893, 77; regulating the compensation of certain officers, 1891, 73; creating jurors' per diem fund, 1895, 48; relating to county officers, regulating their compensations and other matters connected therewith, 1895, 66; amended, 1899, 68; regulating compensation of district attorney, 1897, 75; separating offices of treasurer and assessor, 1901, 35; amended, 1905, 42; to create a salary fund, 1901, 40; relating to salaries and compensation of county officers, 1901, 92; authorizing issuance of bonds on property of the town of Ely for protection against fire, 1901, 114; to consolidate certain offices and fixing compensation of the officers, 1905, 95; authorizing issuance of bonds on the property of the town of Ely for protection against fire, 1905, 152; fixing salaries and compensation of county clerk and district attorney, 1905, 249; pertaining to compensation of county officers, 1907, 212; authorizing trustees of Ely school district No. 1 to issue bonds to purchase sites, erect, furnish and equip school buildings, 1907, 337; authorizing issuance of bonds for erection of

county buildings, 1907, 338; to segregate certain offices and fixing salaries, 1907, 428; amended, 1911, 8, 9; to provide a typewriter operator for county clerk and fixing salary, 1909, 6; authorizing trustees of East Ely school district to issue bonds for purchasing, erecting, furnishing school buildings, 1909, 14; amended, 1911, 122; making county treasurer ex officio city treasurer of Ely, 1909, 88; fixing fees and compensation of witnesses in criminal cases, 1909, 168; authorizing issuance of bonds to refund bonds heretofore issued, 1909, 181; to create the office of road supervisor, 1909, 206; to fix a salary for the constable for the first township, 1911, 9; fixing salary of justice in first township, 1911, 21; fixing and regulating salaries of certain officers, 1911, 111.

*An Act authorizing the survey and establishment of boundaries between the several counties of this state.*

Approved February 26, 1866, 130

1489. Boundary surveys authorized.

1490. Duty of surveyor.

1491. Idem.

1492. Reports and maps to be made.

1493. Expenses to be prorated.

1494. Compensation for expenses.

1495. Construction of act.

**1489. Survey authorized.**

SECTION 1. The county commissioners, of the several counties of this state, are hereby authorized and required to have made an accurate survey of the boundaries between the several counties within this state, in which the same have not been established according to law; and said survey shall be commenced within six months after the passage of this act. And the commissioners of the counties adjoining, are required to arrange for the making of such survey, and notify the county surveyors of their respective counties thereof.

Six months provision of above section held to be directory. *Lyon County v. Storey County*, 33 Nev. —.

Cited, *Eureka Co. v. Lander Co.*, 21 Nev. 148 (24 P. 871); *Humboldt Co. v. Lander Co.*, 22 Nev. 256 (58 A. S. 750, 26 L. R. A. 749, 38 P. 578).

**1490. Duty of surveyor.**

SEC. 2. It shall be the duty of the county surveyors, of the several counties where the boundaries have not been established by survey, to meet at such time and place as the county commissioners of the said counties shall designate, and proceed to survey the boundary lines between the same.

*Lyon County v. Storey County*, 33 Nev. —.

**1491. Idem.**

SEC. 3. If the surveyor or surveyors of any county or counties shall fail to meet the surveyor or surveyors of the county or counties adjoining, at the time and place designated by the county commissioners, the surveyor or surveyors of the county or counties, who may be present, shall proceed to make the survey, and the same shall be the established boundaries between such counties.

**1492. Reports and maps to be made.**

SEC. 4. The county surveyors, of the several counties where such boundaries are surveyed, are hereby required to make out a report and maps of the same, one copy to be deposited with the county clerk of said counties, as aforesaid, and a joint copy of the counties adjoining to be transmitted to the secretary of state.

**1493. Expenses to be prorated.**

SEC. 5. The expenses of such surveys shall be borne jointly by the several counties pro rata according to the number of miles surveyed on the line of each county.

**1494. Compensation for expenses.**

SEC. 6. The boards of the county commissioners, of the counties on the line of which such surveys shall be so made, are hereby authorized and empowered

to allow reasonable and proper compensation and all necessary expenses incurred in making the surveys, as aforesaid, and upon such allowance the county auditor, of such counties respectively, is hereby directed to draw his warrant on the county treasurer therefor, in favor of the party or parties entitled to the same.

#### 1495. Construction of act.

SEC. 7. Nothing in the provisions of this act shall be construed so as to compel or enforce the board of county commissioners, of the several counties of this state, to have any county line or lines surveyed and established, except where such county lines or line is now, or may hereafter be, in dispute by reason of the settlement of persons and the ownership of property along such county line or lines.

*An Act providing for the removal of county-seats and permanent location of the same.*

Approved March 2, 1877, 139

1496. Petition for removal—Requisites—Election.

1498. Officers to remove to new location.  
1499. Registry agent to certify petition.

1497. Vote canvassed—Proclamation.

1500. Election, how conducted.

#### 1496. Petition for removal of county-seats, requisites—Election.

SECTION 1. Whenever three-fifths of the qualified electors of any county of this state, each elector being a taxpayer of said county, as appears by the last assessment roll, who have taken and subscribed to the oath or affirmation prescribed by law for the registration of electors in this state, shall petition the board of county commissioners of such county for the removal or location of the seat of justice of said county, the said county commissioners shall, within sixty days thereafter, cause an election to be held at the various places of voting in said county, the said county commissioners giving thirty days' notice in some newspaper published in the county or by posting written or printed notices at the several voting precincts in the county; such notice shall state the time and place of holding, and for what purpose such election is held; and any election provided for in this act may be held on the day of any general election in said county. The place receiving a majority of all the votes cast at such election shall be declared the county-seat; *provided*, that if no place receive a majority of all the votes cast, there shall be held a second election for said seat of justice, on a day not less than twenty nor more than thirty days after the vote of the first election is counted and declared by the said board of county commissioners, which last day shall be fixed by the board of county commissioners, and they shall give notice of the same for at least ten days in the manner provided for the first election. At said second election the balloting for the seat of justice shall be confined to the two places having the highest number of votes at the first election.

The words "each elector being a taxpayer of said county" refer to the preceding word "electors," and hence the petition is sufficient when three-fifths of the qualified tax-paying electors are signers of the petition. State ex rel. Kaufman v. Martin, 31 Nev. 493, 496-500 (103 P. 840).

The fact that one may have failed to register for a special election does not dis-

qualify him as a signer of the petition above required where he possesses the substantial qualifications and is a taxpayer and voter as indicated.

Persons who appear on the assessment roll as paying taxes only in a partnership capacity are taxpayers within the meaning of this section. State ex rel. Kaufman v. Martin, 32 Nev. 197 (106 P. 318-320).

#### 1497. Vote canvassed.

SEC. 2. Within ten days after such election shall be held the board of county commissioners shall meet and proceed to canvass the vote, and the place which has received the majority of all the votes cast shall be proclaimed by them the seat of justice for said county.

**1498. Officers to remove to new location.**

**SEC. 3.** The county officers who are required by law to keep their offices at the county-seat, shall, within twenty days after said proclamation, remove all books, records, papers, and furniture belonging to the county to the place named, and if any officer shall fail to remove within the time prescribed by this section, he or his sureties shall pay to the county the sum of twenty dollars for each and every day of such failure, to be sued for and collected by the board of county commissioners.

**1499. Registry agents to certify petition.**

**SEC. 4.** Every petition for the purpose mentioned in section 1 of this act shall be accompanied by the certificate of the registry agent of the district where the persons signing such petition reside, showing that all the persons whose names are signed to said petition are qualified electors of said county, as appears by the registry list of said district, or the affidavits on file in his office of persons not registered at the last general or special election, but who are qualified electors of said county.

The determination of the question as to whether the signers were on the last assessment roll and as to whether they had taken the oath prescribed by law for the registration of electors, when that fact was certified by the registry agent, are ministerial acts, and mandamus will lie to compel the board to call an election, if the petition is filed by three-fifths of the taxpaying voters, as shown by the roll and registration certified, although the board has already acted

and denied the petition. *State ex rel. Kaufman v. Martin*, 31 Nev. 493, 496, 499 (103 P. 840).

A petition for the removal of a county-seat which alleges every statutory requirement is not void because it also asks that an election be called to determine whether the county-seat shall be removed to a particular place. *State ex rel. Kaufman v. Martin*, 32 Nev. 197 (106 P. 318-320).

**1500. Election, how conducted.**

**SEC. 5.** The election provided for in this act shall be conducted in all respects as provided for by the general election laws of this state, and any person swearing or affirming falsely in taking an oath provided for in this act, shall be deemed guilty of perjury, and held subject to all the penalties attached by law to the commission of that crime.

## COUNTY GOVERNMENT

### COMMISSIONERS

- To create board and define duties and powers, sections 1501-1529.
- Act supplementary to above, section 1530.
- To define manner of electing, sections 1531-1534.
- Presentation and auditing of claims, section 1535.
- Concerning allowance and payment of demands, section 1536.
- In relation to county contracts, sections 1537-1538.
- Limiting power of certain officers, section 1539.
- Authorizing transfer of surplus money from one fund to the other, section 1540.
- Providing for publication of bills, sections 1541-1543.
- Regulating powers and duties of in certain cases, 1544, 1545.
- To fix the number and limit the compensation of, sections 1546-1548.
- Creating boards of examiners, sections 1549-1551.
- To authorize commissioners to build or purchase buildings for county purposes, sections 1552-1554.
- To apportion the county revenues, sections 1555-1557.
- Act supplementary to above, sections 1558, 1559.
- Permitting compilation of index of records and proceedings, sections 1560-1561.
- Relative to abating nuisances, section 1562.
- Relating to county certificates of indebtedness, section 1563.

Prescribing office hours for county officers, sections 1564, 1565.  
 Authorizing commissioners to grant leave of absence, 1566-1568.

#### ASSESSORS

Providing for election of, sections 1569-1576.  
 In relation to, section 1577.  
 Relating to duties of, section 1578.  
 To provide for appointment of deputies, sections 1579, 1580.  
 Authorizing commission on collections from certain taxes, section 1581.

#### AUDITORS

Relating to county certificates of indebtedness, section 1582.  
 To regulate issuance of court orders, section 1583.  
 To provide for obtaining statements of financial condition, sections 1584-1591.  
 To abolish compensation for extending taxes, section 1592.

#### DISTRICT ATTORNEYS

Concerning district attorneys, sections 1593-1607.  
 To require certain reports, sections 1608, 1609.  
 Relating to district attorneys and partners thereof, sections 1610-1612.

#### COUNTY CLERKS

Relating to duties of regarding claims, section 1613.  
 Authorizing retention of certain fees and compensation, section 1614.

#### PUBLIC ADMINISTRATORS

Relating to office and prescribing duties, sections 1615-1627.

#### RECORDERS

Concerning and defining duties, 1628-1632.  
 Relating to duties of in certain counties, sections 1633, 1634.  
 Concerning records now in custody of, sections 1635, 1636.  
 Requiring a receiving book, sections 1637, 1638.  
 For purchase and preservation of newspapers, sections 1639-1642.

#### SHERIFFS

Relating to, sections 1643-1660.  
 Defining duties in relation to filing and posting licenses, section 1661.  
 For relief of purchasers at sales of real estate by public officers, sections 1662, 1663.

#### SURVEYORS

To regulate surveyors and surveying, sections 1664-1674.

#### TREASURERS

In relation to, sections 1675-1686.  
 Authorizing treasurers to place county funds in bank under certain restrictions, sections 1687-1688.

#### CONCERNING CERTAIN OFFICERS

Concerning officers, sections 1689-1692.

#### COMPENSATION, FEES, SALARIES

Fixing compensation of deputies and jailers, sections 1693-1695.  
 Regulating compensations of county officers, sections 1696-1701.

#### COMMISSIONERS

*An Act to create a board of county commissioners in the several counties of this state and to define their duties and powers.*

Approved March 8, 1865, 257

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| 1501. Commissioners, when elected—Terms of office—Vacancies, how filled. | 1503. Meetings of boards.                          |
| 1502. Qualifications—Terms of office—Eligibility—Vacancy.                | 1504. Special meetings—Notice—Business restricted. |
|  | 1505. Quorum—Clerk—Absence of chairman.            |

1506. Compensation of clerk.  
 1507. Records kept at office of clerk.  
 1508. Powers and jurisdiction of board.  
 1509. To act on demands against county.  
 1510. Copy of order of allowance—Proceedings when auditor refuses to allow.  
 1511. Duties of auditor.  
 1512. Indebtedness deducted.  
 1513. Board of canvassers—District judge to canvass—Clerk to issue certificate—Application for recount.  
 1514. May require new bonds of officers.  
 1515. To publish statement of finances.  
 1516. Not to contract debts not authorized by law.  
 1517. Salary—Proviso—Mileage.
1518. Board to fill vacancy in county and township offices.  
 1519. Duty of district attorney.  
 1520. District attorney not to advocate claims.  
 1521. Objections to claims—Made, how.  
 1522. Commissioners shall not be interested in contracts.  
 1523. When suit brought against county.  
 1524. Unaudited claims—When must be presented.  
 1525. Last section mandatory.  
 1526. Rejected claims.  
 1527. County seal.  
 1528. Commissioners empowered to administer oaths.  
 1529. In case of tie vote.

### 1501. When elected—Terms of office—Vacancies, how filled.

SECTION 1. At the general election of the several counties in this state, in A. D. eighteen hundred and seventy, by the qualified electors of each county, a board of county commissioners, to consist of three members, shall be elected, to possess such qualifications and to have such powers as hereinafter provided; *provided*, that in any county where, at the last general election, there were polled four thousand or more votes, such board shall consist of five members. At the general election in A. D. eighteen hundred and seventy, and at such election held every two years thereafter there shall be elected in such county one commissioner to serve upon the board of county commissioners for the term of four years; and a term of four years shall be known, both in this act and for the purpose of the election of county commissioners, as the long term; and the other commissioner or commissioners, as the case may be, necessary to fill the board, shall, at said election, be elected to serve upon the board for the term of two years; *provided*, that in any county or counties which are or shall be under the provisions of this act entitled to a board consisting of five county commissioners, two of the commissioners shall be elected to serve upon the board for the long term. In any county wherein at the last or any future general election there were or shall be polled for the first time four thousand or more votes, the board shall be increased to five members by appointment of the governor, and such appointees shall hold their office until the first Monday of January following the then next general election; and at such next general election in such county or counties, five county commissioners shall be elected as provided in this section of this act. Any vacancy or vacancies occurring in any board of county commissioners shall be filled by appointment of the governor, and such appointee or appointees shall hold his or their offices until the first Monday of January following the then next general election, except as provided otherwise in this act. *As amended, Stats. 1869, 92.*

See secs. 283–284 (Constitution).

The words "last general election," mean the last general election preceding the time when the commissioners are required by law to assume the duties of their office. (Leonard, J., dissenting.) State ex rel. Copeland v. Woodbury, 17 Nev. 337, 341 (30 P. 1006).

Section 26, article 4 of the constitution

(sec. 284 ante) does not prevent the legislature, after the board has been once created, from increasing or decreasing the number of commissioners which shall constitute the board. State ex rel. Copeland v. Woodbury, 17 Nev. 337, 341–350, 353–359 (30 P. 1006).

### 1502. Qualifications—Terms of office—Eligibility—Vacancy.

SEC. 2. Said commissioners shall be qualified electors of their respective counties, and shall enter upon their duties on the first Monday of January succeeding their election, and shall hold their offices two or four years, as the case may be, as provided in this act; and the term of office of two years or four years, as the case may be, shall expire at twelve o'clock p. m. of the

day preceding the first Monday in January following a general election. No county or township officer shall be eligible to the office of commissioner. On entering upon the discharge of the duties of his office, each commissioner, whether elected or appointed under the provisions of this act, shall take and subscribe to the oath of office as prescribed by law; *provided*, that in case such commissioner shall neglect or refuse, during the period of fifteen days from and after the first Monday of January succeeding his election, to take the oath of office as herein directed, his office shall be deemed vacant, and such vacancy shall be filled by appointment as provided in section 1 of this act; *and, provided further*, that the term of office of a person appointed to the office of county commissioners shall not by virtue of the appointment extend beyond the hour of twelve o'clock p. m. of the day preceding the first Monday of January next following a general election. *As amended, Stats. 1869, 92.*

### 1503. Meetings of board.

SEC. 3. The meetings of the board of county commissioners shall be held at the county-seats of their respective counties on the first Monday of each and every calendar month; special meetings may be held at the county-seat for the transaction of business pertaining to the county whenever said meeting shall be authorized by the board by resolution duly adopted and entered upon its minutes at a regular meeting. The board shall also meet on the tenth day after each general election to canvass election returns. *As amended, Stats. 1909, 217.*

The board of county commissioners is not a court as courts are defined in the constitution (ante, sec. 316). Such bodies may lawfully meet and transact business on the first day of January. *Brumfield v. Douglas Co.*, 2 Nev. 65.

Any meeting specially authorized by act of the legislature is valid irrespective of other provisions of the law regarding special meetings.

After a board has adjourned to a day certain it has no power to revoke such order

and meet at an earlier day. *State v. Manhattan S. M. Co.*, 4 Nev. 319, 330, 331, 335.

Any act of a board of county commissioners as such, between its regular meetings, is void where its records show that at the last regular meeting such meeting had been adjourned sine die and failed to show a compliance with the provisions of this act relating to special meetings. *State ex rel. Beck v. Washoe Co.*, 22 Nev. 15, 17 (34 P. 1057).

### 1504. Special meetings—Notice—Business restricted.

SEC. 4. If, at any time after the final adjournment of a regular meeting, the business of the county shall require a meeting of the board, a special meeting of the same may be ordered by a majority of the board. The order shall be entered on the records of the board, and the clerk shall give at least five days' notice of such special meeting to any member of the board not joining in the order; and shall give notice for one week, by publication in a newspaper, if one be published in the county; if none, by notice posted on the court house door. The order shall specify the business to be performed, and no other shall be transacted at such special meeting.

See *State v. Manhattan S. M. Co.*, under preceding section.

See *State ex rel. Beck v. Washoe County*, under sec. 3.

### 1505. Quorum—Clerk—Absence of chairman.

SEC. 5. A majority of the board shall form a quorum for the transaction of business, and all sessions of the board shall be public. They shall elect one of their number as chairman of the board, and the county clerk shall be clerk thereof. The clerk shall keep a full and complete record of all the proceedings of the board, together with a full and complete alphabetical index and page citation of and for said record and proceedings, and all such proceedings shall be entered upon such record. The record of each day's proceedings of said board shall be signed by the chairman and the clerk. In

case the chairman shall be absent at any meeting of the board, all documents, records, or papers requiring the signature of the board shall be signed by the members present. *As amended, Stats. 1909, 140.*

If the authority of the board of county commissioners, acting under limited and special powers, to do a particular thing is questioned, their record must exhibit affirmatively all the facts necessary to give them authority to do such thing, otherwise the presumption is against their jurisdiction. *State ex rel. Swift v. Ormsby Co.*, 6 Nev. 95.

Whenever the jurisdiction of the board of county commissioners depends upon certain facts to be ascertained and determined by it, its record should show that it acted upon the evidence presented and adjudged the facts to be sufficient. *Johnson v. Eureka*

*Co.*, 12 Nev. 28; *Godehaux v. Carpenter*, 19 Nev. 415 (14 P. 140).

The record is the proper evidence of the official doings of the board. The board has the right to amend the record when sitting as a board of equalization so as to make it conform to the truth, and an amendment made by order of the board of commissioners after they had ceased to sit as a board of equalization was admissible in evidence to show the facts upon which the board of equalization acted in reducing an assessment. *State v. C. P. R. Co.*, 17 Nev. 260, 270 (30 P. 887).

### 1506. Compensation of clerk.

**SEC. 6.** The clerk shall receive a compensation for his services of five dollars per day for each day actually employed; in no case to exceed one hundred dollars per annum in the aggregate, and no fee, or other compensation whatever, shall be allowed the clerk for any service connected with the proceedings or business of the board of county commissioners.

Provisions of above section suspended by acts fixing salaries of the several county clerks.

### 1507. Records kept at office of clerk.

**SEC. 7.** The books, records, and accounts of the board shall be kept at the office of the clerk of the board, and shall, during business hours, be open to public inspection free of charge.

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

### 1508. Powers and jurisdiction of board.

**SEC. 8.** The board of commissioners shall have power and jurisdiction in their respective counties:

First—To make orders respecting the property of the county in conformity with any law of this state, and to take care of and preserve such property.

Second—To examine, settle, and allow all accounts legally chargeable against the county, in the manner provided in this act; and to levy, for the purposes prescribed by law, such amount of taxes on the assessed value of real and personal property in the county as may be authorized by law; *provided*, the salary of the district judge need not be audited by the board, but the county auditor shall, on the first day of each quarter year, draw his warrant on the county treasurer in favor of the district judge, for the amount due such judge as salary for the quarter year preceding.

Third—To examine and audit the accounts of all officers, having the care, management, collection, or disbursement of any money belonging to the county or appropriated by law, or otherwise, for its use and benefit.

Fourth—To lay out, control, and manage public roads, turnpikes, ferries, and bridges within the county, in all cases where the law does not prohibit such jurisdiction, and to make such orders as may be necessary and requisite to carry its control and management into effect.

Fifth—To take care of and provide for the indigent sick of the county, in such a manner only as is or may be provided by law.

Sixth—To divide the county into townships and to change the divisions of the same, and to create new townships as the convenience of the county may require.

Seventh—To establish, change, and abolish election precincts, and to appoint inspectors and judges of elections.

Eighth—To control and manage the property, real and personal, belonging

to the county, and to receive, by donation, any property for the use and benefit of the county.

Ninth—Lease or purchase any real or personal property, necessary for the use of the county; *provided*, no purchase of real property shall be made unless the value of the same be previously appraised and fixed by three disinterested persons, to be appointed for that purpose by the district judge, who shall be sworn to make a true appraisal thereof, according to the best of their knowledge and ability.

Tenth—To sell at public auction, at the court house of said county, after at least thirty days' previous public notice (in the same manner as required by law for the sale of like property on execution), and cause to be conveyed any property belonging to the county, appropriating the proceeds of such sale to the use of the same.

Eleventh—To cause to be erected and furnished, a court house, jail, and such other public buildings as may be necessary, and to keep the same in repair; *provided*, that the contract for building the court house, jail, and other buildings, be let out, after at least thirty days' previous public notice, as provided in subdivision ten of this section—in each case of a readiness to receive proposals therefor—to the lowest bidder, who will give good and sufficient security for the completion of any contract which he may make respecting the same. But no bid shall be accepted which the board may deem too high.

Twelfth—To control the prosecution or defense of all suits to which the county is a party; and to offer and allow rewards for the apprehension or conviction of defaulting or absconding county or township officers.

Thirteenth—To do and perform all such other acts and things as may be lawful and strictly necessary to the full discharge of the powers and jurisdiction conferred on the board. *As amended, Stats. 1871, 47.*

County commissioners can only exercise such powers as are specially granted, or as may be necessarily incidental for the purpose of carrying such powers into effect; and when the law prescribes the mode which they must pursue in the exercise of these powers, it excludes all other modes of procedure. *Waitz v. Ormsby Co.*, 1 Nev. 370, 376, 377; *State ex rel. Hess v. Washoe Co.*, 6 Nev. 104; *State v. C. P. R. Co.*, 9 Nev. 79; *Sadler v. Eureka Co.*, 15 Nev. 39, 41; *Godechaux v. Carpenter*, 19 Nev. 415 (14 P. 140); *State ex rel. Beck v. Washoe Co.*, 22 Nev. 15 (34 P. 1057); *Lyon Co. v. Ross*, 24 Nev. 102, 109-113.

County commissioners have authority under subdivision 12 above to employ attorneys to protect the interests of the county in litigation affecting it and to bind their county by contracts for the payment of such attorney's fees. *Ellis v. Washoe Co.*, 7 Nev. 291-293.

This section confers upon the board the power to employ counsel other than the district attorney, and as a consequence to ratify the act of an unauthorized agent in employing such counsel.

Facts amounting to a ratification recited.

Upon such ratification the county became bound to pay what the services were reasonably worth. *Clarke v. Lyon County*, 8 Nev. 182, 188.

The county commissioners have no power to compromise and settle suits instituted by the state for the collection of delinquent taxes.

The only authority giving county commis-

sioners power to reduce or in any manner change taxes as assessed is vested in them as boards of equalization; and when acting in that capacity they must comply literally with the plain provisions of the statute. The county commissioners can neither release the property from the lien nor discharge the property owner from his obligation. *State v. C. P. R. R.*, 9 Nev. 79, 89.

Clause 11 of above section cited, *Evans v. Job*, 8 Nev. 342.

It is the duty of the commissioners to provide an office, at the expense of the county for some of the county officers; but this duty rests to a great extent, in the discretion of the commissioners.

To hold a county liable for rent of an office, the officer must be one who is by law made the custodian of public records, to which the public are at all reasonable times entitled to access; or one who is by law required to keep his office open for the accommodation of the public and for the transaction of public business.

The officer must show that he demanded of the commissioners a suitable office and that they failed and refused to furnish it. *Owen v. Nye County*, 10 Nev. 338, 341.

Cited, *Gibson v. Mason*, 5 Nev. 312.

A writ of certiorari will not be issued to review claims against a county which have been audited, allowed and paid.

The power of commissioners to allow accounts against the county is confined to those "legally chargeable," and a writ of certiorari will issue to review their action. *State ex rel. Beck v. Washoe Co.*, 14 Nev. 66.

The commissioners in the construction of a court house, have the power without further advertisement, to contract for any alterations or changes in the original plans and specifications, provided the same, in the aggregate, do not amount to the sum of \$500, but if further changes are ordered to be made, the commissioners must advertise for doing such work and provide for letting the same to the lowest bidder. *Sadler v. Eureka Co.*, 15 Nev. 39, 41.

The legislature has no power by a special act to repeal the general law regulating county business, or dispense with its provisions in favor of a particular person, leaving it in force as to all others.

The fact that the board of commissioners of a county has no power under the general law to examine or allow any account against the county except such as is legally chargeable against it does not authorize the passage of a special law directing the allowance and payment of an account which could not be allowed under the general law. *Williams v. Bidleman*, 7 Nev. 68, 73.

The making of an order by a board of county commissioners whereby it is ordered that a firm of attorneys be employed in a certain litigation in which the county is interested, is not the exercise of judicial functions, and such order will not be reviewed on certiorari. (*Bonnifield, J.*, dissenting.) *State ex rel. Thompson v. Washoe Co.*, 23 Nev. 247, 254 (45 P. 529).

See other sections of this act following for additional powers and duties of county commissioners.

Absence, leave of, power to grant to certain county officers, secs. 1566-1568.

Actions against county, where brought, sec. 5013.

Advertising, official, may contract for, sec. 2867.

Apiaries, to appoint inspectors of, secs. 477-478.

Audit and examination of accounts of revenue officers, duty to provide for twice each year, secs. 2855-2860.

Board of examiners, members of, duties of, secs. 1549-1551.

Bounties, artesian wells, duty to make examination, secs. 704, 705, 709, 710, 716.

Boundary of counties, may require surveyor-general to run line for, sec. 4349.

Bonds of county officers, may require additional, secs. 2873-2874.

Assessor, sec. 3705.

Public administrator, secs. 1616, 2873.

Bonds, justice of the peace and constable, official to approve, secs. 4927-4928.

Bounties, noxious animals, duty to pay, secs. 722-727.

Budget of county expenses, duty to make, may not exceed except upon special authorization, secs. 3826-3829.

Children, apprenticeships, power to bind to, secs. 483-497, 2919.

County building, duty to provide, secs. 1552-1554.

County funds, power to transfer money in, secs. 1540-1700.

County officers, bonds of, duty to prove, secs. 1664, 1665, 1675, 2872, 2873, 2890, 4928.

County recorder, duty to fix bond of, sec. 1628.

County records, may contract for index to, secs. 1560, 1561.

County revenues, duty to apportion, secs. 1555-1559.

County treasurer, delinquent, may remove, sec. 1685.

Detention homes, required to maintain in counties of over 10,000 population, sec. 742.

District attorney, duty to fix penalty of bond, sec. 1594.

District attorney, duty of to attend meetings of commissioners and give opinions to, secs. 1602, 1604.

District attorney, may make deduction from salary of for neglect of duty, sec. 1597.

District judge, office of, duty to provide, sec. 2941.

Equalization, board of, commissioners to constitute, powers and duties, secs. 3638-3641, 3693, 3793, 3839, 3844.

Exhibits of county products, powers and duties in relation to, may levy special tax for, secs. 3935-3940.

The sale of property acquired by the county from delinquent tax sales, the assessed value whereof is \$100 or more, can be made only at public auction and after thirty days published notice. *Lyon Co. v. Ross*, 24 Nev. 102, 109-113 (50 P. 1).

If a county obtains money or property of others without authority of law, it will be compelled to make restitution, upon the principle that an obligation rests on all persons, natural or artificial, to do justice. *Humboldt Co. v. Lander*, 24 Nev. 462 (56 P. 228).

The commissioners are the only officers authorized generally to purchase supplies, or enter into contracts on behalf of the county. *State ex rel. Caughlin v. Alt*, 22 Nev. 211 (37 P. 486).

Cited, *State ex rel. Thompson v. Washoe Co.*, 23 Nev. 254, 45 P. 529.

The statute provides the funds into which the commissioners may apportion moneys, and if they create a fund for their own convenience in the management of fiscal affairs of the county such fund has no standing in law. *State ex rel. Holley v. Boerlin*, per *Norcross, J.*, concurring, 30 Nev. 480, 98 P. 402.

Under subdivision 4 above, an engineer, authorized to supervise the repairs of a bridge, could not bind the county by requiring the contractor to perform work not called for by the contract. *Lund v. Washoe Co.*, 31 Nev. 227, 233 (101 P. 550).

- Election, certificates of, duty to issue to county officers, sec. 2794.  
 Duty to provide registry agents with books, secs. 1706, 1726.  
 Claims of, to allow, sec. 1716.  
 Registry agent, death of, vacancy to fill, secs. 1721, 1725.  
 Registration list, may require printing of, sec. 1720.  
 Election precincts, to establish, secs. 1768, 1865.  
 Duty to appoint inspectors of, secs. 1768, 1772.  
 Ballot boxes, duty to provide, sec. 1777.  
 Election supplies, duty to furnish, sec. 1769.  
 Booths, duty to provide, sec. 1850.  
 Proclamation of election, secs. 1770, 1880.  
 Determine number of deputy sheriffs, sec. 1789.  
 Custody of ballots, sec. 1795.  
 Excavations, duty to require fencing of, sec. 3238.  
 Fees, county officers to make quarterly reports to commissioners, of collections, sec. 2021.  
 Fish and game licenses, duty to furnish clerks with blanks, secs. 2102, 2104, 2110.  
 Fish and game wardens, appointment of, salaries, reports from, secs. 2050, 2054, 2055.  
 Fish, power to extend closed season, secs. 2056, 2057.  
 Franchises, for furnishing light, heat and power, sec. 1261, et seq.  
 See franchises, secs. 2121-2141.  
 See corporations, secs. 1261-1264.  
 Game, birds, etc., power to adopt ordinance for protection of, sec. 2098.  
 Health, county board of, members of, duties, secs. 2981, 2982.  
 Quarantine, secs. 2996-3003.  
 Highways, powers and duties in relation to, secs. 3004-3062.  
 Horses, sheriff as inspector of, to file report with commissioners, secs. 2291, 2293, 2294, 2296.  
 Hospital and asylum associations (private) must report to commissioners, sec. 1397.  
 Irrigation ditches, duties in relation to, secs. 4724, 4725, 4744.  
 Juries, grand and petit, duty to draw, secs. 4930, 4931, 4936, 4938, 4939.  
 Legislature, vacancy in, special election to be called on writ of governor, sec. 2797.  
 Licenses, collections of, duty of sheriff to report to commissioners, sec. 3740.  
 Licenses, power to revoke when business becomes nuisance, secs. 3867-3871.  
 Libraries, public, duty to levy tax to support, sec. 3297.  
 Approve claims for, sec. 3230.  
 Maps, may direct assessor to prepare for use in assessing city property, sec. 3634.  
 Mining recorders, duty to provide with suitable books, sec. 2465.  
 Newspapers, duty to allow claims for preserving, sec. 1641.  
 Nuisances, duty to abate, sec. 1562.  
 Poll taxes, duty to set aside for exclusive use of road districts, sec. 3841.  
 Poor, duty to make provisions for, secs. 2915-2928.  
 Pure food law, duty to allow bills of sheriff for expense under, sec. 3501.  
 Railroads, may grant permission to use highways, streets and alleys, sec. 3532.  
 Resignations of county officers to be to commissioners, sec. 2793.  
 Revenue officers, may suspend for cause, sec. 3753.  
 Revenue officers, state to allow part compensation on commissioner's voucher, secs. 1701, 3749.  
 Rewards, power to offer in certain cases, secs. 3906, 3907.  
 Schools, duty to establish school districts, secs. 3316, 3326.  
 To levy tax for school purposes, sec. 3378.  
 Sheep inspector, duty to appoint, sec. 2298.  
 Stationary engineers, license of, may grant and revoke, secs. 3898-3904.  
 Sheep inspection fund, duty to levy special tax for, secs. 4589, 4590.  
 Taxes, delinquent, property acquired by county may direct treasurer to sell, secs. 3652, 3667, 3670, 3767.  
 Taxes, delinquent, duties in relation, secs. 3862, 3863.  
 Tax suits, duty to pay certain costs and fees in, sec. 3673.  
 Taxes, to fix rate of and make levy, secs. 3618, 3762-3765, 3818, 3826-3833, 3837.  
 Books for assessment, to furnish, sec. 3623.  
 Taxes, transient live stock, assessments of, duties in relation to, secs. 3853-3859.  
 Telephone lines, power to construct or purchase, secs. 4633, 4634.  
 Town government, powers and duties in relation to, secs. 842, 877-895, 902, 908-918, 922-938, 940-953, 967-974, 984-990.  
 Toll roads, may direct proceedings to forfeit, secs. 3757, 3759.  
 Vacancies, power to declare and fill, secs. 2802, 2803, 2805, 2813, 2853, 2874, 2882.  
 Veterinarian, state, may require services of, sec. 4379.  
 Waters, public, suits to institute for pollution of, may levy tax for expenses, secs. 4716, 4717.

### 1509. To act on demands against county.

SEC. 9. Every demand against the county, except the salaries of the auditor and district judge or judges, shall be acted upon by the county com-

missioners, and allowed or rejected in order of presentation, and must, after having been approved by the board of county commissioners, before it can be paid, be presented to the county auditor to be allowed, who shall satisfy himself whether the money is legally due and remains unpaid, and whether the payment thereof from the treasury is authorized by law, and out of what fund. If he allow it, he shall indorse upon it, the word "allowed," with the name of the fund out of which it is payable, with the date of such allowance, and sign his name thereto, and draw his warrant on the county treasury for the amount allowed. No demand shall be approved, allowed, audited, or paid unless each several item, date, and value composing it be indorsed upon the same, by the order of the board of county commissioners, together with a reference to the law, order, contract, or authority by title, date, and section, authorizing the same.

Claims must be sworn to, sec. 1535.

Clerk to administer oath without charge, sec. 1613.

Reallowance of unpaid claims, sec. 1536.

Claims allowed to be published, secs. 1541, 1542.

Claims of sheriffs and constables for transportation of prisoners, secs. 1544, 1545.

Warrants or certificates of indebtedness paid in the order of issuance, sec. 1582.

Auditor to number and register orders made by district judges for payment of money from county treasury, sec. 1583:

A juror's claim for fees on the certificate of the clerk should be audited like any other demand against the county. *Thornburg v. Herman*, 1 Nev. 477.

See *Williams v. Biddleman*, 7 Nev. 68, 73.

The legislature appropriated money to reimburse the counties for expenses of special election on constitutional amendments. A portion of such claims was disallowed by the board of examiners and suit was brought to recover the amount. The claims against the county were never submitted to the

auditor and never paid by the county. Held, that since the county had never paid the claims nor allowed them so as to make them a legal charge it could not recover them from the state. *Esméralda Co. v. State*, 21 Nev. 195, 197, 27 P. 869.

Where a board of commissioners, without legal justification, refused to allow a claim based upon judgment regularly obtained against the county, mandamus is the proper remedy. *State ex rel. Humboldt Co. v. Lander Co.*, 22 Nev. 71 (35 P. 300).

### 1510. Copy of order of allowance—Proceedings when auditor refuses to allow.

SEC. 10. The county auditor shall sign no warrant authorizing the payment of money by the treasurer (except for the salary of the auditor and district judge or judges), until a copy of the order of the board of county commissioners, allowing the amount, and ordering the payment thereof, together with the account, have been submitted to him, and his allowance indorsed on such order, unless the said auditor shall refuse to audit and allow the same, in which latter case the order shall be presented to the board of county commissioners, with the refusal of the auditor indorsed, and his reasons for such refusal; and should the board order the issuance of such warrant, by a unanimous vote of all the members elected or appointed, the county auditor shall immediately issue such warrants upon service upon him of a copy of such order of the board, certified to by the clerk of the board, that all the members elect voted for its passage; otherwise, the account shall be declared rejected, and no warrant shall thereupon issue. And if said auditor allow such account in part, a warrant shall only issue for such part, unless the board, by a similar unanimous vote, allow a greater sum. No warrant shall be drawn by the auditor on the county treasurer on any fund, unless the money be therein at the time to pay the same; and any warrant drawn contrary to this provision of this section shall be void for all purposes whatsoever.

Sec. 1, Stats. 1871, 56, conflicts with evident intention with secs. 9 to 12 of this act, and being the subsequent expression of legislative will, overrides them to the extent of creating an exception, in favor of jurors, to

the general rules requiring claims against counties to be audited as therein prescribed. *Gillette v. Sharp*, 7 Nev. 245, 247, 248.

See *Esméralda Co. v. State*, 21 Nev. 195, 197, 27 P. 869.

**1511. Duties of auditor.**

SEC. 11. The auditor shall number and keep a record of all demands allowed, showing the number, date, date of approval, amount, and name of the original holder, on what account allowed, and out of what fund payable. The county auditor is required to be constantly acquainted with the exact condition of the treasury, and every lawful demand upon it; and shall report to the board of county commissioners, at each regular meeting thereof, the condition of each fund in the treasury. He shall keep a complete set of books for the county, which shall be open to the inspection of the public, free of charge, during business hours, in which shall be set forth in a plain and businesslike manner every money transaction of the county, so that he can, at any time when requested, tell the state of each fund, where the money came from, to what fund it belonged, and how and for what purpose it was expended, and also the collection made, and the money paid into the treasury by each and every officer.

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

**1512. Indebtedness deducted.**

SEC. 12. No demand upon the treasury shall be approved by the board of county commissioners or allowed by the auditor in favor of any person or officer in any manner indebted to the county, without first deducting the amount of such indebtedness; nor to any person or officer having the collection, custody, or disbursement of public funds, unless his account has been duly presented, passed, approved, and allowed as required by law; nor to any officer who shall have neglected or refused to comply with any of the provisions of this or any other act regulating the duties of such officer, on being required, in writing, to comply therewith by any member of the board of county commissioners.

**1513. Board of canvassers—District judge to canvass—Clerk to issue certificates—Application for recount.**

SEC. 13. The board of county commissioners shall also act as a board of canvassers, and declare election returns, and cause a certificate of election to be given by their clerks to any person who shall be elected to any legislative, county, or township office within their county; *provided*, that when the election shall be held for legislators or county commissioners, the district judge or judges shall canvass and declare the election returns for such legislators or commissioners for which purpose all election returns shall be sealed and delivered according to law, to the county clerk, and by him opened in the presence of the district judge or judges, who shall declare the result as to legislators or county commissioners, and the clerk shall give to such persons elected as legislators or county commissioners a certificate of his election, and the board of county commissioners shall then canvass the returns as to other offices; *and, provided further*, that when said board of county commissioners shall have canvassed the vote for legislators, county and township officers, and it shall appear from such canvass that any legislator, county, or township officer voted for at such election has received a majority of ten votes, or less, in such case, upon the application of the defeated candidate for such office, setting forth, under oath, that he has reason to believe, and does believe, that a mistake or mistakes have occurred on the part of the inspector of election in any election precinct or precincts in said county sufficient to change the result of such election so far as said office is concerned, it shall then be the duty of said board of county commissioners to immediately proceed to recount the ballots for said office of any or all the precincts in said county wherein any mistake or mistakes are alleged to have occurred, and shall continue such count from day to day (Sundays excepted), until the votes of all the election precincts wherein any such mistake

or mistakes are alleged to have occurred shall have been counted, and when said count is completed shall declare the result, and issue the certificate of election to the party entitled thereto, as determined by their said count, but they shall in no case be allowed to throw out any ballot upon any alleged legal defect, if from the face of such ballot it can, upon inspection, be ascertained for whom the elector intended to cast his ballot; *and, provided further*, that nothing herein contained shall prevent either party to said proceeding to contest the right to said office in the courts, in the manner now prescribed by law. *As amended, Stats. 1877, 83; 1879, 118.*

See, also, secs. 1796, 1798, 1800, 1801, 1858, 1863.

Soldiers' vote, sec. 1891; U. S. senator, sec. 1898.

Duty to canvass vote of primary election, secs. 1757, 1762.

Ballots bearing words or marks not authorized are not to be counted, sec. 1858.

Under this section it was held, that the county commissioners did not become functi officio as a canvassing board on their determination of a canvass in the first instance, or on the delivery of the certificate of election to a legislator whose office was contested so as to deprive it of power to recount the votes in such contest.

The fact that the contestant of an election for the office of legislator had a remedy to contest such election before the legislature, did not preclude him from prosecuting his remedy by recount before the board of county commissioners. *Wright v. Commissioners*, 27 Nev. 33-38 (71 P. 145).

#### 1514. May require new bonds of officers.

SEC. 14. The board of county commissioners shall, by an order to that effect entered upon the record, require new bonds of any county or township officer, with additional securities, whenever they deem the same necessary, and may require of all county or township officers, intrusted with the collection, management, safe keeping, or disbursement of public funds, a monthly report of all collections and disbursements made by them during the preceding month; and may at any time examine their books, accounts, and vouchers. They shall see that all the county and township officers intrusted with the collection, disbursement, safe keeping, or management of the public revenue, faithfully perform the duties imposed upon them by law, and shall cause them to be prosecuted for any delinquencies.

#### 1515. To publish statement of finances.

SEC. 15. The boards of county commissioners shall, within sixty days after the passage of this act, ascertain the amount of the existing debt of their respective counties, and the amount and condition of all revenue and property belonging to the county, and cause a statement of the same to be made out and published; and quarterly thereafter, the board shall publish a statement of the receipts and expenditures of the three months next preceding, and the accounts allowed. Said publications shall be made by making one insertion of the statement in a newspaper published in the county, but if no newspaper be published in the county, then such publication shall be made by posting a copy of said statement at the court house door, and at two other public places in the county.

#### 1516. Not to contract debts not authorized by law.

SEC. 16. The board of county commissioners shall not for any purpose contract debts or liabilities, except those expressly authorized by law, and whenever debts or liabilities have been created, which, added to the salaries of county officers and other estimated liabilities, fixed by law for the remainder of the year, shall equal the money on hand in the treasury at the time applicable to the payment of such salaries and said other fixed liabilities, then no allowance shall be made of any account, nor shall any expense be incurred other than salaries and fees and fixed liabilities, expressly authorized by law, during the remainder of said year. *As amended, Stats. 1893, 120.*

Commissioner cannot vote on contract which extends beyond his term. Sec. 1537.

### 1517. Salary—Proviso—Mileage.

SEC. 17. Each member of the board of county commissioners shall be entitled to receive for his services a sum not to exceed in the aggregate the sum of six hundred dollars per annum; *provided*, that in any county where at the last general election there were polled four thousand or more votes, such member of the board of county commissioners shall be entitled to receive for his services a sum not to exceed the sum of one thousand dollars in the aggregate during one year; *and, provided further*, that in any county where at the last general election there were polled five thousand or more votes, each member of the board of county commissioners shall be entitled to a sum not to exceed in the aggregate during one year the sum of thirteen hundred and twenty dollars, and each member of the board of county commissioners shall receive twenty cents per mile for each mile necessarily traveled in going to and returning from the county-seat to attend any session of said board; *provided*, that but one charge shall be made for going and returning from the residence of such commissioner at any one session of such board; *and, provided further*, that no commissioner shall be allowed any compensation for services by reason of his being on any committee appointed by the board, or for any cause other than as herein provided. *As amended, Stats. 1869, 94; 1879, 125.*

[Sec. 18 repealed, Stats. 1869, 92.]

Limitation of amount of salary, sec. 1547.

The compensation of county commissioners is regulated by the provisions of the salary act (Stats. 1879, 133).

The provision allowing mileage in the former law was intended as a part of the compensation of commissioners for their

services. The language of the salary act that the salaries fixed "shall be in full for all services," excludes the idea that the legislature intended to allow the former provision on that subject to stand. State ex rel. Scott v. Trousdale, 16 Nev. 357, 358.

### 1518. Board to fill vacancy in county and township offices.

SEC. 19. When a vacancy shall occur in any county or township office, except the office of county commissioner, the board of county commissioners shall appoint some suitable person, an elector of the county, to fill the vacancy until the next general election.

See sec. 1607, District Attorney, also sec. 2803.

The phrase "next general election," means the general election on alternate years, commencing with 1864, and has no reference to the election of 1865, which is in some

respects to be held as a special election, interpolated on the general system of biennial election. State ex rel. Daggett v. Collins, 2 Nev. 351-354.

### 1519. Duty of district attorney.

SEC. 20. The district or prosecuting attorney, when not engaged in the district court, in the discharge of his official duties, shall attend the sittings of the board of county commissioners when engaged in auditing accounts and claims brought against the county, and in all cases shall oppose such accounts or claims as he may deem unjust, illegal, or extortionate.

### 1520. District attorney not to advocate claims.

SEC. 21. No district or prosecuting attorney, except for his own services, shall be allowed to present any claim, account, or demand for allowance against the county, or in any way to advocate the relief asked on a claim or demand made by another.

### 1521. Objections to claims made, how.

SEC. 22. Any person being a resident and taxpayer of the county may appear before and file with the board of county commissioners of the county wherein he resides written objections to the allowance of any claim or claims, demand or demands against the county. Such objections in writing shall properly describe the claims or demands objected to, and the board of county

commissioners shall file the same and embody such objections in the record of their proceedings, and lay such claims or demands on the table for a definite period of time, not less than ten days, at the expiration of which time they may proceed to consider the claims or demands so objected to, together with the objections, unless proceedings have been instituted in a court of competent jurisdiction to determine the validity of such claims or demands. *As amended, Stats. 1893, 121.*

Any resident taxpayer has the right to oppose in a proper manner, the allowance of a claim against a county both before the board of county commissioners and in the courts.

The board has no jurisdiction to act after objections have been filed and proceedings instituted in the court, to determine the validity of a claim, and they have been notified thereof. *State ex rel. Hayes v. Gallagher, 22 Nev. 80, 84, 87.*

It was held that, since amendment of Stats. 1893, 120, to above section provided an adequate remedy, certiorari would not lie at the

instance of a taxpayer to review the action of a board in entering into a contract for indexing certain county records. *State ex rel. Murphy v. White Pine Co., 31 Nev. 113, 118, 119 (101 P. 104).*

Where an act of the legislature authorizes the county commissioners to instruct the auditor to issue to the holder of the original a certificate in place of one that has been lost, the issuance of such certificate cannot be restrained on the ground that it is the creation of an unjust indebtedness against the county or an injury to taxpayers. *Hayes v. Davis, 23 Nev. 318, 319 (46 P. 888).*

## 1522. Commissioners shall not be interested in contracts.

**SEC. 23.** No member of the board of county commissioners shall be interested, directly or indirectly, in any property purchased for the use of the county, or in any purchase or sale of property belonging to the county, nor in any contract made by the county for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes; *provided*, that the board may purchase supplies for the county, not to exceed thirty dollars, in the aggregate, in any one month, from one of their number, when not to do so would be a great inconvenience, but the member from whom said supplies are purchased shall not vote upon the allowance of said bill, and a violation of this act shall be a misdemeanor, punishable by fine of not less than one hundred dollars and not exceeding five hundred dollars, and shall be cause for removal from office. *As amended, Stats. 1889, 35.*

See secs. 1530, 2827, 2829, 2830.

See crimes act, sec. 6331.

See provisions relative to purchase of supplies, secs. 3479, 3480.

Commissioner cannot vote on contract which extends beyond his term, sec. 1537.

Cited, *State ex rel. Thompson v. Washoe Co., 23 Nev. 254, 255 (48 P. 529).*

## 1523. When suit brought against county.

**SEC. 24.** No person shall sue a county in any case for any demand, unless he or she shall first present his or her claim or demand to the board of county commissioners and county auditor for allowance and approval, and if they fail or refuse to allow the same, or some part thereof, the party feeling aggrieved may sue the county; and if the party suing recover in the action more than the said board allowed, or offered to allow, said board and auditor shall allow the amount of said judgment and costs as a just claim against the county; but if the party suing shall not recover more than the board and auditor shall have offered to allow him or her, then costs shall be recovered against him or her by the county, and may be deducted from such demands.

Where the relief sought is not damages, but an injunction to prevent the commissioners from committing an unlawful act, as the opening of a road through plaintiff's land without having compensated him, and which, if opened, would result in damages, no demand need be made. *Champion v. Sessions, 1 Nev. 478, 482.*

Cited, in dissenting opinion of Beatty,

*C. J., Washoe Co. v. Humboldt Co., 14 Nev. 136.*

The commissioners allowed the sheriff a certain amount for services as a jailer which he refused to accept. He brought suit for more than \$300: Held, that under this section he was entitled to costs provided he recovered more than commissioners allowed, notwithstanding the fact that the

amount recovered was less than \$300. *Randall v. Co. of Lyon*, 20 Nev. 35, 38 (14 P. 583).

Cited, *Co. of Esmeralda v. State*, 21 Nev. 197, 27 P. 869.

The rendition of a judgment against a

county is an auditing of a claim within this section and it becomes the duty of the commissioners to allow it as an audited claim, unless some sufficient defense exists to the judgment. *State ex rel. Humboldt Co. v. Blossom*, 22 Nev. 71, 76, 77 (35 P. 300).

### 1524. Unaudited claims, when must be presented.

SEC. 25. All unaudited claims or accounts against any county in this state, shall be presented to the board of county commissioners of said county, duly authenticated, within six months from the time such claims or accounts become due or payable; *provided*, nothing contained in this section shall be so construed as to prevent the presentation and auditing of any claim now due against any county in this state, at any time within nine months from the passage of this act.

Where the expenses of a criminal trial have been properly audited in a county where the trial was had, it is unnecessary to have the same claims verified and presented as unaudited accounts to the commissioners

of the county from which the cause was transferred (*Beatty, J., dissenting*). *Washoe Co. v. Humboldt Co.*, 14 Nev. 124, 135, 137.

See *State ex rel. Humboldt Co. v. Blossom*, under sec. 24 of this act.

### 1525. Last section mandatory.

SEC. 26. No claim or account against any county in this state shall be audited, allowed, or paid by the board of county commissioners, or any other officer of said county, unless the provisions of the last preceding section are strictly complied with.

See *Washoe Co. v. Humboldt Co.*, under sec. 25 of this act.

### 1526. Rejected claims.

SEC. 27. No claim which has once been presented and rejected, shall ever again be considered or allowed by the same, or any subsequently elected or appointed board of county commissioners of the same county.

### 1527. County seal.

SEC. 28. The seal of the county shall be the seal of the board of county commissioners.

### 1528. Commissioners empowered to administer oaths.

SEC. 29. The commissioners are authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their offices.

### 1529. In case of tie vote.

SEC. 30. When a majority only of the members shall be present at the meeting of the board, in case of a tie vote on any question, it shall be postponed to a subsequent meeting.

*An Act to amend an act entitled "An act supplementary to an act entitled 'An act to create a board of county commissioners in the several counties of the state and to define their duties and powers,' approved March 8, 1865," approved February 19, 1867.*

Approved March 24, 1911, 368

### 1530. Must advertise for bids for contracts over certain amount—Proviso.

SECTION 1. In letting all contracts of any and every kind, character, and description whatever, where the contract in the aggregate exceeds the sum of five hundred dollars, the county commissioners shall advertise such contract or contracts to be let, stating the nature and character thereof—and when plans and specifications are to constitute part of such contract, it shall be stated in the notice where the same may be seen—in some newspaper

published in their county, for the period of thirty days; in case the contract be for constructing any public building, then the advertisement shall be in that paper published in the county which is nearest the selected location for such building; and in case there shall be no newspaper published in their county, then by posting notices of the same in five of the most conspicuous and public places in their county for the same period of time. All such contracts shall be let to the lowest responsible bidder, subject to the provisions of the twenty-third section [1522, supra] of the act to which this is supplementary; *provided*, that the provisions of this act shall not apply to contracts for the construction or repair of bridges, highways, streets or alleys where the same conflicts with other acts in relation to bridges, highways, streets or alleys.

Original act, Stats. 1867, 59, consisting of but one section, was superseded by above, and therefore omitted.

Cited, State ex rel. Norcross v. Washoe Co., 22 Nev. 406 (11 P 145); State ex rel. Thompson v. Washoe Co. (opinion of Bonfield, J. dissenting), 23 Nev. 254, 255 (45 P. 529).

Act construed, Office Specialty Mfg. Co. v. Washoe Co., 24 Nev. 359, 363 (55 P. 222).

Act held inconsistent with act incorporating Reno (Stats. 1897, 50). Reno W. L. & L. Co. v. Osborn, 25 Nev. 53, 66, 67 (56 P. 945).

Cited, State ex rel. Office Specialty Mfg. Co. v. Curler, 26 Nev. 347, 352 (67 P. 1073).

Under Stats. 1899, 60, to regulate allowance and payment of certain claims against counties, later repealed, it was held: Mandamus should not be granted to compel a technical compliance with the strict letter of the law, in disregard of its spirit.

Relator presented its claim against Washoe County under said act. The transaction upon which the claim was based had previously been judged fraudulent.

It appeared that there was no dispute as to the value of the property in question. It was held that the county was not bound under said act to submit the question of the value of the property to appraisers where there was no dispute as to its value nor to pay the award of appraiser appointed under its provisions regardless of any meri-

torious defense the county may have, and that the compelling of a county to pay a claim which had been adjudged fraudulent was not within its object. State ex rel. Office Specialty Co. v. Beck, 25 Nev. 105, 111, 112 (57 P. 935).

Under said act it was held that where the district judge heard the petition of a person claiming the benefit of the same, but refused to appoint the appraisers, mandamus will not issue to compel the judge to make such appointment, since the power to hear, involved the power to determine, and, the determination upon such hearing being a judicial act, it could not be reviewed by mandamus. State ex rel. Office Specialty Co. v. Curler, 26 Nev. 347, 351, 354 (67 P. 1075).

See secs. 3005, 3019.

See provisions relative to purchase of supplies, secs. 3479, 3480.

### *An Act to define the manner of electing county commissioners.*

Approved February 21, 1893. 33

1531. Commissioner districts.

1533. Terms of office.

1532. Precincts to be designated.

1534. Electors.

#### 1531. Commissioner districts.

SECTION 1. Whenever twenty per cent or more of the qualified electors of any county in this state shall petition the board of county commissioners of their county to that effect, it shall be the duty of the county commissioners of such county, on or before the first Monday in July preceding any general election, to divide the county into three districts to be known as "Commissioner Districts." Such division shall be made to conform to the established boundaries of election precincts or wards, and each and every election precinct or ward shall be wholly within one of the commissioner districts herein provided for. Each commissioner district shall embrace, as near as may be, one-third of the voting population of the county, to be determined by the vote cast at the last general election, and shall consist of adjoining precincts; *provided*, that in case not more than three election precincts or wards exist in the county, then each election precinct or ward shall constitute a commissioner district.

**1532. Precincts designated.**

SEC. 2. It shall be the duty of the board of county commissioners to cause to be published in some newspaper in the county, if there be one, and if not, then by the posting at the door of the court house, and one or more conspicuous places in each of the commissioner districts, a notice specifying the election precincts or wards embraced in each of the commissioner districts so established. Such notice shall be posted or published for a period not less than twenty days prior to each general election.

**1533. Terms of office.**

SEC. 3. The commissioner designated in the statute as the "long term" commissioner shall represent the district in which he resided when elected, and at the general election in the year eighteen hundred and ninety-four, and every two years thereafter, there shall be elected a commissioner from each of the remaining districts, one for the "long term" and one for the "short term," as now provided by law.

**1534. Electors.**

SEC. 4. County commissioners shall be elected by the qualified electors of the county wherein they reside as other county officers are now elected. *As amended, Stats. 1895, 39.*

*An Act to regulate the presentation and auditing of demands against counties.*

Approved March 13, 1867, 115

**1535. Accounts sworn to—Certificate—Fees.**

SECTION 1. Accounts presented against a county must be sworn to by the claimant, or some one in his behalf, before the county auditor, or some other officer authorized by law to administer oaths; and at the request of the claimant, the auditor shall issue a certificate and deliver the same to the claimant, showing the amount allowed, and out of what fund payable. No more than one certificate shall be issued upon the same allowance, unless the same be plainly marked or shown on the face thereof to be a duplicate certificate. No fee shall be allowed or charged by the county auditor for any service as herein provided to be rendered by the auditor, except as follows: For swearing the claimant, when the demand exceeds fifty dollars, fifty cents; and for issuing the certificate, when the amount allowed exceeds said sum of fifty dollars, one dollar.

Cited, Washoe Co. v. Humboldt Co., 14 Nev. 137; Esser v. Spaulding, 17 Nev. 300 (30 P. 896).

*An Act concerning the allowance and payment of demands against the several counties of this state and barring the payment thereof in certain cases.*

Approved February 4, 1881, 25

**1536. County funds assigned to payment of claims — Reallowance — Debarred from payment.**

SECTION 1. That when there shall be in the general, school, contingent, indigent sick, or road funds of any county in this state, any sum or sums of money which have been in such fund for the term of two years or more by reason of the failure or neglect of the owner or owners of such indebtedness to demand the payment of the same, such sum or sums of money shall be applied to the payment of the more recent indebtedness of such county payable out of such fund. And in case the owner or owners of such allowance or allowances shall demand such sum or sums of money within six years from the date of the original allowance of such sum or sums of moneys, and after such sum or sums of money have been so applied, the

board of county commissioners of such county may again allow such demand for the amount originally allowed, without interest, and no more, and any such demand, so reallocated shall be paid in the order of its reallocation, out of the fund originally accountable therefor, in case there be any such fund, and in case there shall at said time be no such fund, then such demands shall be paid in the order of its reallocation, out of the general fund of such county; but should the payment of such sum or sums of money not be demanded within six years from and after the original allowance of such demand or demands, then such indebtedness shall not be reallocated by such board of county commissioners, and the payment thereof shall be forever barred; *provided*, that nothing in this act shall be so construed to affect or repeal any act providing for the redemption or funding of the indebtedness of any county in this state.

Sec. 23 of the salary act is not repugnant to this section. *Esser v. Spaulding*, 17 Nev. 289, 309.

*An Act in relation to county contracts.*

Approved March 16, 1895, 88

**1537. County contracts.**

SECTION 1. No member of any board of county commissioners within this state, shall be allowed to vote on any contract which extends beyond his term of office.

**1538. Penalty.**

SEC. 2. Any county commissioners violating section 1 of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined a sum not less than one hundred nor exceeding five hundred dollars, or three months in the county jail, or both.

*An Act limiting the power of certain county officers.*

Approved March 3, 1887, 108

**1539. None but commissioners to contract.**

SECTION 1. No county officer in any county in this state, except the board of county commissioners, shall contract for the payment or expenditure of any county moneys for any purpose whatever, or shall purchase any stores or materials, goods, wares or merchandise, or contract for any labor or service whatever, except the board of county commissioners, or a majority of them, shall order such officer to do the same.

This section being expressed in negative terms, repeals Stats. 1866, 189, which required the sheriffs to furnish at the expense of the counties, all necessary supplies for the prisoners committed to their custody, and left the sheriffs without

authority to bind their counties by contract for the board of prisoners.

Negative statutes are mandatory and must be presumed to have been intended to repeal all conflicting statutes, unless the contrary can be clearly seen. *State ex rel. Caughlin v. Alt*, 22 Nev. 203, 209-212 (37 P. 486).

*An Act to authorize the county commissioners in the several counties in this state to loan or transfer surplus money from one fund to the other.*

Approved February 9, 1881, 32

**1540. To transfer surplus money.**

SECTION 1. The county commissioners in the several counties in this state are hereby authorized and empowered to transfer any surplus money which may be in any of the county funds of the respective counties (except the school fund) from one or more of said funds, to another or others, and transfer the same back to the fund or funds from which said surplus money was taken, at such times and in such manner as, in the judgment of said commis-

sioners, the best interest of the county may require. *As amended, Stats. 1887, 111.*

State v. Storey Co., 17 Nev. 96.

Sec. 23 of the salary act is not repugnant to this section. There is no conflict between these acts. Esser v. Spaulding, 17 Nev. 290, 309.

this act. State ex rel. School Trustees v. County Commissioners, 17 Nev. 96, 103.

Cited, State ex rel. Holley v. Boerlin, 30 Nev. 490 (98 P. 402).

The act of 1879, 35, was not repealed by

*An Act providing for the publication of all bills allowed by the boards of county commissioners in this state.*

Approved February 1, 1893, 13

#### 1541. To publish claims allowed.

SECTION 1. The county commissioners of the different counties in this state shall cause to be published in some newspaper, published in their respective counties, the amount of all bills allowed by them, together with the names of the persons to whom such allowances are made; *provided*, that in counties where there are no papers published the board of county commissioners shall cause to be posted by the clerk of said board, at the door of the court house in such county, the allowances provided for in this act.

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

#### 1542. Price of printing.

SEC. 2. The amount paid for such publication shall not exceed the sum of one dollar per square of ten lines, and the publication shall not extend beyond a single insertion.

#### 1543. Repeal.

SEC. 3. An act entitled "An act providing for the publication of bills allowed by the boards of county commissioners in this state," approved March 1, 1883 [p. 86], and all acts amendatory thereof and supplementary thereto passed and approved prior to the year 1893, are hereby repealed.

*An Act regulating the powers and duties of the board of county commissioners of the several counties within this state in certain cases.*

Approved March 6, 1879, 72

#### 1544. Delivery of prisoners to jails—Mileage of officers.

SECTION 1. The board of county commissioners of the several counties within this state are hereby authorized and directed, from and after the passage of this act, to examine, audit and allow to any sheriff or constable, in any one of said counties, the actual fare paid by such officer in the conveyance or transportation of any one or more prisoners, that may be committed to the county jail, by the justice of the peace of such county or counties, in addition to the amount now allowed by law for the safe keeping and delivering of prisoners to the county jail; *provided*, such officers shall upon the presentation of their bill or bills, for the fare actually paid in pursuance of the provisions of this act, such bill or bills shall be accompanied with a receipt showing the amount paid, and by what conveyance said prisoner or prisoners was conveyed to said county jail, whether by the means of railroad, stage-coach, or private conveyance; and in no case shall a greater sum be allowed for a private conveyance than is usually charged by stage conveyance for a similar distance, such amount shall always be determined by the board of county commissioners, in accordance with their best judgment and information.

#### 1545. County auditors to draw warrants.

SEC. 2. The county auditor of the several counties within this state, are

hereby authorized and directed to draw his warrant upon the general fund for the payment of such sum as may be allowed by the county commissioners from time to time, in accordance with the provisions of section 1 of this act, and the county treasurer of the several counties is hereby directed to pay the sum upon presentation in their regular order.

*An Act to fix the number and limit the compensation of county commissioners.*

Approved March 1, 1883, 96

**1546. Number in any county.**

**SECTION 1.** Hereafter each board of county commissioners of the several counties of this state shall consist of three members; and not more than three county commissioners shall be elected or appointed to such office in any county of this state.

Copeland v. Woodbury, 17 Nev. 337.

**1547. Compensation.**

**SEC. 2.** No county commissioner hereafter elected, or appointed, shall receive as compensation for his services as such commissioner an amount to exceed nine hundred (\$900) dollars per annum.

See sec. 1517.

**1548. When not affected.**

**SEC. 3.** This act shall not be so construed as to limit the number or affect the compensation of county commissioners now holding office by virtue of election or appointment.

*An Act creating boards of examiners in the several counties of this state.*

Approved January 31, 1881, 21

**1549. County board of examiners.**

**SECTION 1.** The board of county commissioners and the county auditor of each county in this state are hereby created a board of examiners.

**1550. Auditor's duties—Commissioners to count money.**

**SEC. 2.** The county auditor in each county in this state shall, in the months of January, April, July, and October, of each year, in counties having polled a vote at the last general election prior to the passage of this act of less than twelve hundred votes, and once a month in counties having polled, at said election, twelve hundred or more votes, furnish the board with a statement of the amount of money, securities, and other property in the custody of the county treasurer, and shall, in company with the board of commissioners, count, examine, and inspect the same and carefully determine whether the funds, securities, and property of the county are all on hand and properly protected in the full amounts belonging to the county, and the county treasurer shall assist and, as far as possible, facilitate such examination.

Cited, State v. Nevin, 19 Nev. 167 (7 A. S. 873, 7 P. 650).

**1551. Neglect of duty, how punished.**

**SEC. 3.** If any board of commissioners, or any member of any board of commissioners, or the county auditor shall refuse or neglect to comply with the provisions of this act, or if the county treasurer shall, in any way, prevent such examination, such person so neglecting or violating the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one hundred dollars, and may be imprisoned at the discretion of the court, and shall be removed from office.

*An Act to authorize the county commissioners of the several counties of this state to build or purchase buildings suitable for county purposes.*

Approved March 10, 1865, 377

**1552. Authorized to build or purchase buildings.**

SECTION 1. In any county in this state, not at present supplied with suitable buildings for county purposes, it shall be lawful for the board of county commissioners of such county, to build or purchase, in their discretion, the buildings required.

**1553. To issue bonds—Proviso.**

SEC. 2. For such purposes the board of county commissioners are hereby authorized and empowered to issue bonds of such county, in an amount not to exceed the sum of twenty-five thousand dollars; *provided*, that in counties where the voting population shall be more than four thousand, the said county commissioners may issue bonds in a sum not to exceed sixty thousand dollars; *provided, further*, that such bonds shall not in any county bear interest at a rate exceeding two (2) per cent per month, which, principal and interest shall be payable at such times as may be determined, in gold or silver coin of the United States.

**1554. Payment by special tax.**

SEC. 3. On any county availing themselves of the privileges of this act, the board of county commissioners are hereby authorized and empowered to levy a special tax, not to exceed one-half of one per cent on the taxable property in the county, for the purpose of paying the interest and principal of the bonds or warrants herein authorized to be issued, and the same shall be set apart for the purposes herein specified; *provided*, that should there be any excess of such fund hereby created, after paying the principal and interest of such bonds or warrants, such excess shall be transferred to the general fund of such county; *provided, further*, that should there not be a sufficient amount of said fund collected to liquidate the indebtedness hereby authorized to be created, at the time such indebtedness may become due, then, and in that case, such deficiency shall be paid from the general fund of such county, and the board of county commissioners are hereby authorized and required to draw their warrants upon the general fund for such deficiency.

*An Act authorizing the board of county commissioners of the several counties of this state to apportion the county revenues.*

Approved March 10, 1865, 376

**1555. County money to be apportioned to various funds.**

SECTION 1. The boards of county commissioners in the several counties of this state shall apportion all the moneys coming into the county treasury, or so much thereof as is not by law set aside into special funds, as follows: Two-thirds shall go into the general county fund; one-sixth, or so much thereof as may be necessary, shall go into the indigent sick fund; and one-sixth, or so much thereof as may be necessary, shall go into the contingent fund, to defray the contingent expenses of the county. Said apportionment shall be made by an order entered upon their records, at the time the tax levy shall be made each year (see secs. 1558-1559); [The following proviso added by amendment, Stats. 1899, p. 40] *provided*, that in all counties polling at the last general election preceding the passage of this act, more than six hundred and twenty-five votes, and not exceeding seven hundred and twenty-five votes, to be determined by the vote cast for member of Congress, one-fourth, or so much thereof as may be necessary, shall go into the contingent fund;

one-fourth, or so much thereof as may be necessary, shall go into the indigent sick fund, and the remainder into the general fund.

See Const. (art. 4, sec. 20), sec. 278.

### 1556. Not to interfere with special fund.

SEC. 2. Nothing in this act shall be so construed as to authorize the said board to disturb, or in any manner to interfere with any special fund which has been or which may hereafter be created by law.

Humboldt County v. Churchill County, 6 Nev. 30.

### 1557. Duty of treasurer.

SEC. 3. It shall be the duty of the state treasurers of the several counties of this state to apportion and pay into the funds, as directed by said board of county commissioners, all moneys coming into their hands.

The mere fact that a creditor, having the right of payment out of the "general fund" of a county may have the right to enjoin the county auditor from issuing warrants in favor of others against such fund, does not give him a right to restrain the auditor from issuing warrants against other funds.

Under this act it is within the power of the commissioners to authorize the payment of indebtedness incurred in the construction or repair of roads and bridges, out of the "general fund" and of the auditor to draw

warrants thereon for such indebtedness. Webster v. Fish, 5 Nev. 190, 193.

Cited, Schweiss v. District Court, 23 Nev. 232 (34 L. R. A. 602, 45 P. 289).

Cited, State ex rel. Holley v. Boerlin, 30 Nev. 480 (98 P. 402).

This act provides how the county money shall be apportioned, and the law provides how the money in the general fund shall be paid out. The commissioners have no authority to make a change in this respect. State ex rel. Flack v. Washoe Co., 1 Nev. 460-463.

*An Act amendatory of and supplemental to an act entitled "An act authorizing the board of county commissioners of the several counties of this state to apportion the county revenues," approved March tenth, eighteen hundred and sixty-five.*

Approved February 21, 1866, 74

### 1558. Unlawful to pay fees out of contingent fund.

SECTION 1. It shall not be lawful to pay, or order to be paid, any fees, per diem, or salary of any county officer or county commissioner, out of the contingent fund of any county of this state, created by "An act authorizing the board of county commissioners of the several counties of this state to apportion the county revenues," but such contingent fund shall only be applied to the payment of the legitimate contingent expenses of said counties.

See sec. 1555.

### 1559. Misdemeanor.

SEC. 2. Any county commissioner who shall order the payment of any such fees, per diem, or salary, out of said contingent fund, and any county auditor who shall draw his warrant on such contingent fund for the payment of such fees, per diem, or salary of any county commissioner or other county officer, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than five hundred dollars, and be removed from office.

*An Act permitting the board of county commissioners of the several counties of the state, in certain cases, to cause to be compiled a full and complete alphabetical index and page citation of and for its records and proceedings, providing for bidders for compiling the same, where the cost thereof amounts to \$500, and for the cost, payment, and approval of said index and page citation.*

Approved March 20, 1909, 140

### 1560. Index of county records.

SECTION 1. The board of county commissioners of the several counties of

this state, may in their discretion cause to be compiled a full and complete alphabetical index and page citation of and for all of its records and proceedings, where the same do not now exist, and are not now, or may not hereafter be, otherwise enjoined by law to be compiled and kept.

### 1561. By contract, when.

SEC. 2. Should the cost for compiling said index and page citation in any case amount to the sum of \$500, such compilation shall be let and done by contract by the lowest and best bidder therefor, as is now provided for by law; otherwise the same may be done by such responsible person or persons as the board may employ for that purpose; and such compilation when completed shall be subject to the approval of said board, and payment therefor shall be a valid and subsisting claim against the county, and shall be allowed, approved and paid, in the manner as is now provided by law.

*An Act to define the duties of county commissioners and district attorneys, relative to abating nuisances in the several counties of the State of Nevada and matters connected therewith.*

Approved March 2, 1901, 39

### 1562. Abating nuisances, action for—Penalty for official neglect.

SECTION 1. Whenever, in any county of this state, the county commissioners of said county shall have knowledge, either by personal observation, complaint in writing, or other satisfactory evidence, that a nuisance exists within the limits of said county, as defined by section 3346 of the Compiled Laws of Nevada [infra, 5504] it shall be the duty of said board of county commissioners to take immediate action by entering and recording an order in the minutes of said board, directing the district attorney to notify the person or persons responsible for such nuisance to abate the same, and in case the said notice is not obeyed within five days from and after such service, the said district attorney is hereby directed and empowered to bring action in a court of justice to enforce or abate the same, together with the recovery of damages and costs. Said action shall be under the control of the board of county commissioners in like manner as other suits to which the county is a party, and all necessary expenses incurred in conducting said action shall be paid out of the general fund of said county as other claims are paid. Failure on the part of either county commissioners or district attorney to enforce the provisions of this act shall work forfeiture of office.

Section 5504, infra, same as sec. 3346, Compiled Laws.

*An Act relating to county certificates of indebtedness, or warrants.*

Became a law March 18, 1885, 128

### 1563. Warrants payable in order of issuance.

SECTION 1. All warrants or certificates of indebtedness issued by county auditors, as such, shall be paid in the order in which they are issued; *provided*, that whenever any county warrant or certificate of indebtedness shall not be presented for payment within six months after notice shall have been given that said warrant or certificate is payable, the money held for payment of such warrant shall be paid out as other county funds, but whenever any warrant as aforesaid shall thereafter be presented, the same shall be deemed then due and payable; *and, provided further*, that nothing in this act shall be so construed as to prevent the transfer of money from one county fund to another, as provided by law.

See sec. 1540, transfer of funds.

*An Act regulating and prescribing the hours that sheriffs, county recorders, county clerks, county treasurers, and district attorneys of all of the counties in the State of Nevada shall keep their offices open for the transaction of public business, and providing a penalty for the violation thereof, and repealing all acts in conflict herewith.*

Approved March 29, 1907, 373

#### 1564. Office hours—Exception.

SECTION 1. The sheriffs, county recorders, county clerks, county treasurers and district attorneys shall keep an office at the county-seat of their county, which shall be kept open on all days except Sundays and nonjudicial days, from nine o'clock a. m. to twelve o'clock a. m., and from one o'clock p. m. to five o'clock p. m. for the transaction of public business; *provided*, that the provisions of this act shall not apply to the district attorney when called away from his office by official duties.

#### 1565. Idem—Penalty.

SEC. 2. Any officer violating the provisions of section 1 of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars, nor more than thirty dollars, or by imprisonment in the county jail not less than five days, nor more than fifteen days.

*An Act authorizing boards of county commissioners to grant leave of absence to county officers.*

Approved March 6, 1893, 104

#### 1566. Leave of absence, how granted.

SECTION 1. The board of county commissioners in any county of this state is hereby authorized and empowered to grant leave of absence to any county officer, authorized to appoint a deputy, for a period not exceeding six months, if in the discretion of said board such a cause [course] appears proper.

#### 1567. Application for leave of absence.

SEC. 2. The officer desiring leave of absence shall first make an application in writing to the board of county commissioners for such leave, and a copy of such application shall be published in some newspaper of the county at least one month previous to the granting of such leave. If there be no newspaper published in the county, copies of said application shall be posted in at least three public places in the county. Said publication or posting shall be at the expense of the applicant.

#### 1568. Form of application.

SEC. 3. Such application shall contain the name of a competent deputy who is to be appointed by the officer applying for leave of absence, and who shall serve without expense to the county or state.

### ASSESSORS

*An Act providing for the election of county assessors in the several counties of this state, and defining their duties.*

Approved March 9, 1865, 345

1569. Election of.

1570. Term of office.

1571. Bond and oath of office.

1572. Vacancy, how filled.

1573. May appoint deputy—Compensation of  
—Districts.

1574. Punishment for neglect of duty.

1575. Suit on bond.

1576. May administer oaths.

**1569. Election of.**

**SECTION 1.** At the election for county officers held in the several counties of this state, in the year eighteen hundred and sixty-six, and at such election every two years thereafter, there shall be elected by the qualified electors of each county a county assessor.

Sheriff ex officio assessor in certain counties.

County assessor acts in same capacity in unincorporated towns, secs. 878, 890.

May appoint deputy, sec. 2136.

Foreign corporations to file annual statement with, sec. 1352.

Duty to assess patented mines, sec. 1578.

Franchises, receipts and expenses to be filed with, sec. 2136.

See duties under subject of Revenue, secs. 3623—3640, 3678—3705, 3713—3726, 3753—3754, 3763—3765, 3775—3776, 3786—3792, 3797—3809, 3814—3817, 3819—3825, 3838—3840, 3842, 3843, 3845—3859, 3866.

County auditor to furnish certain information to, sec. 1585.

Duty to make certain reports to county auditors, clerks and surveyor-general, secs. 1586, 1591, 4356.

**1570. Term of office.**

**SEC. 2.** The term of the county assessor shall commence on the first day of January next succeeding his election, and continue for two years thereafter, and until his successor is elected and qualified.

**1571. Bond and oath of office.**

**SEC. 3.** Each county assessor, before entering upon the duties of his office, shall execute to the people of the State of Nevada, a bond in the penal sum of five thousand dollars, with two or more sufficient sureties, to be approved by the board of county commissioners, and filed in the office of the county clerk, conditioned for the faithful performance of all the duties of his office required by law; and shall take the oath of office as prescribed by law, which shall be indorsed on his certificate of election or appointment.

See *Kruttschnitt v. Hauck*, 6 Nev. 163.

See *State v. Nevin*, 19 Nev. 162; *State v. Rhoades*, 6 Nev. 352, and 7 Nev. 434; *Alderson v. Mendes*, 16 Nev. 298.

**1572. Vacancy, how filled.**

**SEC. 4.** In case of a vacancy in the office of the county assessor, or failure of any county assessor to qualify as required in this act, the board of county commissioners shall appoint some suitable person possessing the qualifications of an elector, residing within such county, to fill the vacancy; and the person thus appointed shall give bond and take the like oath that is required of assessors elected by the people, and shall hold his office until the next general election, and until his successor is elected and qualified.

**1573. May appoint deputies—Compensation of—Districts.**

**SEC. 5.** Said assessor shall have the power of appointing one or more deputies, to aid him in his official duties, for whose conduct he shall be responsible; *provided*, that the assessor, before he shall appoint a deputy or deputies, shall divide the county into convenient districts, of which division notice shall be given to the board of county commissioners of said county; and *provided further*, that the board of county commissioners may fix the number of days for which pay shall be allowed any deputy for assessing a district.

The power of the county assessor to appoint deputies is limited only by above proviso. *Kruttschnitt v. Hauck*, 6 Nev. 163, 166.

See sec. 1579.

**1574. Punishment for neglect of duty.**

**SEC. 6.** If any assessor or deputy assessor shall be guilty of neglect of any

of the duties enjoined on him by law, he shall be liable to indictment in any court of competent jurisdiction, and fined in any sum not exceeding five hundred dollars.

#### 1575. Suit on bonds.

SEC. 7. Suit may be instituted on the assessor's bond, in the manner prescribed by law, for the benefit of any person who may be aggrieved by the wrongful act or conduct of such assessor or his deputy.

#### 1576. May administer oaths.

SEC. 8. The assessor and his deputies are hereby authorized to administer all oaths and affirmations contemplated by law, in the discharge of their duties as such assessors.

See State v. Kruttschnitt, 4 Nev. 179.

*An Act in relation to county assessors, and to repeal sections one and two of "An act in relation to county assessors, their terms of office and compensation." which became a law March 14, 1883.*

Approved March 14, 1899, 92

#### 1577. Term of office.

SECTION 1. The county assessors elected in the several counties in this state, after the passage of this act shall hold office for the term of two years.

*An Act relating to the duties of county assessors.*

Approved March 4, 1905, 81

#### 1578. To assess patented mines.

SECTION 1. It is hereby made the duty of the assessors in the various counties of the state to place upon the assessment rolls of their respective counties all patented mines situated within such counties, which mines shall be assessed for taxation at the valuation placed upon them by section 1 of article 10 of the constitution of the State of Nevada, as amended by resolution proposed and passed at the nineteenth session of the Nevada Legislature, March 3, 1899, agreed to and passed at the twentieth session, March 6, 1901, and approved by vote of the people at the general election in November, 1902.

See sec. 352 (Const.).

*An Act to provide for the appointment of deputy county assessors and to provide for their compensation.*

Approved February 25, 1885, 40

#### 1579. May appoint deputies.

SECTION 1. The county commissioners of each county may authorize the county assessor to appoint one or more deputies, who shall receive not to exceed five dollars for each day's service actually performed; and said commissioners shall not allow pay for such deputy for more than six months in each year, and may limit the time for which he is to be paid to any number of days less than six months, in their discretion.

See sec. 1573.

#### 1580. How paid.

SEC. 2. The compensation of deputy assessor shall be paid by the county treasurer out of the same fund and in the same manner as the salary of the assessor.

*An Act authorizing commissions on the collections from personal property tax, poll tax, and the tax on the proceeds of mines, and defining the manner in which said commissions shall be appropriated.*

Approved March 5, 1885, 62

### 1581. Commissions on certain tax collections.

SECTION 1. On all moneys collected from personal property tax, poll tax, and the tax on the proceeds of mines, by the several county assessors in this state, there shall be reserved and paid into the county treasury, for the benefit of the general fund of their respective counties, by said county assessor, the following percentage commissions: First, on the gross amount of collections from personal property tax, six per cent; second, on the gross amount of collections from poll tax, ten per cent; third, on the gross amount of collections from the tax on the proceeds of mines, three per cent.

The words "county assessors" cannot be construed to mean county assessors and ex officio tax receivers. State ex rel. Hallock v. Boyd, 19 Nev. 356, 358, 359, 11 P. 36.

County treasurers are not entitled to deduct, as percentage commission allowed to the county ten per cent of the poll taxes collected by them, as ex officio tax receivers, from the amount payable into the state treasury for state purposes. Id.

This act does not violate art. 2, sec. 7, of

the constitution (sec. 256, supra), the commission being an allowance for the expenses of collection and the state being liable for its share. State ex rel. Hallock v. Donnelly, 20 Nev. 214-216, 219 (19 P. 680).

This section is not repugnant to and does not repeal sec. 21, Stats. 1885, 85, there being no provision that counties should receive no other compensation than is therein provided. Id.

## AUDITORS

*An Act relating to county certificates of indebtedness, or warrants.*

Became a law March 18, 1885, 128

### 1582. Warrants payable in order of issuance.

SECTION 1. All warrants or certificates of indebtedness issued by county auditors, as such, shall be paid in the order in which they are issued; *provided*, that whenever any county warrant or certificate of indebtedness shall not be presented for payment within six months after notice shall have been given that said warrant or certificate is payable, the money held for payment of such warrant shall be paid out as other county funds, but whenever any warrant as aforesaid shall thereafter be presented the same shall be deemed then due and payable; *and, provided further*, that nothing in this act shall be so construed as to prevent the transfer of money from one county fund to another, as provided by law.

*An Act to regulate the issuance of court orders.*

Approved February 10, 1885, 21

### 1583. Money paid, how.

SECTION 1. In every case in which the court or district judge is authorized to draw any money to be paid out of the county treasury, such order shall be first presented to the county auditor, who shall number and register the same, and shall issue his warrant on any fund in the county treasury not otherwise specially appropriated or set apart.

*An Act to provide for obtaining correct statements of the financial condition of the several counties of this state, and other matters of statistical information.*

Approved February 26, 1873, 97

1584. Make statement to controller—what to show.

1586. Assessors to report certain facts to auditor—Compensation—Penalty.

1585. Circular of surveyor-general.



**1588. Surveyor-general and controller to report to legislature.**

SEC. 5. The controller of the state and the surveyor-general shall include in their annual reports to the governor, a digest and synopsis, in tabular form, of all reports received by them under the provisions of this act, and shall name therein the counties, if any, which have failed to make the report herein provided; and the governor shall transmit said reports of the controller and surveyor-general of the state to the legislature.

**1589. Circular, what to contain.**

SEC. 6. It shall be the duty of the surveyor-general to cause to be inserted in his annual circular letter, provided for in section 6 of "An act concerning the office of the surveyor-general," approved March twentieth, eighteen hundred and sixty-five [sec. 4352, post] so much of this act as shall give the county assessors knowledge of the duties required of them by this act, and he shall cause to be printed an appropriate set of blanks for the use of such assessors in reporting uniformly the matters required of them by this act, and shall forward a sufficient number of such blanks to the county auditor at the time of sending his circular letter, as in this act provided. And the said auditors, at the time of delivering said circulars, shall deliver to said assessors the necessary blanks, as provided for in this act.

**1590. Cost of printing.**

SEC. 7. The costs of printing by this act required shall be audited by the controller of state, and allowed and paid in the same manner as provided by law for other printing.

**1591. Assessor to gather information for reports.**

SEC. 8. It is hereby required of the county assessors, and all deputy county assessors, that the information required of them by this act shall be gathered and collected at the time they make their annual assessment for taxation, as required by law, and shall be gathered by diligent and personal inquiry; and each of them shall certify to said reports of statistical information, that the same has been so gathered, and is as full and complete as can reasonably be made.

*An Act to abolish the compensation of county auditors for extending the taxes on the assessment roll.*

Approved March 9, 1891, 30

**1592. No additional compensation.**

SECTION 1. It shall be the duty of the county auditors of the several counties to extend the taxes on the assessment roll without any additional fees or compensation.

Duty to audit claims against counties, secs. 1509-1512, 1535.

Duty to audit claims of sheriffs and constables for transporting prisoners to jails, secs. 1544-1545.

Member of board of examiners, duties, secs. 1549-1551.

Similar duties in relation to town governments, secs. 878-890.

District attorney to file duplicate receipts with, sec. 1599.

Bond of sheriff to be filed with, sec. 1644.

Duties of in relation to revenue, secs. 3625, 3640-3642, 3646, 3649, 3657, 3668, 3675, 3680, 3682, 3683, 3685, 3686, 3697, 3698, 3702, 3706, 3722, 3723, 3725, 3739-3741, 3746-3750, 3754, 3771, 3794-3796, 3806, 3841, 3862, 3882, 3883.

May appoint a deputy, sec. 2848.

Fees of in counties of less than 800 population, sec. 2002; more than 800, sec. 2014.

Duty to make affidavit has not violated law relating to officers, sec. 2844.

## DISTRICT ATTORNEYS

*An Act concerning district attorneys.*

Approved March 11, 1865, 386

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| 1593. Election of.                      | 1600. File account with treasurer.             |
| 1594. Bond of.                          | 1601. Treasurer to bring action against, when. |
| 1595. Public prosecutors.               | 1602. Legal opinion free to officers.          |
| 1596. Conduct all prosecutions.         | 1603. Fees in addition to salary.              |
| 1597. Court may appoint attorney, when, | 1604. To attend sittings of commissioners.     |
| 1598. Duties of.                        | 1605. Not to present claims.                   |
| 1599. Receipt for money or property.    | 1606. May be indicted for neglect of duty.     |
|   | 1607. Vacaney, how filled.                     |

**1593. Election of.**

**SECTION 1.** There shall be a district attorney in each of the counties of this state, who shall be elected by qualified electors of each county, at the general election in the year 1908, and every two years thereafter, and who shall enter upon the duties of his office on the first Monday of January following his election; *provided*, that no person shall be eligible to the office of district attorney unless he shall, at the time of his election, be a bona fide resident of the State of Nevada, and duly licensed and admitted to practice law in all courts of said state. *As amended, Stats. 1907, 427.*

See sec. 525.

Election of to be provided for (Const.), sec. 290.

To keep office at county-seat (Const.), sec. 375.

Duty to aid bank examiner, secs. 669, 686.

Duties in relation to town government, secs. 878-890.

Duties in relation to excessive town or city tax, secs. 976, 977, 981; certain delinquent taxes, sec. 934.

Duties of in relation to stockholders of bonding companies, secs. 1244, 1248.

Duty to enforce act requiring mining companies to file statements, sec. 1340.

Duty to keep office and office hours, sec. 1564.

Duty to abate nuisances, secs. 1562, 5504.

May have leave of absence, secs. 1566-1568.

Duty to report to attorney-general, secs. 1608, 1609.

Prosecuting attorneys were the same as had formerly belonged to the district attorneys except that their authority was limited to their respective counties; The district attorneys have authority to their duties were precisely the same that appoint deputies. *Id.*

Duty of in relation to revenue, secs. 3624, 3625, 3650, 3655, 3658, 3659-3665 (suits for delinquent taxes), 3674, 3675, 3677, 3681, 3704, 3706, 3707, et seq. (suits against mine owners for delinquent taxes), 3737, 3754, 3755, 3830, 3834, 3870, 3871.

Duty to prosecute violations of pure food law, sec. 3505.

Power to direct services of state veterinarian, sec. 4379.

May appoint deputy, sec. 2848.

Inspectors of hides to report to, sec. 2285.

Duty to institute proceedings against sheep inspector, sec. 2344.

Duty to prosecute violations of optometry act, sec. 2896.

Duty to bring action for unlawful holding office, sec. 1814.

**1594. Bond of.**

**SEC. 2.** Before entering upon the duties of his office he shall execute and file with the county clerk a bond to the county, conditioned for the faithful performance of his duties, the penalty of said bond to be fixed by the board of county commissioners.

Sureties on bond of person appointed to fill vacancy in this office, conditioned for faithful performance during incumbency are liable for breach at any time while such person fills the vacancy and until his succes-

sor is qualified. *State v. Wells*, 8 Nev. 105.

The sureties on such official bond are liable for his defalcation, though he hold office only de facto and not de jure. *Id.*

**1595. Public prosecutor.**

**SEC. 3.** The district attorney in each county shall be public prosecutor therein.

Cited, *State v. Salge*, 2 Nev. 324.

Sec. 4, relative to salaries, is superseded by the various salary acts.

Duty to prosecute cases under juvenile court act, sec. 763; mutual fire insurance act, sec. 1295; foreign corporations for violations of law, secs. 1350, 1354.

### 1596. Conduct all prosecutions.

SEC. 5. He shall attend the district courts held in his county, for the transaction of criminal business; he shall, also, attend justices' courts in his county, when required by justices of the peace, and conduct all prosecutions on behalf of the people for public offenses.

The district attorney is not entitled to act in a case which he did not prosecute. charge the fee of \$10 provided by section 7, *Tilden v. Esmeralda Co.*, 32 Nev. 319, 107 Stats. 1877, 181, for a conviction under said P. 881.

### 1597. Court may appoint attorney, when.

SEC. 6. If he fails to attend any session of the district court, or for any reason is disqualified from acting in any matter coming before said court, the court may appoint some other person to perform the duties of district attorney, who shall receive a reasonable compensation, to be certified by the court and paid out of the county treasury. If the district attorney shall wilfully neglect to attend any session of the district court the amount so paid shall be deducted by the board of county commissioners from the salary allowed to said district attorney. *As amended, Stats. 1889, 73; 1907, 25.*

### 1598. Duties of.

SEC. 7. The district attorney shall draw all indictments, when required by the grand jury; shall defend all suits brought against his county; shall prosecute all recognizances forfeited in the district court, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to his county; and he shall also perform such other duties as may be required of him by law.

See notes to sec. 1593.

The duty of bringing suits for collection the district attorney. *State ex rel. Drake v. Hobart*, 12 Nev. 408.

### 1599. To deliver receipt for money or property.

SEC. 8. When he receives money or property in his official capacity, he shall deliver a receipt therefor to the person from whom he receives it, and file a duplicate with the county auditor.

### 1600. File account with treasurer.

SEC. 9. He shall, on the first Mondays of May, August, and November, in each year, file in the office of the county treasurer an account in writing, certified by oath, of all moneys received by him in his official capacity during the preceding three months, and shall, at the same time, pay it over to the county treasurer.

### 1601. Treasurer to bring action against, when.

SEC. 10. For a failure to comply with the provisions of the last section, the county treasurer shall bring an action against him and his sureties for the recovery of all moneys in his hands not accounted for, and for twenty per cent additional thereon.

### 1602. Legal opinion free to officers.

SEC. 11. The district attorney shall, without fees, give his legal opinion to any assessor, collector, auditor, or county treasurer, and to all other county, township or district officers, within his county, in any matter relating to the duties of their respective offices. *As amended, Stats. 1887, 52.*

### 1603. Fees in addition to salary.

SEC. 12. The district attorney, in addition to the yearly salary allowed by

law, shall receive the following fees: For each conviction in capital cases, the sum of one hundred dollars; on conviction of any other felony, fifty dollars; and for a misdemeanor in the district court, twenty-five dollars, to be charged against the defendant; for each conviction in a justice's court, to be taxed as costs against the defendant (but shall in no case be charged against the county), fifteen dollars; for each suit in a justice's court, for delinquent taxes, a fee of five dollars; and in the district court, ten dollars, with ten per cent on the amount of taxes delinquent, said fee and percentage to be taxed and collected as costs; for all amounts collected by him for the county by action, except for delinquent taxes, ten per cent.

Fee of district attorney, five per cent upon amount of taxes delinquent instead of ten per cent as provided in foregoing section, see sec. 3677.

See, also, secs. 3660, 3665.

An act fixing salary of the district attorney of a designated county in full for his services suspends as to such county the provisions of this act authorizing collection of fees in addition to salary.

A special statute restricts the effect of a prior general act from which it differs, and suspends its operation in the field covered by the special act. *Tilden v. Esmeralda Co.*, 32 Nev. 319, 107 P. 881.

#### 1604. To attend sittings of commissioners.

SEC. 13. The district attorney, when not in attendance on the sittings of the district court as criminal prosecutor, shall attend the sittings of the board of county commissioners, when engaged in auditing accounts and claims brought against the county, and in all cases oppose such accounts or claims as he may deem illegal or unjust, and shall, at all times, give his advice when required to said commissioners upon matters relating to their duties.

See sec. 1519.

It is the duty of the district attorney to assist the board of county commissioners in formulating and adopting ordinances, within the scope of their authority, under the town

and city government act (Stats. 1881, 68) without additional compensation. *State ex rel. Norcross v. Shearer*, 23 Nev. 76, 80 (42 P. 582).

#### 1605. Not to present claims.

SEC. 14. No district attorney, except for his own services, shall be allowed to present any claim, account, or demand, for allowance, against his own county, or in any way to advocate the relief asked on the claim or demand made by another.

See sec. 1520.

#### 1606. May be indicted for neglect of duty.

SEC. 15. The district attorney may be indicted for a misdemeanor in office, or neglect of duty, and be punished by fine not exceeding one thousand dollars, or by removal from office, or by both such fine or removal from office, said fine to be paid into the county treasury for county purposes.

#### 1607. Vacancy, how filled.

SEC. 16. In case a vacancy should occur in the office of district attorney, by death, removal, or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy, who shall remain in office during the balance of the unexpired term.

Although the statute makes no provision that a district attorney, whether elected or appointed, shall hold office until the qualification of a successor, yet he must do so under the general rule, because the presence of such an officer is necessary to the proper conduct of the public business. *State v. Wells*, 8 Nev. 105.

The provisions of this section that a vacancy in this office shall be filled by appointment for the "balance of the unex-

pired term" was repealed by Stats. 1866, 231, requiring all appointments to run "until the next general election." *Idem*.

A reasonable construction of said last-mentioned act does not contemplate that an appointment to fill a vacancy, occurring after an election but before the newly elected officers are to assume their duties, can keep out of his regular term a person legally chosen at such election. *Idem*.

*An Act to require district attorneys to make certain reports to the attorney-general.*

Approved March 1, 1889, 54

**1608. District attorneys to report to attorney-general.**

SECTION 1. That on the first day of December, one thousand eight hundred and ninety, and annually at said date thereafter, the several district attorneys or other persons charged by law with the prosecution of criminals, shall make report in writing to the attorney-general, stating the number and character of prosecutions for the year ending on the first day of November preceding the date aforesaid within the territory embraced in the limits of office for which the reports are made, respectively; the number of persons convicted, and the average punishment on conviction; the number of persons acquitted, or as to whom prosecutions were abated or dismissed, and the number of prosecutions pending at the end of time covered by report; also, the costs of such prosecutions to each county, and the amount of fines paid therein. Within sixty days after the sentence of any person to the state prison, the district attorney who prosecuted said person shall make a written statement of the facts and circumstances connected with the commission of the crime for which the person stands convicted, as shown by the evidence upon the trial thereof, and deliver said statement to the district judge who presided at the trial of said cause. Said judge shall within thirty days thereafter correct said statement according to the facts and testimony; and, after certifying that said statement is a correct statement of the substance of the testimony introduced upon the trial of said action, said judge shall forward the same to the attorney-general. Upon receipt of said statement the attorney-general shall file the same in his office, and shall not permit the same to be taken therefrom, except at the request of the board of pardons, or a member thereof. Said statement shall be considered by the board of pardons as prima facie evidence of the matter therein contained.

**1609. Penalty for failure to report.**

SEC. 2. Be it further enacted, that any district attorney, or other person charged by law with the prosecution of criminals, who fails to make a full report or statement, as and within the time required by section one of this act, shall forfeit to the State of Nevada the sum of one hundred dollars, to be recovered on motion of the attorney-general in the district in and for the proper county, on ten days' notice of such motion.

*An Act relating to district attorneys and partners thereof.*

Approved February 23, 1887, 81

**1610. Not to engage as counsel against state or county.**

SECTION 1. No district attorney, or partner thereof, shall appear within his county as attorney in, or directly or indirectly aid, counsel or assist in the defense in any criminal action began or prosecuted during his term; nor in any civil action began or prosecuted during his term, in behalf of any person suing or sued by the state or any county thereof.

**1611. Violation of this act a misdemeanor.**

SEC. 2. A violation of this act shall be deemed a misdemeanor, and punished by a fine of not less than two hundred and fifty dollars and not more than one thousand dollars, and in addition the offender shall be disbarred from practicing law in any of the courts of this state until restored by the supreme court of the state.

**1612. Applies with equal effect.**

**SEC. 3.** This act shall apply with equal effect to any and all partners of said district attorneys.

**COUNTY CLERKS**

Ex officio clerks of courts of record and board of county commissioners, election of, secs. 290 (Const.), secs. 1505, et seq., 1691.

May appoint deputy, sec. 2848.

Powers and duties of, relative to corporations, secs. 1145, 1167, 1170, 1171, 1209, 1223, 1241, 1251, 1255, 1258, 1290, 1298, 1348, 1367, 1376, 1865.

Bond of, approved by commissioners and filed with recorder, sec. 2872.

Duties of, in relation to town government, secs. 878-890.

May have leave of absence, secs. 1566-1568.

Duty to take oath and give bond, sec. 1690.

Duty to deliver corrected assessment roll to auditor, sec. 3640.

Duties relative to assessment of transient live stock, secs. 3846-3852.

Jurors, expenses of, to receive and disburse, sec. 2035.

Fees of, in counties of 800 or less, sec. 1995, over 800, sec. 2007; see sec. 2030.

Juries, duties in drawing and issuing venire, secs. 4930, 4931.

Jury box, custodian of, sec. 4937.

Seal of court, duty to keep, sec. 4878.

Acknowledgments, power to take, sec. 4883.

Insane, power to examine in absence of district judge, sec. 2210.

Physicians, duty to keep record of licenses of, sec. 2367.

Ministers authorized to solemnize marriage, duty to keep record of, sec. 2340.

Marriage license, duty to issue, sec. 2341.

Mines, inspection of by stockholders, duties in relation to, secs. 2492-2495.

Fish and game licenses, duty to issue, secs. 2102, 2104.

Notary public, bond and oath of to be filed with clerk, sec. 2746.

Justice of the peace, bond of to be filed with clerk, sec. 4927.

Officers elected and appointed, or vacancy, duty to certify to the secretary of state, sec. 2795.

Officers, decree removing, duty to transmit to secretary of state, sec. 2853.

Elections, duties in relation to: Issue certificate of election, secs. 1513, 1796; to furnish registration list to inspectors, sec. 1713; registration agents to file lists with clerk, secs. 1734, 1735; to furnish secretary of state certified copy of registration list, sec. 1735; to publish notice of primary election, sec. 1739; primary nomination papers to be filed with clerk, sec. 1741; notice of election (primary and general), to give, secs. 1770, 1880; constitutional amendments, secs. 1842, 1879; certain fees to pay treasurer, sec. 1743; publish list of candidates (primary), sec. 1745; to provide ballots for primary, secs. 1747, 1748; prepare statement of result of primary, forward to secretary of state, sec. 1757; to furnish poll books and supplies, sec. 1769; to make abstract of vote, furnish copy to secretary of state, secs. 1797, 1799, 1881; election contests, secs. 1805-1811, 1818-1820; furnish election laws to election officers, sec. 1832; certificates of nomination, to file, secs. 1837, 1839; supervise printing of ballots, sec. 1840; publish list of nominations, sec. 1841; to provide printed ballots, secs. 1843-1847, 1868, 1885, 1897; furnish election officers with ballots, sec. 1848, sample ballots, sec. 1857; custody of ballots, sec. 1795.

*An Act relating to the duties of county clerks regarding claims against a county.*

Approved March 1, 1883, 92

**1613. To administer oaths.**

**SECTION 1.** The county clerks of the several counties of this state are hereby authorized and directed, when required to administer to the claimant of any demand against the county, the necessary oath, and properly certify to the same without any fee or charge therefor.

*An Act authorizing the county clerks, as ex officio clerks of the courts of record, to retain for their own use the fees and compensation for services performed by authority of any act of Congress relating to location of government lands.*

Approved March 20, 1901, 91

**1614. Certain fees to be retained.**

**SECTION 1.** The several county clerks of the State of Nevada, who are ex officio clerks of the courts of record, and who are or may be authorized and

empowered by any act of Congress to take and certify affidavits, applications and proofs for or relating to the location of the public lands of the United States, are hereby authorized to retain for their own use the fees and compensations allowed for such services.

### PUBLIC ADMINISTRATORS

#### *An Act relating to the office of public administrators, and prescribing their duties.*

Approved March 7, 1883, 115

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| 1615. Election of.                                 | 1622. Civil officers and other persons to furnish information—May institute suits. |
| 1616. Oath and bond—When to qualify.               | 1623. How governed.  |
| 1617. Duties and compensation.                     | 1624. To qualify.  |
| 1618. Report to district judge.                    | 1625. Money paid to state, how recovered—Escheats.                                 |
| 1619. Final settlement—To pay over funds—Escheats. | 1626. When to make application for letters.  |
| 1620. Not to be interested in expenditures.        | 1627. Books, papers to be turned over.   |
| 1621. Wilful misdemeanor—Penalty for.              |  |

#### 1615. Election of.

SECTION 1. There shall be elected in each organized county in this state, at the general election A. D. eighteen hundred and eighty-four, and at the general election every two years thereafter, a public administrator, who shall be ex officio coroner in and for his county.

Portion of section relative to ex officio coroner superseded by sec. 7542.

#### 1616. Oath and bond—When to qualify.

SEC. 2. Every public administrator, elected at the last general election, and who shall hereafter be elected, shall take the constitutional official oath, and give such official bond as shall be in amount required and fixed by the board of county commissioners of his county, by an order duly entered in the minutes of such board, to be conditioned, secured, approved, filed, and recorded as the bonds of other county officers are, or may be required by law to be, and shall be so conditioned as to hold the principal and sureties liable for any breach thereof made, while acting, or illegally refusing to act, in either official capacity. The official oath shall be for the faithful performance of the duties of both offices, and shall be taken and subscribed upon both the certificate of election (or appointment, if appointed to fill a vacancy, as hereinafter provided) and the official bond; and that upon the bond shall be recorded with it; *provided*, the official bond of no public administrator shall be less than two thousand dollars; *and, provided further*, that the county commissioners may, upon reasonable cause therefor shown, require at any time a new bond, or an additional bond, to be given upon ten days' notice in writing; and if not so given, shall thereupon declare the office vacant, and fill the vacancy by appointment for the remainder of the term; and shall, in like manner, fill a vacancy in said office arising from any other cause. Any person appointed to the office of public administrator, shall within ten days thereafter, qualify in the same manner as if elected thereto. Every person elected to fill said office shall qualify as in this section required, on or before the first Monday of January next after his election, and shall on that day enter upon the discharge of his official duties.

Cited, *State v. Borowsky*, 11 Nev. 126.

See *Jeffree v. Walsh*, 14 Nev. 143.

#### 1617. Duties and compensation.

SEC. 3. The public administrator of each county shall have the right, and it is hereby made his duty to administer, according to law, upon the estate of any person, who died intestate in, or was at the time of his or her death, a resident of the county, or had assets therein, not administered on in some

other county, or of a deceased stranger, or of a deceased testate, when no executor is appointed, or if appointed fails to qualify, unless administered upon within one month after the death of the testate, or within the time provided by law for an intestate, or by a relative by blood or marriage within the fourth degree of consanguinity or legal relation. For such administration he shall be paid as other administrators or executors are paid.

Act in relation to estates of deceased persons, see secs. 5357—6147.

#### 1618. To report to district judge.

SEC. 4. Each public administrator shall on the first Monday in January and July, in each year, and at the termination of his official duties, make a verified written report to the district judge having jurisdiction in the premises, of all estates of deceased persons which have officially passed into his hands, the value of the same, the expenses, if any, paid thereon, and the balance of property, effects, or money, if any, remaining in his hands, and the judge to whom such report is made shall cause it to be made public, by publication or posting, as he may deem just and right.

Cited, *State v. Borowsky*, 11 Nev. 286.

#### 1619. Final settlement—To pay over funds—Escheats.

SEC. 5. Each executor, administrator and public administrator, on final settlement of an estate and proper order of the court having jurisdiction in the matter thereof, or before final settlement, upon the regular order of the court aforesaid, shall pay over all moneys of such estate to the lawful heirs or legatees, or devisees, thereof, and if there be none of either, then to the county treasurer, and the county treasurer shall pay the same to the state treasurer, and if the same escheat to the state, the state treasurer shall place the same in the fund devoted and pledged to educational purposes.

See sec. 1625.

#### 1620. Not to be interested in expenditures.

SEC. 6. No public administrator shall be interested in anywise in any expenditures of any kind, made on account of any estate of a deceased person upon which he is administering, save as necessarily made in the due course of such administration, nor shall he be associated in business with any one so interested, and he shall state in his semiannual reports that he has not been so interested or associated.

Above sections quoted, *State v. Borowsky*, 11 Nev. 125.

It is a "misdemeanor in office" for a public administrator to embezzle money received ex officio after his term of office has expired.

It is the official duty of every public officer at or after the expiration of his term of office, to turn over to his successor or other

proper recipient, all funds received and held by him in his official capacity and a refusal to do so, on proper demand, is a violation of his official duty. *State v. Borowsky*, 11 Nev. 119.

#### 1621. Wilful misdemeanor, penalty for.

SEC. 7. For any wilful misdemeanor in office any public administrator may be indicted, tried, and if found guilty, fined in any sum not exceeding two thousand dollars and removed from office; but such fine and removal shall not bar any existing right of civil action upon his official bond.

#### 1622. Civil officers and other persons to furnish information—May institute suits.

SEC. 8. It shall be the duty of all persons, especially of all civil officers, to give all information in their possession to public administrators respecting estates and the property and condition thereof, upon which no other person has then administered. Public administrators may, and it is hereby made their official duty to, institute, maintain and prosecute all necessary actions at law and in equity, for the recovery and for the protection of the property,

debts, papers, or other estate of any deceased person upon whose estate they may be administering.

#### 1623. How governed.

SEC. 9. Except as in this act otherwise provided, public administrators, in administering upon estates, shall be governed by the same rules and laws by which other administrators or executors are.

[Sec. 10 superseded, sec. 7542.]

Entitled to letters of administration in what rank, sec. 5894.

#### 1624. To qualify.

SEC. 11. Each and every public administrator in this state who was elected at the last general election, who has not already qualified, shall qualify as provided in this act within thirty days after its approval, and shall be governed and controlled in his office by the provisions of this act, and shall be ex officio coroner in and for his county. They shall immediately, after so qualifying, enter upon the discharge of their official duties, and shall continue in office until the first Monday in January, eighteen hundred and eighty-five (A. D. 1885), and thereafter until their successors shall have been duly elected and qualified.

#### 1625. Money paid to state, how recovered—Escheats.

SEC. 12. Any money paid into the state treasury under the provisions of this act, excepting from an escheated estate, may be recovered by the rightful heirs or legatees thereof in the following manner, viz: Such heir or heirs, legatee or legatees, may present their claim therefor to the district court which had jurisdiction of the final settlement of the estates to which such money belonged, and make proof of the validity of such claim, after notice given to the attorney-general of the state, to the satisfaction of such court, under such rules as it may prescribe. If satisfied on the hearing that such claimant or claimants are rightfully entitled to the same, the court shall enter a decree that such money be paid to him or them. Such decree shall then be certified to the state board of examiners, stating the amount thereby found to be due, and the said board shall allow the same, certify it to the controller, who shall draw his warrant therefor on the treasurer, and who shall pay the same; *provided*, no proceedings shall be maintained under the provisions of this section of this act unless commenced within six years next after the final settlement of the estate to which they relate; *and provided further*, that all costs of such proceeding shall be paid by the applicant or applicants. If not applied for within six years, as above provided, or if applied for and not obtained, such moneys shall then be placed in the irreducible school fund of this state.

#### 1626. When to make application for letters.

SEC. 13. Public administrators are authorized to administer on the estate of any deceased person in any case where by law he is entitled to administer by virtue of his office and shall be required to make formal application for letters of administration, as in the case of administrators, but he shall not be required to file or have approved any bond, except as such public administrator, in any case; *provided*, that the bond of any public administrator may be increased as provided in this or other acts.

See sec. 5894.

#### 1627. Books, papers, to be turned over.

SEC. 14. Public administrators shall, at the expiration of their terms of office, surrender up to their successors in office all the books or papers belonging or appertaining to said office, including all exhibits, estates, money and property in their possession.

## RECORDERS

*An Act concerning county recorders, and defining their duties.*

Approved March 9, 1865, 351

1628. To take oath and file bond.  
1629. May take acknowledgments.

1630. May appoint deputy.  
1631. Powers of deputy.  
1632. May require fees in advance.

**1628. To file oath and bond.**

SECTION 1. Each of the county recorders of the several counties of this state, before entering upon the duties of their office, shall take the constitutional oath of office, and shall enter into bonds in the penal sum of not less than five nor more than fifty thousand dollars, at the discretion of the county commissioners of the respective counties, with two or more sureties, to be approved by the district judge, conditioned for the faithful performance of their duties as recorders.

Duty to record contracts of apprenticeship, sec. 489.  
Duty to discharge mortgages and liens of record, secs. 1049-1051.  
Duty to keep records of chattel mortgages, fees for, sec. 1080.  
Mining companies to file annual statements with, secs. 1330-1340.  
Foreign corporations to file copy of charter with, sec. 1346.  
Bonding companies to file articles of incorporation with, sec. 1247.  
Duty to keep office and office hours, sec. 1564.  
Duty to report unsatisfied mortgages to board of equalization, sec. 3638.  
Duty to record certificates and deeds of property sold to county for delinquent taxes without fee, sec. 3669.  
Duty to impose oath as to taxes paid before satisfying mortgage of record, sec. 3755.  
Certificates of physicians, duty to record, sec. 2369.  
Mining locations, mill sites, tunnel sites, annual labor, duty to record, secs. 2424, 2431, 2435, 2438, 2442, 2446, 2448, 2451, 2463, 2469-2473.  
Notary public, termination of office, duty to demand records of, sec. 2757.  
Ditch claim, certificate of, to record, sec. 4712.  
Mining, grubstake contracts, duty to record, sec. 2475.  
Marriages, duty to record, secs. 2344-2346.  
Estrays, duty to keep book and record of, secs. 2275, 2282.  
Marks and brands, duty to keep record of, secs. 2234, 2235, 2236, 2244, 2248.  
Liens, book of, duty to keep, sec. 2219.  
Separate property of wife, inventory of, to record, secs. 2157, 2159.  
Franchises, acceptances of to be filed with, sec. 2139.  
Fees of, in counties of less than 800, sec. 1996, more than 800, sec. 2008, other sections relating to fees, 2019-2021, 2025, 2046.  
Custodian of ballots, may be, sec. 1795.

**1629. May take acknowledgments.**

SEC. 2. The county recorder of the several counties within this state, are hereby empowered to take and certify the acknowledgment and proof of all conveyances affecting any real estate, or of any other written instrument, for which he shall receive the same fees as are now prescribed by law. *As amended, Stats. 1871, 107.*

County recorders are authorized to administer the oath and certify to the verification required by law in filing mechanic's liens. *Arrington v. Wittenberg, 12 Nev. 99, 100.*

See also, *State ex rel. Ford v. Hoover, 5 Nev. 141.*

*Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 60, 5 L. R. A. (N. S.) 545, 124 A. S. 883, 84 P. 1061.*

**1630. May appoint deputy.**

SEC. 3. The recorder of each county may appoint a deputy, who shall hold his office during the pleasure of the recorder; such appointment shall be in writing, and filed and recorded in the office of the recorder. And the recorder so appointing him, and his sureties, shall be responsible for the faithful performance of his duties as such deputy.

See sec. 2848.

**1631. Powers of deputy.**

SEC. 4. In case of a vacancy in the office of recorder, or his absence or

inability to perform the duties of his office, the deputy shall perform the duties of recorder during the continuance of such vacancy, absence, or inability.

May have leave of absence, secs. 1566—1568.

### 1632. May require fees in advance.

SEC. 5. The recorder shall not be bound to record any instrument, or file any paper or notice, or to furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are paid or tendered.

Incoming recorder has a right to record instruments left unrecorded by his predecessor.

The necessity being imposed on the incoming recorder to record the deeds left unrecorded by his predecessor, and that recording

inuring to the benefit of his predecessor, the law raises an implied request on the part of the outgoing recorder to perform the labor and an implied promise on his part to pay for the same. *Davis v. Thompson*, 1 Nev. 17.

### *An Act relating to the duties of county recorders in certain counties.*

Approved February 20, 1864, 151

### 1633. When county is attached to or divided, recorder to keep separate books.

SECTION 1. From and after the first day of March, eighteen hundred and sixty-four, it shall be the duty of the county recorder, to which any other county is attached for legislative, judicial, or other purposes, to keep a separate book or books for the recording of all papers relating to property or other matters connected with said county and entitled to record, which book or books shall, upon the separate organization of the county attached, become the property of said county; *provided*, that in case of any alterations, in the boundary lines between the two counties by the act authorizing a separation of the counties, for the purposes for which they were attached, the acting recorder of the county in which the records have been kept, shall be entitled to keep possession of the book or books in which such records are kept for a sufficient length of time, not exceeding sixty days, for the purpose of copying any papers which, owing to the change of boundary lines, may become necessary to be recorded in his county.

### 1634. Transfer of records—Fee for transcript of records.

SEC. 2. Whenever it shall become necessary, owing to any change in boundaries, contemplated in section 1 of this act, to have any transfer of records from the records of the county so separating to those of the other, it shall be the duty of the county recorder, in which such records have been kept, to make such transfer, for which service he shall be entitled to receive from the county treasurer a sum of money not exceeding forty per cent of the fees as established by law at the time for making the original records; *provided*, that he shall receive no pay for transcribing any records which the county commissioners shall decide unnecessary to be made.

### *An Act concerning records now in the custody of county recorders of this state.*

Approved February 20, 1873, 63

### 1635. Records to impart notice.

SECTION 1. All instruments of writing relating to mining claims now copied into books of mining or other records, now in the office of the county recorders of the several counties of this state, shall, after the passage of this act, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of the contents thereof; *provided*, that nothing

herein contained shall be construed to affect any rights heretofore acquired or vested.

### 1636. Copies may be read in evidence.

SEC. 2. Copies of the records of all such instruments mentioned in section 1 of this act, duly certified by the recorder in whose custody such records are, may be read in evidence under the same circumstances and rules as are now or may hereafter be provided by law, for using copies of instruments relating to mining claims or real estate, duly executed or acknowledged, or proved and recorded.

Cited, State ex rel. N. T. G. & S. Co. v. Grimes, 29 Nev. 58.

*An Act requiring county and district recorders to enter in a receiving book, each document, instrument, or paper filed in his office, and providing for a file number to be placed on official records.*

Approved March 13, 1905, 221

### 1637. To keep receiving book.

SECTION 1. It shall be the duty of the county and district recorders in each county to enter each document, instrument, or paper filed in his office in a book to be known as the receiving book, in the order in which it is filed, and shall give to each document, instrument, or paper thus filed its proper number in the order of filing and shall write opposite the title, name or designation of such filing in said book the date of filing, the file number so given to it, and the amount of fees collected for the recording or filing of the same, as the case may be, and upon request shall issue his receipt for said fee, with the file number placed thereon, and said receiving book, when so kept, shall be the fee book of such recorder for the matters herein mentioned, and shall be open to the inspection of any one desiring so to do. The file number of each document, instrument or paper, as hereinbefore mentioned, shall be placed on such document, instrument or paper at the time of filing, and on the official record when and where the same shall be recorded.

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 58.

### 1638. Violation, misdemeanor.

SEC. 2. Any officer who shall wilfully violate any of the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars.

*An Act for the purchase and preservation of public newspapers printed and published in the several counties in this state.*

Approved February 1, 1865, 127

1639. Recordors to subscribe for newspapers.

1641. Subscription, how paid.

1640. Idem—Copies to be preserved.

1642. Penalty for abstracting or destroying papers.

### 1639. Recorder to subscribe for newspapers.

SECTION 1. The recordors of the several counties of this state are hereby authorized and required to subscribe for such newspapers, at least one and not more than three, printed and published in their respective counties, as the board of commissioners therein may select and determine.

Amended, Stats. 1895, 107; amending act declared unconstitutional.

This section, in so far as it attempts to regulate the matter of legal advertising and printing, is in conflict with the provisions of art. 4, sec. 17, of the constitution (sec. 275,

supra). State ex rel. Norcross v. Co. Comrs. of Washoe Co., 22 Nev. 399 (11 P. 145).

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 58.

### 1640. Idem—Copies to be preserved.

SEC. 2. It shall be the duty of each county recorder to receive and pre-

serve every copy of the paper or papers so subscribed for, and from time to time to cause the same to be properly arranged and bound in volumes of convenient size in a substantial manner, and said volumes when bound shall be kept in his office for the use of the courts when needed, of strangers, and the inhabitants of the county, all of whom shall have access to the same at all times during office hours, free of charge. For his service in this behalf the recorder shall receive the sum of ten dollars for each volume, and for neglect of the duties hereby imposed shall forfeit the sum of fifty dollars, to be recovered, with costs, in a civil action before any court, one-half of which shall be paid into the county school fund, and the other half to the person who shall prosecute such action to successful termination.

#### 1641. Subscription, how paid.

SEC. 3. The subscription price of such paper or papers, the binding of the several volumes thereof, and the recorder's compensation for the care and preservation of the same shall be paid out of the general fund of the county, in the same manner that other charges are audited and allowed from such fund by the respective boards of county commissioners; *provided*, that in any county in this state in which the county recorder is compensated by a salary, said recorder shall receive for such services no compensation additional to that of his salary, and the expense of procuring and filing such newspapers shall be paid as stationery and books for the office of said recorder are now paid for.

#### 1642. Penalty for abstracting or destroying papers.

SEC. 4. Any person who shall wilfully abstract, destroy, mutilate, or deface any number or volume of such newspaper purchased in pursuance of this act, shall be deemed guilty of a misdemeanor, and shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months, or both such fine and imprisonment, in the discretion of the court; *provided*, that one-half such fine shall be paid into the school fund of the county wherein such offender may be convicted, and the other half to the person who shall make the complaint.

### SHERIFFS

#### *An Act relating to sheriffs.*

Approved November 28, 1861, 103

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| 1643. When elected.                             | 1651. Liable to creditor.                  |
| 1644. Oath of office and bond.                  | 1652. Liability for collections.           |
| 1645. Power to appoint deputies—Oath of deputy. | 1653. Location of office.                  |
| 1646. Custody of jail—Not to practice law.      | 1654. Limit of fees.                       |
| 1647. Duties of sheriff and deputy.             | 1655. Sheriff not to purchase at sale.     |
| 1648. Duty of sheriff regarding court.          | 1656. May collect after term of office.    |
| 1649. Writs and orders to be endorsed.          | 1657. Escape of prisoners—Liability.       |
| 1650. Execution of process.                     | 1658. Authority of, in judicial districts. |
|   | 1659. When not liable for damages.         |
|   | 1660. Service on sheriff, how made.        |

#### 1643. When elected.

SECTION 1. That there shall be elected at the annual election, in each county in this state, a sheriff, who shall hold his office for two years, and until his successor is elected and qualified; *provided*, the sheriff elected at the special election of January next, shall hold his office until the first general election, and until his successor is qualified.

#### 1644. Oath of office and bond.

SEC. 2. Before entering upon the discharge of his duties, each sheriff shall take an oath of office, and give a bond to his county, in the penal sum of not less than ten nor more than fifty thousand dollars, with two or more sureties,

residing in his county, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of his office, which bond shall be filed with the county auditor.

See *State v. Kruttschnitt*, 4 Nev. 178; *Kruttschnitt v. Hauck*, 6 Nev. 163; *W. P. Co. v. Herrick*, 19 Nev. 34; *Alderson v. Mendes*, 16 Nev. 298; *State v. Laughton*, 19 Nev. 202; *State v. Wells*, 8 Nev. 105; *State v. Nevin*, 19 Nev. 162.

The sheriff and his sureties are liable for all moneys received by him in his official capacity which he neglects or refuses to pay over, on demand, and for penalties when he does not act in good faith.

The return of the sheriff admitting receipt of money is not a condition precedent to the

institution of proceedings. Receipt of money may be established by other evidence.

The sheriff is not authorized to withhold money for expenses incurred in preserving personal property levied upon, unless his charges have been certified to by the district judge as just and reasonable. *Nash v. Muldoon*, 16 Nev. 404.

### 1645. Power to appoint deputies—Oath of deputy.

SEC. 3. Each sheriff shall have power to appoint, in writing, signed by him, one or more deputies, who are hereby empowered to perform all the duties devolving on the sheriff of the county; and the sheriff shall be responsible for all the acts of his deputy or deputies, and may remove such deputy or deputies at pleasure; but no deputy sheriff shall be qualified to act as such until he has taken an oath to faithfully and impartially discharge the duties of said office, which said oath shall be certified on the back of his appointment, and filed in the office of the county auditor. The sheriff may also require of his deputies such bonds as to him shall seem proper.

See sec. 2848.

May appoint policemen upon request in unincorporated towns, sec. 903.

Duty to abate nuisances in unincorporated towns, sec. 920.

Ex officio license collector, sec. 3737.

Duties of in relation to collection of licenses, secs. 3735, 3740, 3741, 3745, 3754, 3770, 3772—3773, 3778, 3781—3783, 3897.

Agents for enforcement of pure food law, sec. 3498.

Duty to assist state veterinarian, secs. 4380, 4384.

Inspector of horses, secs. 2289—2296.

Estray animals, duty to impound; secs. 2261—2265, 2329—2331.

Power of county, may command, secs. 2833, 2840.

Duel, duty to prevent, sec. 2823.

Jury, duty to summon, secs. 4931—4939.

Refusal to receive prisoner, or to make arrest; felony, sec. 2820.

District judge, duty to provide office for, upon order of, sec. 4921.

Bailiff of district court may perform duties of, sec. 4919.

Fees, in counties of less than 800, sec. 1997, over 800, sec. 2009, on returns, sec. 2041.

Mileage of, secs. 2037, 2040.

Elections, duties relating to: Deliver supplies to election officers, sec. 1769; appoint special deputies, sec. 1789; serve papers in election contests, secs. 1811, 1818—1820.

Where a sheriff gave his deputy an attachment to execute and the writ could not be executed without taking possession of personal property, the deputy could, if necessary, employ a keeper of the attached property.

A keeper of attached property must ordinarily look to the sheriff attaching the property for his compensation, and in the absence of an express agreement with the plaintiff he cannot recover from him. *Allen v. Ingalls*, 33 Nev. — (111 P. 34, 36).

### 1646. Custody of jail—Not to practice law.

SEC. 4. The sheriff of each county shall have the custody of the jail or prison of his county, and the prisoners in the same, and shall appoint the keeper thereof, for whose conduct he shall be responsible, and whom he may remove at pleasure; and no sheriff shall be allowed to practice law in any court of which he is an officer. *As amended, Stats. 1867, 64.*

### 1647. Duties of sheriff and deputy.

SEC. 5. It shall be the duty of sheriffs and of their deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person

for felony, or breach of the peace, they may call upon the power of their county to aid in such arrest, or in preserving the peace.

Refusal to aid officer, misdemeanor, sec. 6361.

See sec. 1692, authority superior to constable.

Cited, Washoe Co. v. Humboldt Co., 14 Nev. 131, 132.

#### 1648. Duty of sheriff regarding court.

SEC. 6. It shall be the duty of the sheriff to attend in person, or by deputy, at all sessions of the district court in his county, and to obey all the lawful orders and directions of the same; to execute the process, writs, or warrants of courts of justice, judicial officers and coroners, when delivered to him for that purpose. *As amended, Stats. 1873, 115.*

#### 1649. Writs and orders to be indorsed.

SEC. 7. When any process, writ, or order shall be delivered to the sheriff to be served or executed, he shall forthwith indorse upon it the year, month, day, and hour of its reception, and shall give to the person delivering it, if required, on payment of his fee, a written memorandum signed by him, stating the names of the parties in the process or order, the nature thereof, and the time it was received. He shall also deliver to the party served a copy thereof, if required so to do, without charge to such party.

#### 1650. Execution of process.

SEC. 8. A sheriff to whom any process, writ, order, or paper shall be delivered, shall execute the same with diligence, according to its command, or as required by law, and shall return it without delay to the proper court or officer, with his certificate endorsed thereon of the manner of its service or execution, or, if not served or executed, the reasons of his failure. For a failure so to do, he shall be liable to the party aggrieved for all damages sustained by him on account of such neglect.

#### 1651. Liable to creditor.

SEC. 9. If the sheriff to whom a writ of execution or writ of attachment is delivered, shall neglect or refuse, after being required by the creditor or his attorney to attach, or to levy upon, or sell, any property of the party charged in the writ which is liable to be attached or levied upon and sold, he shall be liable on his official bond to the creditor for the value of such property.

#### 1652. Liability for collections.

SEC. 10. If a sheriff shall neglect or refuse to pay over on demand to the person entitled, 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 the demand, may be recovered by such person from him and the sureties on his official bond, on application, upon five days' notice to the court in which the action is brought, or the judge thereof in vacation.

This section refers only to those cases where there is a wrongful withholding of money collected and not where there is a mistake in its application, and it is shown that the sheriff has not the money in his hands.

It is not the policy of the law to inflict penalties upon officers for mistakes or errors of judgment. *Giffin v. Smith*, 2 Nev. 374, 375, 378; *Nash v. Muldoon*, 16 Nev. 405, 408.

As a general rule, process regular on its face and issued by a tribunal having authority to issue it, is sufficient to protect the officer, although it may have been wrongfully issued. But when the officer attempts to

overthrow a sale by the debtor, on the ground that it was fraudulent as to creditors, he must go back of his process, and show the authority for issuing it. *Keyes v. Grannis*, 3 Nev. 548.

A sheriff's sale of property will not be set aside for inadequacy of price, in the absence of fraud. *Dazet v. Landry*, 21 Nev. 291, 30 P. 1064.

Sheriff must pay preferred claim out of proceeds of sale. *Alexander v. Archer*, 21 Nev. 23 (24 P. 373).

The sheriff and judgment creditors in case of wrongful seizure are jointly liable for the trespass. *Streeter v. Johnson*, 23 Nev. 194 (44 P. 819).

**1653. Location of office.**

SEC. 11. The sheriff shall keep an office at the county-seat of his county, which shall be kept open on all days except Sundays, from nine o'clock, forenoon, until five o'clock, afternoon.

See sec. 1564.

**1654. Limit of fees.**

SEC. 12. No sheriff shall, directly or indirectly, ask, demand, or receive for any services or acts by him performed in pursuance of any duty of his office, any greater or more fees than he is allowed by law, on pain of forfeiting for such offense, to the party aggrieved, treble the sum so demanded or received, and his legal fees, together with costs of suit.

**1655. Sheriff not to purchase at sale.**

SEC. 13. No sheriff shall become the purchaser, nor procure any person to become the purchaser for him, of any property, real or personal, by him exposed to sale by virtue of any execution or other process; and all such purchases made by any sheriff, or any person in his behalf, shall be absolutely null and void.

**1656. May collect after term of office.**

SEC. 14. Any sheriff, at the expiration of his term of office, having any execution or final process which he may have levied and not collected, shall be and hereby is authorized to proceed and collect such execution in the same manner as if his term of office had not expired.

**1657. Escape of prisoners—Liability.**

SEC. 15. When any prisoner shall be committed to the county jail for trial, or for examination, upon conviction for a public offense, or for disobedience to any writ, mandate, process or order of any court, such prisoner shall be actually confined in the jail until he is legally discharged; and if he be permitted to go at large out of the jail, except by virtue of a legal order or process, it shall be an escape, and the sheriff or jailer permitting it shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding ten thousand dollars.

**1658. Authority of, in judicial districts.**

SEC. 16. The sheriff in any county in any judicial district in this state, to which any other county or counties in such district may be attached for judicial purposes, shall have power and authority to serve all process, writs, orders, or other papers issued or directed to him by the district court of his county, or the clerk thereof, within any county or counties so attached, the same as if the said county or counties were not separate and distinct counties.

An attachment must be served by the sheriff of the county where the property is situated, except where one county is attached to another for judicial purposes.

A county is not "attached" to another for judicial purposes simply because it and another county or counties form one judicial district. To be so "attached" both counties

must, under the law, be treated as one county in all matters pertaining to the courts. *Sadler v. Tatti*, 17 Nev. 429, 431, 432-435.

The sheriff is not authorized to serve a subpoena upon witnesses residing in any other county, except it is within the same judicial district. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123, 131.

**1659. When not liable for damages.**

SEC. 17. No sheriff shall be liable for any damages for neglecting or refusing to serve any civil process, unless his legal fees (and an indemnifying bond in cases where he has doubts as to the ownership of the property sought to be levied upon or attached, if the same shall be required by him) are first tendered him.

Cited, *Gaudette v. Roeder*, 13 Nev. 346.

## 1660. Service on sheriff, how made.

SEC. 18. Service of a paper upon the sheriff may be made by delivering it to himself in person, or by delivering it to one of his deputies, or to a person belonging to and in the office, during office hours, or, if no such person be there, by leaving it in a conspicuous place in the office.

*An Act defining the duties of sheriffs in relation to the filing and posting of licenses.*

Approved March 6, 1893, 86

## 1661. Licenses to be posted.

SECTION 1. The sheriff of each county in the state shall, on the first Mondays of April, July, October and January, file with the board of county commissioners and post up in his office a statement showing the names of all persons, firms and corporations doing business in the county from whom licenses are collected, the nature and kind of said business, and the amount of license so paid.

Duty to collect licenses from insurance agents, sec. 1280.

*An Act for the relief of purchasers at sales of real estate, or any interest therein, by public officers.*

Approved December 12, 1862, 13

## 1662. Successor in office may execute deeds.

SECTION 1. Where lands, or any estate or interest therein have been or may hereafter be sold by a sheriff or constable, or other authorized officer, for taxes, or under an execution or order of sale, and the purchaser or his assigns may be entitled to a deed, and the sheriff or other officer who made the sale shall have died, or shall be absent from the territory, or in any way disqualified, it shall be lawful for the successor of the said sheriff or constable, or other officer to make such deed to such purchaser, his assignee or assignees, in the same manner and with the same effect as if made by the officer making the sale.

## 1663. Idem—Effect of deed.

SEC. 2. Such deeds, so made as aforesaid, shall have the same force and effect as evidence as if made by the officer making such sale.

### SURVEYORS

*An Act to regulate surveyors and surveying.*

Approved November 29, 1861, 267

1664. Office created.

1665. Oath and bond required.

1666. May appoint deputies.

1667. Certificate to be evidence.

1668. Surveys, when county surveyor interested party.

1669. Vacancy, how filled.

1670. Duties of.

1671. Record of surveys.

1672. Surveys, how expressed.

1673. Penalty for neglect of duties.

1674. Fees.

## 1664. Office created.

SECTION 1. That the office of county surveyor be and is hereby created; and that there shall be a county surveyor, to be elected in each county by the qualified electors thereof, at the general election, whose term of office shall be two years, and until his successor in office shall be qualified; *provided*, that the county surveyors elected in the year A. D. eighteen hundred and sixty-two shall hold their offices for two years thereafter, and until their successors shall qualify; and said surveyors shall keep their offices at the

county-seats of their respective counties, and shall qualify on or before the first Monday in October following their election. *As amended, Stats. 1862, 32.*

Surveyor-general to issue letter of instruction to, sec. 4352.

Salt lands, duty to survey, secs. 2448, 2454, 2455.

Fees of, sec. 2017.

Charcoal bins, duty to estimate, sec. 4825.

### 1665. Oath and bond required.

SEC. 2. Each county surveyor, before entering upon the duties of his office, shall take and subscribe to the oath of office, and execute to the State of Nevada a bond in the penal sum of not less than five hundred (\$500) nor more than five thousand (\$5,000) dollars (the amount thereof to be determined by the board of county commissioners), with two or more sureties, residing in the county, to be approved by the board of county commissioners, conditioned for the faithful performances of the duties of his office, which bond shall be filed with the county clerk. *As amended, Stats. 1883, 45.*

### 1666. May appoint deputies.

SEC. 3. The county surveyor may appoint deputy surveyors, who shall severally take and subscribe to the oath of office, and for the faithful performance of whose duties he shall be responsible.

### 1667. Certificate to be evidence.

SEC. 4. The certificate of the county surveyor, or any of his deputies, shall be submitted as legal evidence in any court of this state; but the same may be subject to be rebutted by other evidence. Surveys made by the mutual consent of parties may also be admitted as legal evidence in any court of this state; *provided*, this section shall not be so construed to exclude the testimony of other surveyors or engineers.

### 1668. Surveys, when county surveyor interested party.

SEC. 5. When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before any court, and a survey of which is necessary, the court shall direct the survey to be made by some capable and disinterested person, who shall return such survey on oath or affirmation, and shall receive for his services the same fees as the county surveyor would be entitled to for similar services.

### 1669. Vacancy, how filled.

SEC. 6. During a vacancy in the office of county surveyor of any county, the probate judge of such county may appoint some competent person to perform the duties of surveyor until such vacancy shall be filled in the manner prescribed by law.

Vacancy, see secs. 1518, 2803.

### 1670. Duties of.

SEC. 7. It shall be the duty of said county surveyor, either by himself or one of his deputies, to execute any survey that may be required by order of any court, or upon the application of any individual or corporation.

### 1671. Record of surveys.

SEC. 8. He shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided by the county for that purpose, which shall be transmitted to his successors in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, indorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with the certificate of sur-

vey, shall be furnished by him to any person requiring the same, upon payment of the fees allowed by law.

### 1672. Surveys, how expressed.

SEC. 9. In all surveys the courses shall be expressed according to the true meridian; and the variation of the magnetic meridian from the true meridian shall be expressed on the plat with the year, month, and day of the survey.

[Sec. 10 repealed, Stats. 1865, 344.]

### 1673. Penalty for neglect of duties.

SEC. 11. Any county surveyor who shall fail or refuse to perform any of the duties required of him by this act, shall be fined by any court of competent jurisdiction, in a sum not exceeding five hundred dollars.

### 1674. Fees.

SEC. 12. Each county surveyor shall be allowed such fees as are provided by law.

[Sec. 13 repealed, Stats. 1865, 344.]

Washoe Co. v. Humboldt Co., 14 Nev. 123.

## TREASURERS

### *An Act in relation to county treasurers.*

Approved November 29, 1861, 286

1675. Oath of office and bond.

1676. Duties of.

1677. May appoint deputies.

1678. Office, location and hours.

1679. Accounts, arrangement of.

1680. Books subject to inspection.

1681. To pay orders when funds—Procedure when no funds.

1682. Orders and interest redeemed.

1683. How redeemed—Received on taxes.

1684. Redeemed orders, where deposited.

1685. Removal of treasurer.

1686. Annual settlements.

[Section 1 superseded, sec. 2781.]

### 1675. Oath of office and bond.

SEC. 2. The county treasurer, before he enters on the duties of his office, shall take the oath faithfully to discharge the duties of his office, as prescribed by law; he shall, also, before he enters upon the duties of his office, give a bond to the county, with at least two sureties residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said treasurer during his term of office, the amount to be fixed, and the bond to be approved by the county commissioners of the proper county, conditioned that all moneys received by him for the use of the county shall be paid as the commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his duties.

Official bond of treasurer. White Pine Co. v. Herrick, 19 Nev. 34.

Liability on bond where money is stolen. State v. Nevin, 19 Nev. 162.

See Kruttschnitt v. Hauck, 6 Nev. 163; State v. Rhoades, 6 Nev. 352, and 7 Nev. 434; Jeffrey v. Walsh, 14 Nev. 143.

Responsible on official bond for money of unincorporated town, sec. 952.

Duties in relation to town government, secs. 878–890 (police department fund), 910–912; fire department fund, 897–898; sewerage purposes, 990.

Duty to pay money received from escheated estates to state treasurer, sec. 1625.

May sue district attorney to compel accounting, secs. 1600–1601.

Salaried officers to account to, for fees collected, secs. 1696–1700.

Settlements with state treasurer to deduct allowance to revenue officers, sec. 1701.

Ex officio tax receiver, sec. 3643.

County treasurer assist board of examiners in county funds, 1550.

County treasurer to apportion county money to various funds, 1557.

Duties of in relation to revenue, secs. 3644–3651, 3654, 3667–3672, 3680, 3703, 3746–3749, 3754, 3767, 3796, 3862, 3865, 3846–3852.

Sheep inspection fund, duty to notify commission of amount collected for, sec. 4590.

Warrants transferred in violation of law, may refuse to redeem, sec. 2845.

Fines and forfeitures under marriage act, may bring action for, sec. 2352.

Baggage, unclaimed at hotels, proceeds of sales of to be paid to, sec. 2152.

Surety bond, county to pay premium on, sec. 2889.

Custodian of ballots, may be, sec. 1795.

As to action on other official bonds, see *Kruttchnitt v. Hauck*, 16 Nev. 163; *State v. Rhoades*, 6 Nev. 352; *State v. Rhoades*, 7 Nev. 434; *Jeffrey v. Walsh*, 14 Nev. 143.

In action against sureties on official bond of treasurer to recover an amount of money for which treasurer was in default, it is not necessary, to entitle the county to recover, that the complaint should specifically aver a performance of the several acts required to be performed by the county commissioners; but an averment that the county commissioners complied with all the requirements and conditions of said bonds and the requirements of all acts of the legislature pertaining to official bonds of county officers, is sufficient. *Co. of White Pine v. Herriek*, 19 Nev. 34 (5 P. 276).

Public officers who are intrusted with public funds are not mere bailees of the money, to be exonerated by the exercise of ordinary

care and diligence. Their liability is fixed by the bond and the fact that money is stolen from them does not release them from liability on their official bond. *State v. Nevin*, 19 Nev. 162, 166, 167 (3 A. S. 873, 7 P. 650).

A bond requiring a faithful performance of official duty is as binding upon principal and surety as if all the statutory duties of the officer were inserted in the bond. *Idem*.

It is the duty of county treasurers to safely keep the public money, and pay it out only as provided by law. *Idem*.

The treasurer having admitted the defalcation, the state was not compelled to wait until the close of his term of office before commencing an action upon his bond. *Idem*.

## 1676. Duties of.

SEC. 3. He shall receive all moneys due and accruing to his county, and disburse the same, on the proper orders issued and attested by the county auditor.

## 1677. May appoint deputies.

SEC. 4. County treasurers may appoint one or more deputies, and may take from them bond with sureties; they shall have power to remove their deputies at pleasure, and every county treasurer and his sureties shall be liable for every official act of his deputies.

See sec. 2848.

## 1678. Office, location and hours.

SEC. 5. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for transaction of business during business hours; and he, and his deputies, are authorized to administer all oaths necessary in the discharge of the duties of his office.

See sec. 1564.

May have leave of absence, secs. 1566—1568.

## 1679. Accounts, arrangement of.

SEC. 6. He shall so arrange and keep his books that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account.

## 1680. Books subject to inspection.

SEC. 7. He shall, at all times, keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once a year, and as often as such board may require.

Board of examiners to count money in custody of treasurer, secs. 1549, 1551.

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 60.

## 1681. To pay orders when funds—Procedure when no funds.

SEC. 8. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of

such order the date of redemption and his signature. If there be no funds to pay such order when presented, he shall indorse thereon, "Not paid for want of funds," and the date of such indorsement over his signature, which shall entitle such order thenceforth to draw legal interest; *provided*, that such interest shall cease from the date of notice by publication in some newspaper printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case, and if there be no such newspaper, then by posting such notice at three public places in such county.

Payment of certificates of indebtedness, sec. 1563.

Cited, *People ex rel. Flack v. County Commissioners*, 1 Nev. 462.

### 1682. Orders and interest redeemed.

SEC. 9. When the county treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest distinct from the principal.

### 1683. How redeemed—Received on taxes.

SEC. 10. County orders shall be redeemed by the treasurer according to the priority of the time of presentment; *provided*, such orders payable out of the county revenue shall be received in payment of county taxes, without any regard to the priority of presentment, or number; but such treasurer shall not pay any balance thereon over and above such tax, when there are outstanding orders unpaid for want of funds.

The only contract created by the certificate of indebtedness is that they shall be paid out of the general fund in the order of presentation or allowance. *Esser v. Spaulding*, 17 Nev. 289, 300.

### 1684. Redeemed orders, where deposited.

SEC. 11. The treasurer shall, on the first Monday in September, in each year, deposit with the county auditor all county orders redeemed, who shall receipt therefor.

### 1685. Removal of treasurer.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county.

### 1686. Annual settlements.

SEC. 13. The county treasurer shall annually make complete settlements with the board of county commissioners, at the regular September term thereof, and shall, at the expiration of his term of office, deliver to his successor all public moneys, books, and papers in his possession.

[Sec. 14 is superseded by the various salary acts.]

*An Act authorizing county treasurers to place county funds in bank, on open account, under certain restrictions.*

Approved March 12, 1885, 93

### 1687. Unanimous consent of bondsmen necessary.

SECTION 1. The county treasurers of the several counties in this state may, when a private or an incorporated bank is located at the county-seat, deposit, with unanimous consent of their bondsmen, county funds in such bank or banks upon open account; and when no such bank or banks exist at such county-seat, may deposit, with the unanimous consent of their bondsmen, county funds with any private or incorporated bank in the State of Nevada. Such accounts shall be kept in the name of the county in such

manner as the board of county commissioners may prescribe. The balances in said banks, as certified to by the proper officer thereof, and by the oath of the county treasurer, may be counted as cash. All orders, checks or drafts drawn by the county treasurer on the banks with which county funds are deposited, shall be countersigned by the county clerk thereof, and shall bear on their face the number of the county warrant for which such order, check or draft is issued.

### 1688. Bondsman released by giving notice.

SEC. 2. Whenever any bondsman or bondsmen whose consent to deposit the county funds in any bank or banks has not been obtained in writing, such bondsman or bondsmen shall be released from all responsibility on the bond of said treasurer, upon giving notice as required by law.

## CONCERNING CERTAIN OFFICERS

### *An Act concerning officers.*

Approved November 29, 1861, 288

1689. Justices conservators of the peace and other duties.      1691. Additional duties of clerk.  
1690. Clerks to take oath and give bond.      1692. Duties of constable and sheriff.

[Section 1 (bond of justice of the peace) superseded, sec. 4927.]

### 1689. Conservators of the peace and other duties.

SEC. 2. The justices shall be conservators of the peace in their respective townships, and shall discharge such duties as may be prescribed by law.

### 1690. County clerks to take oath and give bond.

SEC. 3. Each county clerk shall, before entering upon the duties of his office, take the oath prescribed by law, and execute to the county a penal bond, in the sum of ten thousand dollars, conditional for the faithful discharge of the duties of his office, which bond shall be approved by the probate judge, and filed in the office of the county recorder.

### 1691. Additional duties of clerk.

SEC. 4. The county clerk shall perform such duties as clerk of the probate court, clerk of the board of county commissioners, and county auditor, as required by law, and shall discharge such other duties as may be prescribed by law.

[Sec. 5 (bond of constable) superseded, sec. 4928.]

### 1692. Duties of constable and sheriff.

SEC. 6. Each constable shall be a peace officer in his township, and shall serve all mesne and final process issued by a justice of the peace, and shall discharge such other duties as are or may be prescribed by law; *provided*, that in case a sheriff or his deputy in any county in this state shall make an arrest of any person or persons charged with a criminal offense or arrested in the commission of an offense, the sheriff or his deputy shall have the privilege, and it shall be his duty to serve all process, whether mesne or final, and attend the court executing the order thereof in the prosecution of the person or persons so arrested, whether in a justice or a district court, to a final conclusion, and whether the same be an offense of which a justice of the peace has jurisdiction, or whether the same be a preliminary examination or hearing; and the said sheriff or his deputy shall receive the same fees and in the same manner therefor as the constable of the township, in which such justice court is held, would receive for like service. *As amended, Stats. 1887, 134.*

- Sheriffs and constables to abate nuisances in unincorporated towns, sec. 920.  
 Successors in office of sheriffs and constables may execute deeds for sales under process or orders, sec. 1662.  
 Duty to impound estray animals, secs. 2261, 2265, 2329—2331; hogs, may sell, 2256—2260.  
 Election of constable, sec. 2782; duties in new township, sec. 2785.  
 Fees, counties less than 800, sec. 1999; over 800, sec. 2011; mileage, sec. 2037, 2040; return, sec. 2041.  
 Unlawful to purchase judgment, sec. 2821.  
 Duel, duty to prevent, sec. 2823.  
 Refusal to make arrest or receive prisoner, felony, sec. 2820.  
 Baggage, unclaimed, may sell, sec. 2153.

### COMPENSATION, FEES, SALARIES

*An Act fixing the compensation of the various county officers (deputies) and of jailers in the several counties of this state.*

Approved February 26, 1881, 86

#### 1693. Salaries of deputies and jailer in certain counties.

SECTION 1. From and after the passage of this act the deputy county recorder, and deputy county clerks, and the jailer of the several counties (applicable to this act as hereinafter stated) shall receive a monthly compensation in the sum of one hundred dollars each for their services so rendered, respectively; *provided*, the provisions of this act shall be applicable only to counties of this state polling not less than sixteen hundred nor more than two thousand votes at any general election held in this state.

#### 1694. *Idem*—Claims to be filed.

SEC. 2. The several officers named in this act shall file their respective bill for the monthly compensation with the county clerk of his county, duly authenticated, and the same shall be allowed by the board of county commissioners of the said counties, by virtue of this act, and the same to be duly audited by the county auditor, and the auditor is hereby authorized to draw a warrant on the county treasurer payable out of the salary fund.

#### 1695. If no funds, certificate issued.

SEC. 3. In case there be no funds in the salary fund, the auditor is hereby authorized to deliver to the person or persons a certificate of indebtedness for the amount so allowed, the same to be registered (in number and date) as allowed by the board of county commissioners and approved by the county auditor.

*An Act regulating the compensation of county officers in the several counties of this state, and other matters relating thereto*

Approved March 11, 1885, 85

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| 1696. Salaried officers to pay fees to county treasurer. | 1699. Fees payable in advance—Penalty.                 |
| 1697. <i>Idem</i> —Must make monthly statement.          | 1700. <i>Idem</i> —Deficiency provided for.            |
| 1698. <i>Idem</i> —Neglect, how punished.                | 1701. State to allow compensation of revenue officers. |

[Sections 1—15, inclusive, fixing the salaries of county officers for the several counties in the state, have been superseded by subsequent acts fixing said salaries, and are therefore omitted.]

#### 1696. Salaried officers to pay fees to county treasurer.

SEC. 16. The several officers named in this act, who shall receive salaries as sole compensation, shall collect and safely keep all fees, percentages, and compensation, of whatever nature and kind, allowed them by law for services rendered by them or their deputies in their several official capacities, and they shall, on the first Monday in each month, after said date, pay the same to the county treasurer of their respective counties.

1697. *Idem*—Must make monthly statement.

SEC. 17. The several officers named in this act, who are required to collect and pay fees and percentages to the county treasurer, shall, on the first Monday of each month, make out and file with said treasurer a full and accurate statement, under oath, of all fees, percentages, or compensation, of whatever nature or kind, [received] in their several official capacities during the preceding month; also, a duplicate copy to the county commissioners; in which statement they shall set forth the causes in which and the services for which such compensations were received; and it shall be the duty of each of said officers to keep a book in which shall be entered the items of every kind or description of services performed by them or their deputies, and the time of rendering said services and the amount allowed by law for each particular service, which book or books shall be open to the inspection of the board of county commissioners and every citizen, at all times.

1698. *Idem*—Neglect, how punished.

SEC. 18. For a wilful neglect or a refusal to comply with the provisions of this act, or for any one or more of them, any officer or officers herein named shall, on conviction, be subject to a fine not exceeding five thousand dollars, to forfeit their offices, to imprisonment in the state prison not less than one year nor more than three years, or to any one or more of said penalties in the discretion of the court; *provided*, that nothing in this section shall be held to release them from the giving of any bonds required by law, from any civil responsibility to any and all persons in relation to the business of their said offices, that may be by other laws applicable to their said official duties.

1699. Fees payable in advance—Penalty.

SEC. 19. No salaried officer named in this act shall perform any service until the fees prescribed by law are paid; *provided*, that if any officer shall neglect or refuse to collect the legal fees for his services, he and his bondsmen shall be liable to pay double the amount of such fees not collected, to be recovered in any court of competent jurisdiction.

NOTE—The following amendment to above section is special in its limitation but is herewith cited for information:

[SEC. 19. No salaried officer, named in this act, except justices of the peace and constables, in any township of this state wherein the number of legal votes cast at the general election held in eighteen hundred and eighty-six equaled or exceeded the number of seventeen hundred, shall perform any service until the fees prescribed by law are paid; *provided*, that if any officer, except justices of the peace and constables, elected as above, shall neglect or refuse to collect the legal fees for his services, he and his bondsmen shall be liable to pay double the amount of such fees not collected, to be recovered in any court of competent jurisdiction; *and, also provided*, that the first moneys collected by the justices of the peace and constables, elected as above, and the first moneys collected in suits before justices so elected, shall be applied to the costs of the suit. *As amended, Stats. 1887, 37.*]

1700. *Idem*—Deficiency provided for.

SEC. 20. All fees and emoluments collected by the several salaried officers under the provisions of this act, shall be paid, upon a statement made under oath, to the county treasurer on the first Monday of each month, and by him kept in a fund to be known as the salary fund, and all warrants for the payment of the salaries provided by this act shall be drawn upon the salary fund. Whenever there is a surplus in said fund, the board of county commissioners may transfer it to the general fund; and whenever there is a deficiency, the board of county commissioners shall transfer to the salary fund a sufficient sum from the general fund to meet all warrants drawn against said salary fund.

See sec. 1540.

## 1701. State to allow part compensation of revenue officers.

SEC. 21. The State of Nevada shall allow the several counties herein named, for the services rendered under the revenue act, by the auditor, assessor, and treasurer of each county, a sum which shall be the proportion of the state tax to the whole tax levied by the county on the basis of the salaries allowed by the act, including the compensations allowed for deputies by the commissioners. These allowances shall be made at the time of the semiannual settlement provided by law, upon vouchers furnished the county treasurer by the board of commissioners of each county.

See sec. 3749.

Inasmuch as the salaries of officers in each county have been fixed by special acts relating to the particular county, sections 1 to 15, inclusive, of an act regulating the compensation of county officers in the several counties of this state (Stats. 1885, 85; amended, 1887, 20, 29, 37, 56, 69, 106, 117, 125; 1889, 31, 49, 50, 98; 1893, 63; 1895, 41, 68) have been omitted.

For the same reason the act consolidating certain county and township officers and fixing salaries (Stats. 1885, 96; amended, 1889, 92; 1891, 129; 1893, 16; 1895, 19, 57) has been omitted.

The salary acts will be found among the special acts relating to each particular county under the proper heading.

Cited, *Lobenstein v. Storey Co.*, 22 Nev. 381, 383 (40 P. 879).

The act of 1885, 85, supra, has had the following citations:

Secs. 1 and 8—The clause in "full for all services performed by himself or deputies" cannot be made applicable to the act of 1905, 109, so as to preclude compensation to the sheriff as collector for licenses since the act of 1885 is in conflict with acts of 1891 and 1905, and hence repealed, and especially since the office of collector of licenses has been regarded in all revenue laws as a distinct office. *Bradley v. Esmeralda Co.*, 32 Nev. 168 (104 P. 1058-1060).

Sec. 2—This act is not in conflict with sec. 20 of art. 4 of the constitution.

It is within the power of the legislature to pass local or special laws regulating the compensation of county officers.

This act, so far as it relates to officers of Washoe County, is constitutional. *State ex rel. Williams v. Fogus*, 19 Nev. 247, 248, 250, 254.

Cited, *State ex rel. Hallock v. Boyd*, 19 Nev. 358 (11 P. 36).

Sec. 5—Cited, *State ex rel. Love v. Elko Co.*, 21 Nev. 19, 21 (23 P. 935).

Sec. 7—Cited, *Turner v. Fish*, 19 Nev. 296 (9 P. 884).

Sec. 21—This section is not repugnant to

Upon a previous act, fixing salaries of the various county officers of the several counties (Stats. 1879, 133), the following decisions were based:

Under section 17 of said act it was held that the right of every justice of the peace, elected or appointed after the act took effect, to salary or fees, should be determined by reference to the number of legal votes cast at the last general election preceding the time when the claim for his salary is preferred. *State ex rel. Flanningham v. Storey Co.*, 16 Nev. 92-94.

The salary of county commissioners is regulated by the provisions of the salary act. The provision allowing mileage in the former law was intended as part of the compensation of commissioners for their services. The language of the salary act, that the salaries fixed "shall be in full for all services,"

and does not repeal Stats. 1885, 62. *State ex rel. Hallock v. Donnelly*, 20 Nev. 214-219.

The state is liable to a county for her proportion of the salaries of the assessor, auditor and treasurer.

This section is not repealed by Stats. 1891, 182-3, the latter act being simply a reenactment of the revenue law of 1865, except that it omits the provisions for the liability of the state for part of certain county officers' salaries, and it is not intended as a repeal of said act of 1865. *State ex rel. Westerfield v. Tyrrell*, 22 Nev. 421, 425 (41 P. 145).

Where the auditor, assessor and treasurer, ex officio, perform the duties of other county officers, not concerned in the collection of the revenue, and receive a salary in solido for the office and ex officio office or offices held by them, the state cannot be compelled to make the county an allowance upon any part of such salaries.

For the state to pay any part of the expenses of a county government not connected with the state's tax, would be in contravention of sec. 21 of art 17 of the constitution (ante, sec. 405). *State ex rel. Lyon Co. v. La Grave*, 24 Nev. 147-151 (50 P. 796).

excludes the idea that the legislature intended to allow the former provision on that subject to stand.

No contract is created between the government and the officer by his acceptance of the office. *State ex rel. Scott v. Trousdale*, 16 Nev. 357-359.

This act, authorizing the commissioners to transfer money from the general fund to the salary fund, is not in violation of the constitutional provision against impairing the obligation of contracts; nor is it repugnant to the act authorizing the transfer of surplus money from one fund to another (ante, sec. 244). *Esser v. Spaulding*, 17 Nev. 289 (30 P. 896).

Cited, in opinion of Hawley, J., on rehearing, *State ex rel. Copeland v. Woodbury*, 17 Nev. 353 (30 P. 1006).

## DEAF, DUMB AND BLIND

*An Act to provide for the education of the deaf and dumb and the blind of the State of Nevada.*

Approved March 2, 1907, 371

1702. Sent to California or Utah institutions. 1704. All intelligent deaf, dumb, and blind  
1703. Application for support and education, to receive tuition.  
how made.

1702. Sent to California or Utah institutions.

SECTION 1. The superintendent of public instruction is authorized to make arrangements with the directors of any institutions for the deaf and dumb and the blind in the State of California, or in the State of Utah, for the admission, support, education and care of the deaf and dumb and the blind of this state, and for that purpose is hereby empowered to make all needful contracts and agreements to carry out the provisions of this act. *As amended, Stats. 1905, 253; 1907, 371.*

1703. Application for support and education. how made.

SEC. 2. Upon the application under oath of a parent, relative, guardian or nearest friend of any deaf, dumb or blind person, resident of this state, setting forth that by reason of deafness, dumbness, or blindness, such person is disqualified from being taught by the ordinary process of instruction or education, and that such parent, relative, guardian or nearest friend is unable to pay for his or her support, education and instruction in any of the aforesaid institutions, and file the same with the board of county commissioners of the proper county, and such board shall be satisfied of the truth thereof and such board shall have made application to the superintendent of public instruction for that purpose, it shall be the duty of the superintendent of public instruction to issue a certificate to that effect, which certificate being produced, shall be the authority of the directors of any of the institutions aforesaid for receiving such deaf and dumb or blind person. *As amended, Stats. 1905, 253; 1907, 371.*

[Sec. 3, making appropriation, omitted.]

1704. All intelligent deaf, dumb and blind to receive tuition.

SEC. 4. All deaf and dumb or blind persons that are not mentally or physically incapacitated to receive an education or instruction, that are free from offensive or contagious diseases, and are unable to pay for their support, education and instruction in any of the aforesaid institutions, and whose parent, relative, guardian or nearest friend is unable to pay for his or her support, education and instruction in any of the aforesaid institutions, shall be entitled to the benefits intended by this act, and it is hereby made the duty of the board of county commissioners of such county to make provisions, at the expense of the county, for carrying such person to the office of the superintendent of public instruction, who shall make necessary arrangements for carrying the person to any of the institutions of instruction before mentioned, at the expense of the state, payable out of the fund provided by this act. All deaf, dumb or blind persons over the age of twenty-one years seeking admission into the aforesaid institutions shall, before making application under this act, have been actual, bona fide residents of the State of Nevada for the period of five years preceding the date of making such application. *As amended, Stats. 1905, 253; 1907, 371.*

Original act, Stats. 1869, 103, has been wholly amended by the foregoing sections.

For further rights and duties of state superintendent of public instruction, see Public Schools, State Superintendent of Public Instruction.

# ELECTIONS

## REGISTRATION

An Act to provide for the registration of electors, approved March 5, 1869, sections 1705-1719.

An Act supplemental to an act to provide for the registration of voters, approved March 5, 1869, approved February 20, 1885, allowing county commissioners to publish list of voters, section 1720.

An Act to provide for the registration of voters in case of death or resignation of registry agent, approved March 6, 1879, sections 1721-1725.

An Act to provide for the registration of electors in certain incorporated cities, approved March 24, 1911, sections 1726-1732.

Separate registration for out-of-town voters in precincts containing cities and towns, sections 1866, 1867.

An Act providing that registration at the primary will be sufficient for voting at the general election, approved March 23, 1911, section 1733.

An Act requiring registry agents to file list of registered voters with the county clerk and secretary of state, approved March 19, 1901, sections 1734, 1735.

## PRIMARY ELECTION

An Act to provide for the direct nomination of candidates for public office by electors, approved March 23, 1909, sections 1736-1766.

## GENERAL ELECTION

An Act relating to elections, approved March 12, 1873, sections 1767-1832.

An Act relating to elections and to more fully secure the secrecy of the ballot, approved March 13, 1891, sections 1833-1862.

An Act supplemental to the last-named act, and requiring rejected ballots to be canvassed on separate sheet, approved March 18, 1901, section 1863.

An Act further supplemental to that act, prohibiting officers from marking ballots, except to indorse reasons for rejection, approved March 19, 1901, section 1864.

An Act relating to elections, approved March 6, 1889, requiring that no precinct shall have more than four hundred voters, section 1865.

An Act concerning the election of town and city officers, approved March 22, 1897, sections 1866-1871.

An Act providing for the closing of the polls when all votes of the precinct have been cast, approved March 6, 1889, section 1872.

An Act to provide for the transmission of ballots, poll books and tally lists by mail in certain cases, approved March 6, 1889, sections 1873-1877.

An Act providing for the manner of submitting constitutional amendments to the voters of the state, approved March 5, 1887, sections 1878-1881.

An Act to provide for submitting certain acts of the legislature to the electors under the referendum provisions of the constitution, approved March 24, 1909, sections 1882-1886.

An Act to provide for the taking of the votes of electors of the state who may be in the military service of the United States, approved March 14, 1899, sections 1887-1893.

An Act limiting the time in which proceedings for contesting the election of any officer may be begun, approved March 25, 1903, sections 1894, 1895.

## ELECTION OF UNITED STATES SENATOR

An Act to secure the election of United States senators in accordance with the will of the people and the choice of the electors, approved March 14, 1899, sections 1896-1900.

Statutes of the United States relative to the election of United States senator by the legislature, sections 1901-1906.

An Act prescribing the manner of electing United States senators, approved March 7, 1865, sections 1907-1914.

## OTHER PROVISIONS RELATING TO ELECTIONS

Amendments to constitution to be submitted to vote of people, Const. 383.

Assemblymen, section 2779, Const. 261; special election to fill vacancy for, section 2797.

Civil process suspended on election day, Const. 253.

Clerk of supreme court, section 2776.

Constables, section 2782.

County commissioners, sections 1501, 1534; Const. 284.

- County officers, sections 2765, 2773, 2781.
- County and township officers, Const. 278.
- District judges, sections 2778, 4901; Const. 320.
- Election by people by ballot, Const. 254.
- Election by legislature viva voce, Const. 254.
- Elector, qualifications of, Const. 250, 411.
- Free text-books, sections 3462-3472.
- General election, date of, Const. 373.
- Governor, sections 2765, 2773, 2774; Const. 295.
- High schools, sections 3413, 3415.
- Justices of the peace, sections 2782, 4852; Const. 323.
- Justices of supreme court, 2775, 4830; Const. 318.
- Justices of supreme court to canvass, Const. 297.
- Laws to be passed regulating, Const. 252.
- Lieutenant-governor, sections 2765, 2773, 2774; Const. 310.
- New constitution, legislature to recommend vote upon, Const. 384.
- Notice of election, section 2769.
- Office, eligibility for, Const. 371.
- Presidential electors, sections 2767, 2768.
- Recorders of municipal courts, section 4856.
- Referendum, Const. 412.
- Registration of electors, Const. 255.
- Representative in Congress, section 2772.
- Residence defined, section 3609; Const. 250, 251, 252.
- Residence not gained or lost, how; Const. 250.
- Road supervisors, sections 3037-3040.
- School district bonds, sections 3431-3442.
- School trustees, sections 3278-3313.
- Senators, section 2780, Const. 262; special election to fill vacancy for, section 2797.
- Sewer bonds, sections 984-990.
- Soldiers and sailors to vote, Const. 252.
- State officers, sections 2765, 2773, 2774; Const. 312.
- Superintendent of public instruction, section 2777; Const. 353.
- Undue influence from power, bribery, tumult or improper practice, laws to be passed prohibiting, Const. 285.
- United States senator, Const. 292, U. S. Const. 93, qualifications, 95.
- Votes, plurality at election, to constitute choice, Const. 882.
- Voter, qualifications of, Const. 250, 411.
- Who not entitled to vote, Const. 250, 335, 371.

### REGISTRATION

#### *An Act to provide for the registration of the names of electors and to prevent fraud at elections.*

Approved March 5, 1869. 140

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| <p>1705. Justice of peace ex officio registry agent—Commissioners may appoint for other precincts—Registry agent may appoint deputy.</p> <p>1706. Commissioners to provide stationery.</p> <p>1707. Directions as to registration.</p> <p>1708. Notice of expiration of time of registration published.</p> <p>1709. Voter to take oath.</p> <p>1710. Oath required, when—Mandamus to require registration—Resident and electoral year defined—When elector deemed registered.</p> <p>1711. Naturalized citizen—Questions propounded.</p> <p>1712. Names and notice to be posted—Challenges, how made—Application to district judge—Penalty against registry agent.</p> <p>1705. Justice of peace ex officio registry agent—Commissioners may appoint for other precincts—Registry agent may appoint deputy.</p> | <p>1713. Official registers copied—Index books—Check lists—Copies delivered to inspectors of election—Transmission to county clerk.</p> <p>1714. Change of residence—Transfers—Certain electors have choice of precincts on certificate and affidavit.</p> <p>1715. Registry agents to subscribe to oath—Form of oath.</p> <p>1716. Compensation of registry agent—Certain expenses to be paid by municipality.</p> <p>1717. How entitled to vote if not on register—Identification may be required.</p> <p>1718. Punishment for illegal registration, voting or attempt to vote.</p> <p>1719. Punishment for perjury and violation when penalty is not prescribed.</p> |
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**SECTION 1.** The justices of the peace of the several counties of the state shall be ex officio the registry agents of their respective townships, and, as

such, their powers and duties shall be as hereinafter provided in this act; *provided*, that in any townships where, from any cause, there shall be no justice of the peace duly commissioned and qualified, or where an election district may be situated too distant from the office of the justice of the peace of said township, the commissioners of the county in which said election district is located may appoint some other competent person to perform the duties of registry agent, who shall be clothed with the same power and governed by the same restrictions as justices of the peace in the registration of the names of electors under the provisions of this act. All registry agents shall have power to administer oaths or affirmations, and do such other acts as may be necessary to fully carry out the provisions of this act. Any registry agent or ex officio registry agent may appoint a deputy registry agent who, upon the filing of his appointment and oath of office with the county clerk, shall have power to register voters, administer oaths or affirmations, and do all such other acts as may be done by a registry agent in carrying out the provisions of this act. Any registry agent or ex officio registry agent appointing any deputy shall be responsible for the compensation and acts of such deputy. *As amended, Stats. 1911, 332.*

The provisions of the registry law, when necessary to preserve the purity of elections, should be strictly pursued. Each elector must be registered and vote in the election precinct where he resides. *Stinson v. Sweeney*, 17 Nev. 309, 314, 315 (30 P. 997).

Where a noncompliance with the provisions of the registry or election laws, upon the part of the registry agent or officers of election, are not essential to preserve the purity of elections and the election is fairly and honestly conducted, the voters should not, on account of such irregularities, be deprived of their votes. *Idem.*

When there is no justice of the peace residing in an election district it is the duty of the county commissioners to appoint a suitable person to act as registry agent therein, and in remote precincts a non-resident may be appointed. *Idem.*

Registration is not an electoral qualification, but is only a means for ascertaining and determining whether the voter possesses the

qualifications required by law, and to secure in an orderly and convenient manner the right of voting. *State ex rel. Boyle v. Board of Examiners*, 21 Nev. 67 (9 L. R. A. 385, 24 P. 614).

The constitution has committed the subject of registration of electors to the legislature for the purpose of determining who are qualified voters, and laws of this description must be calculated to facilitate and secure, rather than impede, the exercise of the right to vote. *Id.*

See ante, 255.

No provision having been made for registration, except in the case of death or resignation of registry agent, one acting for such registry agent when the registry agent is sick is without authority. *State ex rel. McMillan v. Sadler*, 25 Nev. 132 (58 P. 284, 59 P. 546, 63 P. 128).

Cited, *State ex rel. Wilson v. Stone*, 24 Nev. 309 (53 P. 497).

## 1706. Commissioners to provide stationery.

SEC. 2. The county commissioners of the several counties shall provide for the registry agents, in their respective counties, when and where required, all proper and necessary books and stationery to carry out the provisions of this act. They shall furnish to each registry agent a book which shall be known as the "Official Register," which shall be ruled in columns of suitable dimensions to provide for the following entries opposite the name of each elector, to wit:

First—Number on the register.

Second—Date of registry.

Third—Name of elector.

Fourth—Age of elector.

Fifth—Where born.

Sixth—Last place of residence before coming to Nevada.

Seventh—First place of residence in Nevada.

Eighth—Present number of ward, or name of electoral district.

Ninth—Description of residence.

Tenth—Certificate of naturalization exhibited. *As amended, Stats. 1905, 190.*

See sec. 1744.

### 1707. Directions as to registration.

SEC. 3. It shall be the duty of the registry agents, at any time when called on to do so, between the hours of ten a. m. and six p. m. on all legal days, from and after the first day of August, and up to and including the twentieth day of October, prior to any general election, and in the case of any special or municipal election, provided for by law, twenty days prior to closing the register (which shall close ten days prior to the day of election), to receive and register the names of all persons legally qualified and entitled to vote at such election, or who will have legally acquired a residence (being otherwise qualified) and right to vote at such ensuing election according to the provisions of law under which such election may be held, in each election district within their respective townships, entering on the official register under the proper heading, the number and date of registry, the name (with the first or given name in full, if practicable), the age and nativity of the elector, last place of residence of elector before coming to Nevada, first place of residence of elector in Nevada, together with the number of the ward or name of precinct, and a particular description of the house, building or room in which the elector resides, such as will enable the officer or person desiring to serve notice of objection to vote to find the same without difficulty; and when the person so registered shall be of foreign birth, the fact of the exhibition of or failure to exhibit his certificate of naturalization shall be noted in the column provided for that purpose, which list, properly entered, as in this section required, shall be known as the "Official Register" of elections of their respective townships; *provided*, that for ten days next preceding the day set for closing the registry before any election mentioned in this act, said registry agents shall also be in attendance at their respective offices, and ready to register the names of applicants, at any time between the hours of seven and nine o'clock p. m., in addition to the hours heretofore required in this section; *and provided further*, that if any person shall fail or refuse to give his residence and the other information, with the particularity required in this section, he shall not be registered. *As amended, Stats. 1905, 191; 1907, 195; 1909, 53.*

Const., sec. 255.

Regarding registration in incorporated cities, official register to be furnished, see secs. 1727, 1729.

In precincts containing town or city, voters residing out of town are to be registered separately, sec. 1866.

The statute relating to removal of county-seats (Stats. 1867, 78), required an election to be held within fifty days after the order therefor: Held, that though the above section might render it impossible to hold an

election within fifty days, still the former law was too clear and plain in its terms to mean that the fifty-day period could be extended. State ex rel. Hess v. Washoe Co., 6 Nev. 104, 108.

### 1708. Notice of expiration of time of registration published.

SEC. 4. The registry agents shall cause to be published in a newspaper published in their county, or if none be so published, then in the newspaper published nearest to their county-seat, for twenty days before the expiration of the time provided for registration, prior to any general election, and for ten days before the expiration of the time provided by law for registration prior to any special or municipal election, a notice to the effect that the time for the registration of the names of the qualified electors in election districts number \_\_\_\_ of township number \_\_\_\_, prior to the \_\_\_\_ election, (specifying the election), to be held on the \_\_\_\_ day of \_\_\_\_, A. D. 18\_\_, for the county of \_\_\_\_ (or city of) \_\_\_\_, will expire at six o'clock p. m. on the \_\_\_\_ day of \_\_\_\_, A. D. 18 \_\_. The publication of said notice shall continue until the expiration of the time provided for said registration; *provided*, that in remote or new and sparsely settled districts written notices posted at not less than five conspicuous places within said district may be substituted for the publication in a newspaper.

## 1709. Voter to take oath.

SEC. 5. Every person applying to be registered shall, before he shall be entitled to have his name registered, take and subscribe the following oath or affirmation, which shall be administered by the registering agent; *provided*, that no elector who has taken said oath at the time of his previous registration shall be required to do so the second time in the same precinct, to wit:

"I do solemnly swear (or affirm) that I am a citizen of the United States, that I am of the age of twenty-one years, and will have actually and not constructively resided in this state six months, and in the county thirty days next preceding the day of the next ensuing election (or, in case of a municipal election, such length of time as may be required by the act of incorporation), that before coming to the State of Nevada I last resided at \_\_\_\_\_, in the State of \_\_\_\_\_ (designating such place of residence), that upon first coming to the State of Nevada I resided at \_\_\_\_\_, in said state (designating such place of residence), and that I am not registered elsewhere in this state. So help me God (or under the pains and penalties of perjury)."

Whenever an oath is required by the provisions of this act, the elector shall swear according to the form of his religious faith or belief and in such manner as may be considered most obligatory on his conscience. *As amended, Stats. 1905, 192.*

This section (in original act) held unconstitutional, *Clayton v. Harris*, 6 Nev. 64, 66, but the illegality was cured by above amendment.

The legislature can add no qualification to the right of suffrage to those prescribed by the constitution. *Idem.*

Cited, *State ex rel. Whitney v. Findley*, 20 Nev. 199 (19 A. S. 346, 19 P. 241).

## 1710. Oath required, when—Mandamus to compel registration—Resident and electoral year defined—When elector deemed registered.

SEC. 6. When any person shall appear and demand to be registered, whom the registry agent shall not know to be entitled to registry, under the qualifications required by law for the election then ensuing, the registry agent may question the applicant generally, either under oath or not, as to his qualifications as an elector, and, if satisfied, shall enter his name in the registry. But if the registry agent shall not be fully satisfied, or if the applicant be challenged by a qualified elector of the county, stating distinctly the grounds of challenge, the registry agent shall require the applicant to answer truly, under oath or affirmation the following questions, together with such other questions as said registry agent may consider necessary and proper, testing his qualifications as an elector for the ensuing election, to wit:

First—Are you a citizen of the United States?

Second—Are you now or will you be twenty-one years of age on or prior to the day of the next ensuing election?

Third—On the day of the next ensuing election will you have actually and not constructively resided in this state six months, and in this county thirty days (or in this city \_\_\_ days or \_\_\_ months, as provided by the act of incorporation) next preceding the day of said election?

Fourth—Are you now a resident of the election district in which you propose to be registered?

Fifth—Are you registered for this electoral year in any other election district in the name you have now given, or in any other name?

If any of the foregoing questions shall be answered in the negative, except the fifth, or that in the affirmative, the applicant shall not be registered; but if the applicant answer all the foregoing questions in the affirmative, except the fifth, and that in the negative, and the registry agent shall still believe, from the answers to such further questions as he may be led by circumstances

to ask, that the applicant is not a qualified elector, he shall refuse to register the name of said applicant. But such applicant may then apply to the district court of his district, or the judge thereof, for a writ of mandamus to compel the proper registration of his name in such election district; and any elector may also apply to the district court of his district, or the judge thereof, for a writ of mandamus to compel the registry agent to erase from the registered list of electors the name of any person therein registered whom the applicant may know and be able to prove is not a qualified elector; *provided*, that said registry agent shall have notice and opportunity to be heard before said court, or the judge thereof, and show cause for his refusal. For the purpose of deciding contested questions of registration, the district judges of the various judicial districts shall hold court or sit in chambers at least one day in each county of their respective districts during the ten days immediately preceding any general election, during which days cases of contested registration shall take precedence of all other business before such judges or courts. All such cases shall be decided within forty-eight hours after being submitted, and every case shall be decided before the day of election. A resident, within the meaning of this act, shall be construed to mean a person who has resided or will have resided continuously within this state for six months, and in the precinct the time prescribed by law, next preceding the day of the next ensuing election. The electoral year shall commence on the first day of January and end on the thirty-first day of December of each year. Whenever in the same electoral year there shall be held in any township more than one election, general, special or municipal, any person registered for any one of such elections shall be deemed registered for all subsequent elections in the same year for which the residence qualification is included in or implied by the residence qualification of the previous election, and in all cases registration for a municipal election shall be deemed registration for any succeeding general election in the same year. The person so deemed registered shall be subject in all cases to be excluded from the registry by reason of the change of residence, or other causes, as provided elsewhere in this act. *As amended, Stats. 1909, 56.*

See sec. 1712.

Sec. 1751 requires registration for voters at the primary election; sec. 1733 makes registration for the primary sufficient for the general election.

Regarding registration in cities polling over 2,000 votes, see sec. 1726.

Under this section, the functions of the writ of mandamus are enlarged so as to allow a hearing of evidence and an enforcement by such writ of the proper registration of an elector or the erasure of a name improv-

erly registered; being in effect a review of judicial or discretionary action of the registry agent. State ex rel. McGuire v. Waterman, 5 Nev. 323, 326.

### 1711. Naturalized citizen—Questions propounded.

SEC. 7. When a naturalized citizen shall apply for registration, his certificate of naturalization must be produced and stamped or written in ink by the registry agent, with his name and the year and county where presented, but if it shall satisfactorily appear to the registry agent, by the oath or affirmation of the applicant (and the oath or affirmation of one or more credible citizens, as to the credibility of such applicant, when deemed necessary), that such certificate of naturalization is lost or destroyed, or beyond the reach of the applicant for the time being, said registry agent shall register the name of said applicant, unless he be by law otherwise disqualified; *provided*, that in case of failure to produce the certificate of naturalization, the registry agent shall propound to him the following questions: First—In what year did you come to the United States? Second—In what state, county, court, and year did you declare your intention to become a citizen? Third—In what state, county, court, and year were you finally admitted to citizenship? Fourth—Where did you last see your certificate of naturalization? The answer to the above questions shall be taken down in the form of an

affidavit, which shall be subscribed and sworn to by the applicant and retained in possession by the registry agent, and by him handed over to his successor; *provided*, that no person shall be required to make the affidavit twice before the same agent, or the successor of such agent, having in his possession a former affidavit.

**1712. Names and notice to be posted—Challenges, how made—Application to district judge—Penalty against registry agent.**

SEC. 8. On the day next succeeding that on which the registration of electors, prior to any election, mentioned in this act, shall have been closed, the registry agents shall, with all reasonable expedition, prepare, and cause to be written or printed a full and complete list of all the names registered by them, and then remaining on the official register, for each election district, alphabetically arranged, commencing always with the surname of each; and they shall have printed or written such reasonable number of copies of each district list as in their judgment may be necessary, at least five copies of which they shall cause to be posted up in as many public and conspicuous places within the district to which they apply, and the remainder of such lists shall be distributed among the electors of the respective districts. The registry agents shall give notice in said lists that they will receive objections to the right to vote, on the part of any person so registered, until six o'clock p. m. on the tenth day previous to the day of election; and also requesting all persons whose names may be erroneously entered in said lists to appear at his office and have such error corrected. Such objections to the right to vote shall be made only by a qualified elector in writing, setting forth the ground of the objection or disqualification, and sworn to, or affirmed to, to the best of his knowledge and belief. A copy of such written objections, with the name of the objector, together with a copy of notice, requiring the person objected to to appear before the registry agent at a time certain and specified therein, and answer under oath such questions as may be propounded to him by the registry agent touching his qualifications as an elector, shall be served on the person objected to, and such service shall be good when left at the place of residence of such person objected to, as the same shall appear in the official register, however general or indefinite may be the description of the same in said register. And no such objections shall be tried unless it shall appear by the return by an officer, or the sworn statement of an elector within the county, appended to such notice, that such objections and notice were by him duly served by copy, as in this section of this act required. At the time specified in the notice, or at such further time as the hearing may be adjourned to, the registry agent, upon being satisfied from the return or affidavit that proper service of notice has been had, as in this section provided, shall proceed to examine such person (if present), under oath, touching all matters specified in such written objections, and respecting his general qualifications as an elector, and the testimony of the person making the objections, and any further evidence offered (which the registry agent before whom objections are made may desire to hear in relation thereto). If the registry agent shall be satisfied, from the answers under oath of the person objected to, or other evidence, that he is not a qualified elector, as required by law, for the next ensuing election, or if such person, so notified as hereinbefore provided and required, shall fail to appear at the time set, or shall fail to show cause for his nonappearance, it shall be the duty of the registry agent to erase his name from the official register; *provided*, that any person whose name may have been so erased, may apply to the district court or the judge thereof, as is provided in section 6 of this act; *provided, further*, for a refusal of any registry agent to perform his duties as registry agent, he shall, on conviction thereof, before a court of competent jurisdiction, be punished by a fine of not less than thirty dollars nor more than one hundred dollars, or by

imprisonment not less than fifteen nor more than fifty days, or by both such fine and imprisonment. All acts and parts of acts in conflict herewith are hereby repealed. *As amended, Stats. 1909, 56.*

See State ex rel. McGuire v. Waterman, under sec. 6 of this act.

**1713. Official registers copied—Index books—Check-lists—Copies delivered to inspectors of election—Transmission to county clerk.**

**SEC. 9.** During the time intervening between the closing of any registration of electors and the day of the next ensuing election, the registry agents shall carefully copy from the official register, into suitable books, one for each election district within their respective townships, the names of all electors registered for such election district, alphabetically arranged (the surname first), entering opposite each name the number it bears on the official register, together with all other entries therein found opposite such name. The registry agent shall also prepare, not later than the day next preceding that on which the election is to be held, in "index books," one for each election district, and which shall be known as the "check-lists," lists of the names of all electors found on the official register for such election districts, alphabetically arranged (the surname first), with the number such name bears in the official register placed at the left of the name of the elector, and with a blank column at the right of the column of names, formed by two parallel perpendicular lines, in which the inspectors of election shall check the names of those voting, by some particular character, as for instance, thus: "V" for voted. Said blank columns last mentioned shall have written "headings" made by the registry agents, showing what particular election the said "check-lists" apply to, as for instance, "voted at general election, 1868," or "voted at city election, 1869." The copy of the official register, together with the "check-list," for election district, as herein provided, shall be carefully prepared and duly certified to by the registry agent, and delivered to some one of the inspectors of election in each election district, at a time not later than the day next preceding that on which such election is to be held, and such "check-lists" shall be carefully preserved and transmitted by the inspectors of election to the clerk of the board of county commissioners, in connection with and as a part of the "election returns," as provided by law.

It is the duty of the registry agent to pre- deliver the same to the inspectors. Stinson  
pare a certified check list of electors and v. Sweeney, 17 Nev. 309, 314, 315 (30 P. 997).

**1714. Change of residence—Transfers—Certain electors have choice of precincts on certificate and affidavit.**

**SEC. 10.** Any registered elector, moving from one election district to another, prior to the day of the ensuing election, may apply to the registry agent, before whom he has already been registered for that electoral year, at any time prior to the delivery of the certified copies of register to the inspectors of election, and have his name taken off the official register, and receive from the registry agent a certificate showing substantially that he was on a certified date duly registered in the official register of township No. \_\_\_\_\_, in the county of \_\_\_\_\_, and that his name has been erased at his own request; which certificate shall entitle him to have his name registered in the same manner as other names are registered, in any other election district, either within the same county or any other county, for said election; *provided*, that it shall satisfactorily appear to the registry agent receiving the certificate, and to whom application is made for the second registration, that the applicant will have resided such length of time within such county and election district, prior to the next ensuing election, as is or may be provided by law to entitle him to vote. Any registered elector employed in moving trains, stages, mails or otherwise upon any of the transportation routes in this state may apply to the registry agent before

whom he has been already registered for that electoral year, at any time prior to the delivery of the certified copy of the register to the inspectors of election, and have his name taken off the official register and receive from the registry agent a certificate as above provided. Upon presenting, at any time not later than one hour prior to the closing of the polls, to the inspectors of election in any precinct on the railroad, stage line or transportation route on which he is employed, including the precinct in which he originally registered, the certificate mentioned above, and his written affidavit, which may be subscribed and sworn to before any of the inspectors of election, or any officer authorized to administer oaths, stating that he was so suddenly called away or detained by the transportation business in which he is employed that he did not have time to vote in the precinct in which he was originally registered, or to reregister under his transfer in that or any other precinct before the delivery of the certified copy of the register to the inspectors of election, the inspectors of election shall accept and file the certificate and affidavit and shall cause the name of the elector to be entered upon the certified copy of the register and the check-list under the designation "Electors allowed to vote upon presentation of certificate and affidavit on election day," and shall thereupon allow the elector to vote, the same as if his name had originally appeared upon the register, or certified copy thereof, and check-list. *As amended, Stats. 1911, 332.*

See secs. 1751, 1780 and 1851.

Under this statute, a voter, registered in a county where election precincts are not properly established and bounded, may take a certificate and be registered and vote in

any other polling place in the county. State ex rel. McMillan v. Sadler, 25 Nev. 132 (58 P. 284, 59 P. 546, 63 P. 128).

#### 1715. Registry agents to subscribe to oath—Form of oath.

SEC. 11. Before entering upon the duties prescribed in this act the registry agents (excepting justices of the peace who have been duly qualified) shall severally take and subscribe before an officer duly authorized to administer oaths the following oath or affirmation, which shall be filed in the office of the county clerk of their respective counties, to wit:

"I, -----, registry agent for election districts numbers ----- and -----, in the county of -----, and State of Nevada, do solemnly swear (or affirm) that I will perform all the duties of registry agent in and for said election districts according to law and the best of my ability, and that in the discharge of my duties as such registry agent I will honestly endeavor to prevent fraud, deceit, or any other manner of abuse of the elective franchise, so help me God (or under the pains and penalties of perjury)." *As amended, Stats. 1881, 55.*

#### 1716. Compensation of registry agent—Accounts made out—Certain expenses to be paid by municipality.

SEC. 12. The several registry agents shall be entitled to receive, as full compensation for all services rendered by them under the provisions of this act (except for the collection of poll taxes), the sum of twenty-five cents for each name by them legally registered in each electoral year, which shall be a valid claim against their respective counties; and their accounts shall be made out so as to clearly show the number of names by them severally registered during that electoral year, and sworn to and filed with the board of county commissioners of their respective counties; and said claims, together with all other just and reasonable demands of other persons for books, advertising, and printing, necessarily incurred in carrying out the requirements of this act, shall be audited and paid out of the county funds of the several counties as other county charges; *provided*, that the expenses incurred in publishing the notices and printing the lists of electors prior to

any municipal election, shall be a charge against, and shall be paid by the corporate authorities of the municipality holding such election.

[Sec. 13 repealed, Stats. 1871, 132.]

A justice of the peace in Storey County of one of the townships therein is not entitled to the compensation provided in this section, in addition to the salary named in section 11 of the salary act of 1885. *Lobenstein v. County of Storey*, 22 Nev. 382 (40 P. 1016).

**1717. Not entitled to vote if not on register—Identification may be required.**

**SEC. 14.** No person shall be entitled to vote at any election mentioned in this act, unless his name shall, on the day of election, appear in the "check-list" furnished by the registry agents to the inspector of election of the election district at which he offers to vote; and the fact that his name so appears in the "check-list" and in the copy of the official register in the possession of the inspectors of election, shall be prima facie evidence of his right to vote; *provided*, that when the inspectors of election shall have good reason to believe, or when they shall be informed by a qualified elector, that the person offering to vote is not the person who was registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name.

See secs. 1731 and 1790.

One whose name appears on the check list and copy of an official register furnished the election officers by the regular registry agent is entitled to vote although he was registered by one illegally acting for the registry agent. *State ex rel. McMillan v. Sadler*, 25 Nev. 132 (58 P. 284, 59 P. 546, 63 P. 128).

**1718. Punishment for illegal registration, voting or attempt to vote.**

**SEC. 15.** Any person who shall vote, or offer to vote, at any election mentioned in this act, but who shall not be a qualified elector, or any person who, being a qualified elector, shall vote or offer to vote in the name of any other registered elector, shall be deemed guilty of a felony, and on conviction thereof before any court of competent jurisdiction, shall be punished by imprisonment in the state prison for not less than one nor more than three years; and any person who shall wilfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides or will reside prior to the day of the next ensuing election; and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, or will not be a qualified elector on or before the day of the next ensuing election, in the election district in which he causes or endeavors to cause such registry to be made; and any other person who shall induce, aid, or abet any such person in the commission of either of such acts in this section enumerated and described, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by confinement in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

**1719. Punishment for perjury and violation when penalty is not prescribed.**

**SEC. 16.** All wilful, corrupt, and false swearing or affirming before any registry agent shall be deemed perjury, and on conviction, shall be punished as such. If any registry agent, or any other person in any manner concerned, shall wilfully and corruptly violate any of the provisions of this act, the penalty for which is not herein specifically prescribed, he shall be punished for each and every offense whereof he shall be duly convicted, by imprisonment in the state prison for a term not less than one year nor more than five years, or by fine of not less than one hundred nor more than one

thousand dollars, or both such fine and imprisonment, in the discretion of the court.

Under the former registration act (Stats. 1865, 380) it was held:

A person who was a qualified elector did not become disqualified by failure to pay his poll tax and to have his name registered until after the last day of the first week in October, A. D. 1865.

By provisions of said act all persons had until said time within which to have their names registered; no disqualification would result until after that time.

When all that is known of a person's citizenship is that his residence and home has been in a foreign country, the mere statement of a stranger that he was a citizen is not sufficient to establish a citizenship in

this country against the presumption that will arise from his home being in another country. *State v. Salge*, 1 Nev. 455, 456, 458.

On application for registry by one who could not take the oath prescribed in this section, but was entitled under the constitution to the right of suffrage, it was held that the said oath was unconstitutional, and that, as the registry agents could not alter or modify it so as to leave out the objectionable part, the entire oath must fall. *Davies v. McKeedy*, 5 Nev. 369. See sec. 250, ante.

Cited, *State ex rel. Hess v. Washoe Co.*, 6 Nev. 108.

*An Act supplemental to "An act to provide for the registration of the names of electors and to prevent fraud at elections," approved March five, eighteen hundred and sixty-nine.*

Approved February 20, 1885, 33

## 1720. Printing names of voters—Amount allowed.

SECTION 1. Whenever any board of county commissioners shall deem it necessary to have printed copies of the names upon the register of voters in any election precinct (as mentioned in section 8 of the act to which this act is supplementary), said board shall cause said list to be printed in such manner and for such time, in a newspaper or otherwise, as they may deem best calculated to give notice to the public of the names so registered, and shall cause copies thereof to be forthwith furnished to the registry agent of said precinct for posting, as required by said section 8; *provided*, that no registry list shall be printed at the charge or expense of a county, and no board of county commissioners shall allow, or auditor approve any claim therefor, in whole or in part, unless said printing shall have been done at the instance and order of said board; *and provided further*, that in no case shall the whole amount allowed by said board, approved by the auditor, or paid by the county for printing any registry list, exceed the sum of fifteen cents for each name upon said list and printed.

*An Act to provide for the registration of voters in case of death or resignation of registry agent.*

Approved March 6, 1879, 84

## 1721. Death of registry agent.

SECTION 1. It shall be the duty of the chairman of the board of county commissioners of any county of this state, upon receiving notice from any responsible citizen of the death or resignation of any registry agent in their county, after the opening and prior to the closing of the books of registration, to immediately, without giving notice, appoint some competent person to fill such vacancy.

A registration made by one acting for the registry agent while the registry agent is sick is without authority. *State ex rel.*

*McMillan v. Sadler*, 25 Nev. 132 (58 P. 284, 59 P. 546, 63 P. 128).

## 1722. Qualification of appointee.

SEC. 2. It shall be the duty of such person, so appointed, to qualify within two days after receiving notice of such appointment.

**1723. Failure to qualify.**

SEC. 3. In case of the failure of such person so appointed to qualify within the time herein provided, voters may, upon producing evidence as to their right to vote, be registered at any other precinct in said county.

**1724. Voters, when qualified.**

SEC. 4. Any person so registered shall, upon presentation and surrender of a certificate of registration, signed by the registry agent of said precinct, be considered a legal voter in any precinct of said county.

**1725. Construction of act.**

SEC. 5. This act shall not be so construed as to interfere with the right of the full board of commissioners to make such appointment, except in cases herein provided.

McMillan v. Sadler, 25 Nev. 132.

*An Act to provide for the registration of the names of electors and to prevent fraud at elections in certain incorporated cities within the State of Nevada, providing certain penalties and other matters properly appertaining thereto.*

Approved March 24, 1911, 370

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| 1726. Official register and stationery to be furnished by county commissioners. | 1730. Oath of identification on transfer.                            |
| 1727. Duties of registry agent.   | 1731. Challenge and identification of voter. Prompting voter felony. |
| 1728. Questions and answers transmitted to election board.                      | 1732. This act supplementary to previous acts.                       |
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**1726. Official register and stationery to be furnished by county commissioners.**

SECTION 1. The county commissioners of the several counties shall provide for the registry agents, as now constituted by law, in their respective counties, when and where required all proper and necessary books and stationery to carry out the provisions of this act. They shall furnish to each registry agent whose duty it is to register the electors in any incorporated city within the State of Nevada, polling more than two thousand votes at the last preceding general election, a book to be known as the "Official Register," which shall be ruled in columns of suitable dimensions to provide for the following entries opposite the name of each elector, to wit: First—Number on the register. Second—Date of registry. Third—Name of elector. Fourth—Age of elector. Fifth—Where born. Sixth—Number of ward or name of electoral district. Seventh—Description of residence. Eighth—Certificate of naturalization exhibited. Ninth—Signature of the elector. Tenth—Number of identification statement. Each column shall be so marked by printed or written words at the top thereof on each page of such official register as to indicate the nature of the entries to be made therein. Such official register shall be in such number of volumes as shall equal the number of voting or polling-places in such incorporated city.

Const. sec. 255.  
See sec. 1707.

**1727. Duties of registry agent.**

SEC. 2. In registering electors in any such incorporated city as mentioned in section 1 of this act, it shall be the duty of the registry agent to make the appropriate entries in each column of such official register, except in the ninth column, and in said ninth column it shall be the duty of the registry agent to procure from the elector his signature by having the elector sign

therein his name in ink or indelible pencil; and the elector shall, with his own hand and without assistance, using an indelible pencil or ink, sign his name; *provided*, that if the elector alleges his inability to so sign, the registry agent shall read to the elector the following questions from a book to be furnished by the county commissioners and to be known as "Identification Statements for Registration Day," and said registry agent shall write down in said book the answers of the elector to said questions, each answer being written after the question to which it is an answer. Said questions so read shall be the following: What is your name? What is or was your father's full name? What is or was your mother's full name? What is your occupation? What is the name of your present employer? If unemployed, what is the name of your last employer? Where is or was his place of business? Are you married or single? Where did you actually reside immediately prior to taking up your present residence? At the bottom of each list of questions shall be printed the following statement: "I certify that I have read to the above-named elector each of the foregoing questions and that I have truly recorded his answers as above to each of said questions," and said registry agent, who has made the above record, shall forthwith sign his name to said certificate and date the same. The above questions shall be printed on separate sheets of paper which shall be furnished said registry agent, bound together in book form and numbered consecutively, and the number corresponding to the number consecutively, and the number corresponding to the number on each sheet, containing said list of questions shall be entered, when questions have been answered, in the tenth column in the official register of electors. Said book of identification statements shall be kept at all times by the registration agent or other proper officer or officers with the said official register.

See sec. 1707.

Voters residing out of town in precincts containing a town or city are registered differently, sec. 1866.

### 1728. Questions and answers transmitted to election board.

SEC. 3. Each of said registration agents shall cause such registrations of electors and said questions for identification to be so kept that the same shall be in form to be transmitted to the inspectors of elections, and all the electors registering shall be classified according to the polling or voting places at which they are each respectively entitled to vote, and all electors entitled to vote at any particular polling-place in the same book, or have the questions put to them recorded in one book or bound together in such manner as the registry agent shall determine, and no electors entitled to vote at different polling-places shall be registered in the same book. And no change shall be made in polling-places which in anywise interferes with the purposes of this act.

### 1729. Original official register delivered to election board.

SEC. 4. In addition to the books now required by law to be delivered by registry agents to the inspector or inspectors of elections, the registry agent shall deliver not later than the day preceding that on which the election is to be held, to some one of the inspectors of election in each polling or voting place in any such incorporated city, the original official register containing the names and original signatures of all electors registered and entitled to vote at such polling-place, together with the original or true and certified copies of the identification statements for all electors entitled to vote at such polling-place, if any there be.

### 1730. Oath of identification on transfer.

SEC. 5. If any elector registered under the provisions of this act shall transfer to any other incorporated city mentioned in section 1 thereof, or if

any duly registered elector shall transfer to any such incorporated city, after the closing of registration, and shall demand his right to vote at the election and shall, by reason of such transfer, not be able to be identified thereat by his signature taken at the time of registering as provided in this act, or by said identification statements, he shall, if his right to vote be challenged or questioned, before being given a ballot, prove to the satisfaction of the inspector or inspectors of election, by the oath of two qualified electors, that he is the same person who so registered in said other voting precinct and has been transferred and is mentioned in said certificate of transfer, which oath shall be reduced to writing and by the elector subscribed and sworn to before one of the inspectors of election, who shall also sign his name thereto in a book to be known as the "Transfer Book," which shall be kept in the same manner as the other election books.

### 1731. Challenge and identification of voter—Prompting voter felony.

SEC. 6. At any and all elections hereafter to be held in any such incorporated city, if any person except as provided by section 5 demanding the right to vote shall be challenged, or his right to vote be questioned, he shall, before receiving a ballot, sign his name by his own hand and without assistance, using an indelible pencil or ink, in a book provided by the inspectors of elections and to be known as the "Signature Book" and to be so labeled in printed or written words in ink, together with the name and description of the polling-place. If the elector on election day alleges his inability to so sign, then one of the election clerks, to be designated by the chairman of the election board or chairman of the inspectors of elections, if there be a chairman, if not then by any inspector of elections for such polling-place, shall read the same list of questions to the elector as were required to be read at the time of registration from a book to be provided for election day, and to be known as "Identification Certificates for Election Day," and said clerk shall write the answers of the elector thereto. Each of these questions shall be numbered, and a number corresponding to the number on the statement sheet shall be entered opposite the name of the elector in the index book now provided for by law. The questions answered on registration day by the elector shall not be turned to until all the answers to said questions shall have been written down on election day by said election clerk. Any person who shall prompt a voter in answering any questions provided for in this act shall be guilty of a felony, and upon conviction shall be imprisoned in the penitentiary for not more than two years. At the bottom of each list of questions provided to be asked an elector on election day shall be printed or written the following statement: "I certify that I have read to the above-named elector each of the foregoing questions and that I have truly recorded his answers as above to each of said questions," and said election clerk who has made the said record shall sign his name to the said certificates and date the same, and note the time of day of making such record. The comparison of signatures of an elector made on registration and election days, or the comparison of the answers made by an elector on registration and election days shall be had in full view of watchers, and the right to challenge electors shall exist until the ballot shall have been deposited in the ballot-box. If the signatures or answers, as the case may be, made upon registration day do not correspond, in the judgment of a majority of the inspectors of elections, then the person so offering to vote shall not be entitled to a ballot. And that shall be the only test as to whether the person offering to vote is the same person who registered under the name offered to be voted by such person so offering to vote. No other identification of electors shall be necessary nor permitted.

See secs. 1717 and 1790 regarding challenge of voters at polls.

[Sec. 7, repealer, omitted.]

1732. This act supplementary to previous act.

SEC. 8. This act is intended to be supplemental to an act entitled "An act to provide for the registration of the names of electors and to prevent fraud at elections," approved March 5, 1869, and of all acts amendatory thereof or supplemental thereto.

*An Act providing for a single registration of the names of electors to vote at any primary election and at the election for which candidates are nominated at such primary election.*

Approved March 23, 1911, 335

1733. Registration at primary sufficient for regular election—Names to be copied.

SECTION 1. Hereafter when any qualified elector shall have registered a vote at any primary election under the provisions of section 17 of "An act to provide for the direct nomination of candidates for public office by electors, political parties and organizations of electors, without conventions, at elections to be known and designated as primary elections, determining the tests and conditions upon which electors, political parties and organizations of electors may participate in any such primary election, and establishing the rates of compensation for primary election officers serving at such primary elections; providing for the organization of political parties and the promulgation of their platforms, and providing the methods whereby the electors of political parties may express their choice for the registration of votes for said primary elections and the compensation of registry agents, and to provide penalties for violating the provisions of this act," approved March 23, 1909, and his name shall appear on the supplemental register provided for in said section 17, said elector shall not be required to register again in the same voting precinct as a qualification to vote at the election for which candidates were nominated at such primary election for which he has previously registered; and the registry agent shall copy the names appearing on said supplemental register into the registration books for said election the same as if such elector had registered for such election as now required by the registration laws of this state.

See secs. 1710 and 1751 in regard to registration and transfers.

For registration in cities polling over 2,000 votes, see sec. 1726.

*An Act requiring registry agents to file with the county clerks a list of the registered voters in their precincts, and requiring each county clerk to certify the same to the secretary of state.*

Approved March 19, 1901, 82

1734. Registry agent to file list.

SECTION 1. It shall be the duty of each and every registry agent, before receiving pay for his services as such, to send the county clerk of the county wherein he is serving, a full and complete list of the registered voters in his precinct, with their ages and postoffice address.

1735. County clerk to certify registry list to secretary of state.

SEC. 2. It shall be the duty of each and every county clerk throughout the state upon receiving the said list of registered voters from the different registry agents of the different precincts in each county, to furnish forthwith a certified copy of said registry list, containing the names and postoffice address of the said registered voters in each and every county, by precincts, to the secretary of state, who shall upon receipt file the same in his office.

## PRIMARY ELECTION

*An Act to provide for the direct nomination of candidates for public office by electors, political parties and organizations of electors, without conventions, at elections to be known and designated as primary elections, determining the tests and conditions upon which electors, political parties and organizations of electors may participate in any such primary election, and establishing the rates of compensation for primary election officers serving at such primary elections; providing for the organization of political parties and the promulgation of their platforms, and providing the methods whereby the electors of political parties may express their choice at such primary elections for United States senator, to provide for the registration of voters for said primary elections and the compensation of registry agents, and to provide penalties for violating the provisions of this act.*

Approved March 23, 1909, 273

1736. Words and phrases construed.  
 1737. How candidates may be nominated.  
 1738. Date of primary elections.  
 1739. Duty of secretary of state.  
 1740. Nomination papers, filed when; form of—Candidates' statements.  
 1741. Nominations, when filed.  
 1742. Fees for filing nomination papers.  
 1743. Fees, how disposed of.  
 1744. Ballots and supplies provided at public expense.  
 1745. List of candidates to be transmitted to county clerks by secretary of state—County clerk to publish list and notice of primary election.  
 1746. Publication, how to be made.  
 1747. Form and printing of ballots—Secretary of state to furnish paper—Instructions to voters.  
 1748. Sample ballots; clerk to print and distribute—To be posted and published for municipal elections.  
 1749. Hours of election.  
 1750. Officers of election.  
 1751. General election laws govern—Registry agent to furnish copy of register and to register and transfer certain voters—Compensation.
1752. Mode of voting—Instructions may be given voter—New ballot, when.  
 1753. Manner of voting—Marking extra party or candidate nullifies ballot—Technical error.  
 1754. Folding and depositing ballot—Checking register.  
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## 1736. Words and phrases construed.

SECTION 1. The words and phrases in this act shall, unless such construction be inconsistent with the context, be construed as follows:

The words "Primary Election," any and every primary nominating election provided for by this act.

The words "September Primary Election," the primary election held in September to nominate candidates to be voted for at the ensuing November election.

The word "Election," a general or city, or city and county election, as distinguished from a primary election.

The words "November Election," the presidential election, the general state election, district, county, township, or city and county election held in November.

This statute shall be liberally construed, so that the real will of the electors shall not be defeated by any informality or failure to comply with all pro-

visions of law in respect to either the giving of any notice or the conducting of the primary election or certifying the results thereof.

See *In re Primary Ballots*, 33 Nev. —.

Mere irregularity of election officers in canvassing the ballots at a place other than the polling place will be disregarded, under provision of above section that the law shall be liberally construed, etc. *Nicholson v. Comins*, 33 Nev. — (111 P. 289-291).

Political parties are organizations of electors entertaining the same political opinions, attempting through an organization to elect officers of their own party faith and make their political doctrines the policy of the government. *Riter v. Douglass*, 32 Nev. 400 (109 P. 444).

This law is not invalid because it requires participating electors to declare a present intention to support the nominees for whom he votes. *Idem*.

A primary election is one for the nomination of candidates for the various parties.

This law is not invalid because it requires the payment of fees as a condition precedent to becoming a candidate, the fee being a reasonable one. *Idem*.

No religious test can be made a qualification of an elector. *Idem*.

See further citations of this case under section 250, ante.

This law, having made a radical change in the manner of making nominations for election, the provisions therein which preclude the withdrawal of a candidate after nomination supersede any provisions in earlier statutes permitting officers to resign, even if the candidate after nomination and before election were an officer within such former statute. *State ex rel. Donnelly v. Hamilton*, 33 Nev. — (111 P. 1027).

### 1737. How candidates may be nominated—Certain officers excepted.

SEC. 2. All candidates for elective public offices shall be nominated as follows:

1. By direct vote at primary elections held in accordance with the provisions of this act; or

2. By nominating petitions signed and filed as provided by existing laws. Party candidates for the office of United States senator shall be nominated in the manner provided herein for the nomination of candidates for state offices.

This act shall not apply to special elections to fill vacancies to the nomination of party candidates for presidential electors, nor to the nomination of officers of the incorporated cities, whose charters or ordinances now or may hereafter provide a system for nominating candidates for such offices, nor to the nomination of officers for reclamation and irrigation districts; nor to school district officers or school trustees; nor shall it be construed as restricting or affecting the right of political parties to hold, under existing laws, which are hereby continued in force for all such purposes, primaries and conventions for the selection of delegates to national conventions. *As amended, Stats. 1911, 334.*

See secs. 1834-1836.

Regarding nominations for United States senator, see sec. 1896.

### 1738. Date of primary elections.

SEC. 3. The September primary election shall be held in each precinct on the first Tuesday in September for the nomination of all candidates to be voted for at the ensuing November election. Any primary election other than the September primary election shall be held on Tuesday three weeks next preceding the election for which such primary election is held.

### 1739. Duty of secretary of state.

SEC. 4. 1. At least sixty days before the time for holding such September primary election in 1910, and biennially thereafter, the secretary of state shall prepare and transmit to each county clerk and to the city clerk in any city a notice in writing designating the offices for which candidates are to be nominated at such primary election.

2. Within ten days after the receipt of such notice such county clerk or city clerk in any city shall publish so much thereof as may be applicable to his county once in each week for six successive weeks, in not more than two newspapers published in such county or city and county.

3. In the case of September primary elections for the nomination of candidates for the city or city and county offices to be voted for at the November election in the odd-numbered years, the city clerk or secretary of the legislative body in any such city shall cause the publication of notice of such primary election, together with a complete statement of the offices for which candidates are to be nominated, once in each week for four successive weeks in not more than two newspapers of general circulation published in such city or city and county, the last publication to be made not more than forty and not less than fourteen days before such primary election.

4. In the case of primary elections other than the September primary elections the city clerk or secretary of the legislative body of the political subdivision for which such primary election shall be held shall cause one publication of such notice to be given, such publication and posting to be not more than forty and not less than fourteen days before such primary election.

See, In re Primary Ballots, 33 Nev. —.

1740. Nomination papers, filed when; form of—(Candidates' statements.

SEC. 5. (a) The name of no candidate shall be printed on an official ballot used at any primary election unless, at least thirty days prior to the primary election, if the candidate is to be voted for at the September primary election, and at least fourteen days prior to the primary election other than the September primary election, he shall file a nomination paper with the proper official as hereinafter provided by this act, such nomination paper to be under oath and in substantially the following form:

NOMINATION PAPER OF \_\_\_\_\_ FOR THE OFFICE OF \_\_\_\_\_  
 State of Nevada, \_\_\_\_\_ }  
 County of \_\_\_\_\_ } ss.

For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the \_\_\_\_\_ party as its candidate for the office of \_\_\_\_\_ I, the undersigned, \_\_\_\_\_, do solemnly swear (or affirm) that I reside at No. \_\_\_\_\_ street, in the city, (or town) of \_\_\_\_\_, county of \_\_\_\_\_, State of Nevada, and that I am a qualified elector of the election precinct in which I reside; that I am a member of the \_\_\_\_\_ party; that I believe in and intend to support the principles and policies of such political party in the coming election; that I affiliated with such party at the last general election in this state, and I voted for a majority of the candidates of such party at the last general election (or did not vote at said last general election, giving reason); that I intend to vote for a majority of the candidates of said party at the ensuing election for which I seek to be a candidate; that if nominated as a candidate of said \_\_\_\_\_ party at said ensuing election I will accept such nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practice in campaigns and elections in this state; and that I will qualify for said office if elected thereto.

(Signature of candidate for office.)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
 \_\_\_\_\_ notary public (or other officer authorized to administer an oath.)

(b) In the case of an elector seeking a nomination for the office of state senator or member of the assembly, he may include with his affidavit one of the two statements hereinafter set forth in this section and subdivision. His failure to include either such statement shall not be a valid ground for refusal to receive and file his nomination paper or papers by the secretary of state, county clerk or register of voters in any city and county as the case may be. Such statements, if any be made, shall be in substantially the following form:

I further declare to the people of Nevada, and to the people of \_\_\_\_\_

(senatorial or assembly) district that during my term of office, without regard to my individual preference, I will always vote for that candidate for United States senator in Congress who has received for that office the highest number of the people's votes for that position at the general election next preceding the election of a senator in Congress.

----- (Signature of candidate for nomination.)

If the candidate be unwilling to sign the above statement, he may sign the following declaration, which shall be filed with his nomination paper:

I further declare to the people of Nevada, and to the people of the ----- (senatorial or assembly) district that during my term of office I shall consider the vote of the people at any primary election for United States senator as nothing more than a recommendation, which I shall be at liberty wholly to disregard as I see fit.

----- (Signature of candidate for nomination.)

(c) Nothing herein shall be construed as prohibiting the independent nomination of candidates to be voted for at any general election, by electors or bodies of electors, as now provided by law, but a candidate defeated at a primary election held under the provisions of this act shall be ineligible for nomination to the same office at the same election. *As amended, Stats. 1911, 336.*

See sec. 1737.

The question whether a candidate nominated at a primary election may have his name omitted from the general election ballot, is a matter of policy for the legislature, and where the legislature forbids the withdrawal of candidates nominated at a primary, the court cannot allow a candidate to withdraw even for deserving reasons. *State ex rel. Donnelly v. Hamilton, 33 Nev. — (111 P. 1026).*

At common law a citizen could be required to perform the duties of an office. *Idem.*

A candidate nominated at a primary election for a public office is not an officer within the statute allowing officers to resign. *Idem.*

Under this section and sections 24 and 27 of this act, one nominated at a primary election as the candidate of a political party for a public office cannot have his name omitted from the general election ballot, though he has since the primary become incapacitated from making an active campaign. *Idem. (Noreross, C. J., dissenting).*

**1741. Nominations, where filed.**

SEC. 6. All nomination papers provided for by this act shall be filed as follows:

1. For state officers, United States senators, representatives in Congress, and all officers voted for in districts comprising more than one county, in the office of the secretary of state.
2. For officers to be voted for wholly within one county, city, town or township, in the office of the county clerk of such county.
3. For city officers, in the office of the city clerk or secretary of the legislative body of such city or municipality.

See secs. 1835-1837.

**1742. Fees for filing nomination papers.**

SEC. 7. Any candidate filing a nomination paper as provided in section 5a, with the proper officer as provided in section 6 shall pay to such officer a fee for such filing as follows:

If a candidate for nomination for any state office, or any district office voted for in more than one county, or representative or United States senator in Congress, one hundred dollars.

If a candidate for any district office voted for wholly in one county, fifty dollars.

If a candidate for any county office, twenty-five dollars.

If a candidate for state senator, twenty-five dollars.

If a candidate for assemblyman, fifteen dollars.

If a candidate for justice of the peace, constable or other town or township office, ten dollars.

No filing fee shall be required from a candidate for an office the holder of which receives no compensation. *As amended, Stats. 1911, 338.*

#### 1743. Fees, how disposed of.

SEC. 8. The county clerk shall immediately pay to the county treasurer all fees received from candidates. The city clerk or secretary of the legislative body of any municipality shall immediately pay to the city treasurer all fees received from candidates.

Immediately after the last day for filing nomination papers the secretary of state shall pay to the state treasurer all fees received from candidates, and shall apportion the fees paid to him by each candidate equally among the counties within which such candidate is to be voted for and certify such apportionment to the state controller, who shall issue warrants on the state treasurer for the amount due each county and the state treasurer shall pay the same.

#### 1744. Ballots and supplies provided at public expense.

SEC. 9. The expense of providing all ballots, blanks and other supplies to be used at any primary election provided for by this act, and all expenses necessarily incurred in the preparation for or the conduct of such primary election, shall be paid out of the treasury of the city, town or township, county or state, as the case may be, in the same manner, with like effect and by the same officers as in the case of election.

See secs. 1706, 1747 and 1833.

Section 1840 provides that ballots shall be printed under the supervision of county clerks in some newspaper or printing office in the county; or if there is no newspaper or printing office in the county where the work can be done, in any newspaper or printing office in the state; provided that the cost of printing ballots shall not exceed fifty dollars per thousand.

Section 1765 makes the provisions of the general law governing elections applicable to primary elections.

#### 1745. List of candidates to be transmitted to county clerks by secretary of state—County clerk to publish list and notice of primary election.

SEC. 10. At least twenty-five days before any September primary election preceding a November election the secretary of state shall transmit to each county clerk of any county a certified list containing the names and post-office address of each person for whom nomination papers have been filed in the office of such secretary of state and who is entitled to be voted for in such county at such primary election, together with a designation of the office for which such person is a candidate and of the party or principle he represents.

Such county clerk shall forthwith, upon receipt thereof, publish under the proper party designation the title of each office, the names and addresses of all persons for whom nomination papers have been filed, the date of the primary election, the hours during which the polls will be open, and that the primary election will be held at the regular polling-places in each precinct, which shall be particularly designated. It shall be the duty of the county clerk to cause such publication to be made for two successive weeks prior to said primary election.

#### 1746. Publication, how to be made.

SEC. 11. Every publication required by this act shall be made in not more than two newspapers of general circulation published in such county or city or town or township, and one of such newspapers shall represent the political

party that cast at the last preceding general election the highest number of votes in such county or city or town or township, and one of such newspapers, if any, shall represent the party which cast the next highest number of votes at such election. In any case where the publication of the notices provided for by this act cannot be made as hereinbefore provided it shall be made in any newspaper having a general circulation in the city or county in which the notice is required to be published.

**1747. Form and printing of ballots—Secretary of state to furnish paper—Instructions to voters.**

**SEC. 12.** 1. All voting at primary elections within the meaning of this act shall be by ballot, and the respective tickets of all political parties shall be printed on the same ballot.

It shall be the duty of the county clerk of each county to provide such printed official ballots to be used at any September primary election for the nomination of candidates to be voted for in such county, town or township, at the ensuing November election.

It shall be the duty of the city clerk or secretary of the legislative body of any municipality to provide such printed official ballots for any primary election other than the September primary election.

All official ballots shall be printed on plain white paper. The secretary of state shall furnish the paper necessary to print said ballots and it shall be the duty of the secretary of state to obtain and keep on hand a sufficient supply of such paper for ballots, and to furnish the same in quantities ordered to any county clerk.

Such paper shall be watermarked with a design furnished by the secretary of state in such manner that the said watermark shall be plainly discernible on the outside of such ballot when properly folded, and such design shall be changed at each primary election.

See sec. 1744 and note regarding printing and cost of ballots.

See secs. 1779, 1780.

2. Official primary election ballots used at any primary election for the nomination of candidates to be voted for at any presidential or general state election shall be not less than twelve inches wide, and enough wider to conform to the requirements of the following provisions of this section, and as long as the herein prescribed captions, headings, party designations, directions to voters, and lists of names of candidates, properly subdivided according to the several offices to be nominated for, may require; and no official primary election ballot shall be less than six and one-half inches wide.

3. Across the top of the ballot shall be printed in heavy-faced gothic capital type, not smaller than fifty-four point, the words: "Official Primary Election Ballot."

Beneath this shall be printed in not smaller than eighteen-point type the name of the county and town, or township, wherein such ballot is to be used, together with the date of such primary election.

In the case of official primary election ballots to be used at any primary election held for the nomination of candidates other than those to be voted for at a presidential or general state election the words "Official Primary Election Ballot" shall be printed thereon in heavy-faced gothic capital type not smaller than twenty-four point.

4. At least three-eighths of an inch below the name of the county and town or township as aforesaid, and the date of the primary election, shall be printed in ten-point black-faced type, double-ledged, the following, "Instructions to Voters":

Place a cross (X) in the square just below the name of the party whose candidates you desire to vote for.

The designation of more than one party will render your ballot void, and the failure to designate any party will render your ballot void if you vote for any candidate or candidates of more than one party.

To vote for a candidate of the party you have designated, make a cross (X) in the square at the right of the name of the person for whom you desire to vote.

Any votes for a candidate other than a candidate of the party you have designated, will be disregarded.

5. The "Instructions to Voters" shall be separated from the names of the several parties and the lists of candidates thereof and the designation of the several offices for which nominations are to be made by one light and one heavy line or rule.

Beneath the "Instructions to Voters" there shall be printed in as many separate parallel columns as there are political parties represented on said ballot and in said primary election, the names of the respective offices and the candidates for nomination therefor, with the name of said respective political parties in not smaller than eighteen-point black-faced type at the head of said respective parallel columns.

Immediately beneath the name of each party there shall be placed a voting square not less than one-half inch square, the lines bounding said square being four-point black-faced rule.

The names of said parties shall be separated from each other and from the names of the candidates and offices by lines.

The order of said party tickets constituting such respective parallel columns with the name of the party at the head of the respective columns as aforesaid shall be alphabetical from left to right according to the first letter of the names of political parties represented on said ballot.

6. The names of the candidates for each office shall be grouped in alphabetical order according to the surnames of the candidates for such office and each group shall be preceded by the designation of the office for which the candidates seek nomination and the words "Vote for one" or "Vote for two" or more, according to the number to be nominated. Such designation of the office to be nominated for and of the number of candidates to be nominated shall be printed in heavy-faced gothic type, not smaller than eight-point. The word or words designating the office shall be printed flush with the left-hand margin, and the words "Vote for one" or "Vote for two" or more, as the case may be, shall extend to the extreme right of the column and over the voting square. The designation of the office and the direction for voting shall be separated from the names of the candidates by a light line.

7. The names of the candidates shall be printed on the ballot, without indentation, in gothic capital type not smaller than eight-point, between light lines or rules three-eighths of an inch apart. To the right of the names of the candidates shall be printed a light line or rule so as to form a voting square three-eighths of an inch square.

Each group of names of candidates shall be separated from the succeeding group by one light and one heavy line or rule.

All official primary ballots shall have printed on the back and immediately below the center thereof, in eighteen-point gothic capital type the words "Official Primary Election Ballot," and beneath these words the respective counties in which each ballot is to be voted.

8. The primary election ballot shall be printed in the following form: [See next page.] *As amended, Stats. 1911, 338.*

Regarding form of primary election ballots, see *In re Primary Ballots*, 33 Nev. —.

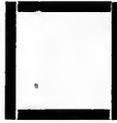
# OFFICIAL PRIMARY ELECTION BALLOT

ORMSBY COUNTY, CARSON TOWNSHIP (OR TOWN OR CITY)

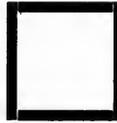
SEPTEMBER 8, 1910

INSTRUCTIONS TO VOTERS: Place a Cross (X) etc. (See Sec. 12, par. 4.)

DEMOCRATIC PARTY



REPUBLICAN PARTY



SOCIALIST PARTY



U. S. Senator Vote for One

JOHN DOE.....

RICHARD ROE.....

[Sec. 13, repealed, Stats. 1911, 342.]

**1748. Sample ballots: clerk to print and distribute—To be posted and published for municipal elections.**

SEC. 14. At least twenty days before the September primary election each city clerk or county clerk in any city or county shall prepare sample ballots for such election, placing thereon alphabetically, according to surnames under the appropriate title of each office the same as hereinbefore described for the official ballot, the names of all candidates for whom nomination papers have been duly filed with him, or have been certified to him by the secretary of state, to be voted for at the primary election in his county or city and county. Such sample ballots shall be printed on yellow paper, and be conspicuously marked with the words "Sample Ballot."

Such clerk shall forthwith submit a copy of said ballot to the chairman of the county committee of each political party represented on such ballot and shall mail a copy to each candidate for whom a nomination paper has been filed with him, or whose name has been certified to him by the secretary of state, to the postoffice address as given in such nomination paper or certification, and shall post a copy of said sample ballot in a conspicuous place in his office, and such clerk shall print for general distribution one sample ballot for each voter in each precinct, and shall distribute said sample ballots not less than ten days before said primary election by sending said sample ballots to the registration agent or agents of the several precincts for distribution.

On the tenth day before such primary election the county clerk shall correct any errors or omissions in the ballot, causing same to be printed as in this act provided, and to be distributed as provided by law, except that the number of ballots to be furnished to each voting precinct shall be apportioned at the ratio of one hundred and fifty such ballots for each one hundred voters registered in each precinct for each primary election.

In the case of primary elections for the nomination of candidates for city offices it shall be the duty of the city clerk or secretary of the legislative body of such city or municipality, or such other officer charged by law with the duty of preparing and distributing official ballots used at elections in such city or municipality, to prepare and distribute the sample and official primary election ballots, and so far as applicable and not otherwise provided herein the provisions of this act shall apply to the nomination of all candidates for city offices; *provided*, that the lists of candidates shall be posted and published at least ten days before such primary election and the official ballots printed at least four days before the day of holding such primary election. *As amended, Stats. 1911, 342.*

**1749. Hours of election.**

SEC. 15. The polls must be open at 8 o'clock of the morning of the day of primary election and must be kept open until 6 o'clock in the afternoon of the same day when the polls shall be closed; *provided, however*, if at the hour of closing there are any voters in the polling-place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. But no one who shall arrive at the polling-place after 6 o'clock in the afternoon shall be entitled to vote, although the polls may be open when he arrives. No adjournment or intermission shall be taken except as provided in the case of elections.

**1750. Officers of election.**

SEC. 16. The officers for primary elections shall be the same as provided by law for general elections, and such officers shall receive the same compensation for their services at primary elections as provided by law for

general elections. It shall be the duty of the proper officers to furnish certified copies of the official register, together with the check-list for election district, to one of the inspectors of election as now provided by law.

**1751. General election laws govern—Registry agent to furnish copy of register and to register and transfer certain voters—Compensation.**

SEC. 17. That the qualifications and regulation of voters at primary elections shall be subject to the same tests and governed by the same provisions of law and rules and regulations as are now prescribed by law for other elections and the same officers who prepare and furnish registers for general elections shall prepare and furnish them for use at primary elections, and it shall be the duty of the proper officers to furnish a certified copy of the register and supplements thereto, for use at primary elections, which said register shall show the names of all voters entitled to vote at such elections. Said register shall be made by taking the names of all voters on the register used at the last general election in the city, town or county, together with supplemental registers or additions showing all additional registrations, changes and corrections made since the last general registration. The supplemental registers to be made as follows: All persons entitled to register or vote at any primary election in any town, city or county whose names are not upon the register, or who may be entitled to transfer their registration, shall be entitled to be registered or transferred so as to enable them to vote at such primary elections, and for that purpose it shall be the duty of the officer charged with the registration of voters of such town, city or county to keep his office open for at least fifty days prior to fifteen days immediately preceding such primary election, and to register all voters entitled to vote at such primary election.

Said registry agent shall be paid a reasonable sum for copying the names from one register to another, the amount to be fixed by the county commissioners of the county; for all new names he shall be paid as now allowed by law.

In regard to registration and transfers, see secs. 1710, 1714, and 1733.

Concerning registration in cities polling over 2,000 votes, see sec. 1726.

Certain electors may vote without being upon the register upon presentation of certificate and affidavit, under sec. 1714.

**1752. Mode of voting—Instructions may be given voter—New ballot, when.**

SEC. 18. Any elector desiring to vote at any primary election shall give his name and address to the ballot clerk who shall immediately announce the same, and the elector's right to vote may be challenged by any elector upon any of the grounds now allowed by law for a challenge for a right to vote at a general election, and such challenge to vote shall be disposed of in the same manner as now provided by law for challenges at general elections.

The voter shall be instructed, if necessary, by a member of the board as to the proper method of marking and folding his ballot and he shall then retire to an unoccupied booth and without undue delay stamp the same with a rubber stamp there found.

If he shall spoil or deface the ballot he shall at once return the same to the ballot clerk and receive another. *As amended, Stats. 1911, 342.*

**1753. Manner of voting—Marking extra party or candidate nullifies ballot—Technical error.**

SEC. 19. (a) The voter shall designate the political party the candidates of which he desires to vote for, by a cross (X) in the square immediately below the name of such party and he shall designate but one such party; if he shall designate more than one party it shall render such ballot void, and if he shall fail to so designate any party at all such ballot shall be void unless

the voter shall have voted only for the candidates of one and the same political party, and shall not have voted for any candidate of any other political party, in which case such ballot shall be counted the same as if the voter had properly designated the party for whose candidates he voted. In case the voter designates one political party in the manner above provided and votes for candidates for nomination of any other political party than the party designated, such votes for such candidates of any other party than the one designated, shall be disregarded in the count.

(b) The voter shall designate his choice on the ballot of candidates of his party by stamping a cross (X) in the small square opposite the name of each candidate for whom he desires to vote. If he shall stamp more names than there are candidates to be nominated for any office, or if for any reason it is impossible to determine his choice for any office, his ballot shall not be counted for such office, but the rest of his ballot, if properly stamped, shall be counted, except as above provided in subdivision "a" of this section.

No ballot shall be rejected for any technical error which does not render it impossible to determine the voter's choice for candidates of his party, nor even though such ballot be somewhat soiled or defaced. *As amended, Stats. 1911, 343.*

#### 1754. Folding and depositing ballot; checking register.

SEC. 20. When a voter has stamped his ballot he shall fold it so that its face shall be concealed and only the printed designation on the back thereof shall be visible, and hand the same to a member of the board in charge of the ballot-box. Such folded ballot shall be placed in the ballot-box in the presence of the voter, and the name of the voter checked upon the register as having voted.

#### 1755. Polls open continuously.

SEC. 21. No adjournment or intermission whatever shall take place until the polls shall be closed and until all the votes cast at such polls shall be counted and the result publicly announced, but this shall not be deemed to prevent any temporary recess while taking meals or for the purpose of other necessary delay; *provided*, that no more than one member of the board shall at any time be absent from the polling-place.

#### 1756. Canvass, how conducted.

SEC. 22. As soon as the polls are finally closed the judges must immediately proceed to canvass the votes cast at such primary election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed, and the result thereof declared. Except as hereinafter provided, the canvass shall be conducted, completed and returned as provided by law.

The number of ballots agreeing or being made to agree with the number of names on the lists, as now provided by law, the board must take the ballot from the box and count all the votes cast for each party candidate for the several offices and record the same on separate tally-lists for each party. *As amended, Stats. 1911, 343.*

#### 1757. Canvass of votes—Clerk to forward statement—Secretary of state to compile returns of canvass.

SEC. 23. The board of county commissioners of each county, or in the case of a city or municipal primary election, the officers charged by law with the duty of canvassing the votes at any city or municipal election in such political subdivision, shall meet at the usual place at 1 o'clock in the afternoon of the first Friday after each primary election to canvass the returns.

If, at the time of meeting, the returns from each precinct in the county, city and county or other political subdivision in which polls were open have

been received, the board must then and there proceed to canvass the returns; but if all these returns have not been received the board may adjourn to 1 o'clock in the afternoon of the following Monday, when the canvass shall begin and be continued until completed, which shall not be later than 6 o'clock in the afternoon of the tenth day following such primary election.

The clerk of the board must, as soon as the result is declared enter upon the records of such board a statement of such result, which statement shall contain the whole number of votes cast for each candidate of each political party, and a duplicate as to each political party shall be delivered to the county, city and county, or city chairman of each political party, as the case may be.

The clerk shall also make an additional duplicate statement in the same form, showing the votes cast for each candidate not voted for wholly within the limits of such county, or city and county. The county clerk in any county shall forthwith send to the secretary of state by registered mail one complete copy of all returns as to such candidates and as to all candidates for the state assembly, state senate, representatives in Congress, and judicial offices, except justices of the peace.

The clerk shall also prepare a separate statement of the names of the candidates of each political party who have received the highest number of votes for the several offices to be voted for wholly within such county, city and county or other political subdivision in which such primary election was held.

The secretary of state shall, not later than the twenty-fifth day after any primary election, compile the returns for all candidates voted for in more than one county, and for all candidates for the assembly, state senate, representatives in Congress and judicial officers, except justices of the peace, and shall make out and file in his office a statement thereof. *As amended, Stats. 1911, 344.*

#### 1758. Certificates of nomination, how issued and transmitted—Certificate of election of county committeemen.

SEC. 24. The person receiving the highest number of votes at a primary election as the candidate for the nomination of a political party for an office shall be the candidate of the party for such office, and his name as such candidate shall be placed on the official ballot voted at the ensuing election.

It shall be the duty of the officers charged with the canvass of the returns of any primary election in any county, city and county, or municipality to cause to be issued official certificates of nomination to such party candidates as have received the highest number of votes as the candidates for the nomination of such party for any offices to be voted for wholly within such county, city and county, or municipality; and cause to be issued to such county committeemen a certificate of his election.

It shall be the duty of the secretary of state to issue official certificates of nomination to candidates nominated under provisions of this act for representatives in Congress and officers voted for in more than one county.

It shall also be the duty of the secretary of state to compile the returns for United States senator in Congress, if any, and prepare a statement thereof. A duplicate of such statement in so far as it shall be applicable to such party shall be transmitted to the state chairman of each political party. And it shall be the duty of the secretary of state to transmit duplicates of such statements to the speaker of the assembly and to the president of the senate on the first day of the next ensuing session of the legislature, together with his official certificates of nomination for the candidates for United States senator in Congress who received the highest number of votes cast by their respective party at the primary election. *As amended, Stats. 1911, 345.*

See State ex rel. Donnelley v. Hamilton, under section 5 of this act.

### 1759. County platforms, how formulated—State, county and executive committees—Vacancy.

SEC. 25. On the second Tuesday after any September primary election at the hour of 2 p. m. all the candidates of each political party to be voted for wholly within any county (including state senators and assemblymen) shall meet at the court house at the county-seat of such county and there organize, and adopt a county party platform and elect a county committee to consist of not less than one nor more than three electors from each voting precinct, but each precinct shall be represented by the same number of committeemen; such county committeemen shall hold office for the term of two years and until their successors are elected. A vacancy in such committee may be filled by the remaining members.

State central committees shall be selected as hereinafter provided; each such committee may select an executive committee and shall choose its officers by ballot and each committee and its officers shall have the powers usually exercised by said committees and the officers thereof in so far as may be consistent with this act.

The various officers and committees now in existence shall exercise the powers and perform the duties herein prescribed until their successors are chosen in accordance with the provisions of this act. *As amended, Stats. 1911, 345.*

### 1760. State platforms, how formulated — Proxies — State central and executive committees, how selected.

SEC. 26. In the years when a governor and other state officers are to be elected the candidates for state officers and for senate and assembly nominated by each political party whose term of office extends beyond the first Monday in January of the year next ensuing shall meet at the state capital at 2 o'clock in the afternoon on the fourth Tuesday of September after the date on which any primary election is held preliminary to such general state election. They shall forthwith formulate the state platforms of their party, which said state platform of each political party shall be framed at such time that it shall be made public not later than 6 o'clock in the afternoon of the following Thursday.

Members of such conventions may be represented thereat by proxy duly executed, but no person other than a member shall act as proxy for a member.

It shall also proceed to elect a state central committee, to consist of at least three members from each county, who shall hold office until a new state central committee shall have been selected. In years when a state convention assembles to select delegates to a national convention, to nominate a candidate for president and for vice-president of the United States, such state convention shall have the power to formulate their party platform and to select such new state central committee, which shall consist of at least one member from each county, which committee shall hold and exercise its power until the candidates for state offices and for senate and assembly to be voted for at the next ensuing state election shall assemble and select their successors. Such state central committee shall meet and organize at a time and place to be designated by the body selecting such state central committee, and such committee may then and thereafter select an executive committee. *As amended, Stats. 1911, 346.*

### 1761. Vacancies, how filled.

SEC. 27. Vacancies occurring after the holding of any primary election shall be filled by the party committee of the city, county, city and county, district or state, as the case may be.

See sec. 1839.

See State ex rel. Donnelly v. Hamilton, under section 5 of this act.

**1762. Tie vote, how decided.**

SEC. 28. In the case of a tie vote, if for an office to be voted for wholly within one county, or city and county, the county, city and county, and city board, as the case may be, shall forthwith summon the candidates who have received such tie votes to appear before such board, and such board in the presence of such candidates shall determine the tie by lot. In the case of a tie vote for an office to be voted for in more than one county, such tie shall be determined by lot by the secretary of state in the presence of the candidates.

**1763. Errors may be ordered corrected.**

SEC. 29. Whenever it shall be made to appear by affidavit to any justice of the supreme court or judge of the district court of the proper county that an error or omission has occurred or is about to occur in the placing of any name on an official primary election ballot, that any error has been or is about to be committed in printing such a ballot, or that any wrongful act has been or is about to be done by any judge or clerk of a primary election, county clerk, registrar of voters in any city and county, canvassing board or any member thereof, or other person charged with any duty concerning the primary election, or that any neglect of duty has occurred or is about to occur, such justice of the supreme court or judge of the district court shall order the officer or person charged with such error, wrong or neglect, to forthwith correct the error, desist from the wrongful act or perform the duty or forthwith show cause why he should not do so. Any person who shall fail to obey the order of such justice of the supreme court or judge of the district court shall be cited forthwith to show cause why he shall not be adjudged in contempt of court.

In re Primary Ballot, 33 Nev. —.

**1764. Contested nomination, how proceeded with.**

SEC. 30. Any candidate at a primary election desiring to contest the nomination of another candidate for the same office may proceed by affidavit within five days after the completion of the canvass as provided in section 23 of this act. And the contestee shall be required by the order of such justice of the supreme court or judge of the district court to appear and abide the further order of the court. *As amended, Stats. 1911, 346.*

**1765. Neglect of filing officer punished—General law to govern primaries.**

SEC. 31. Any officer in whose office any nomination paper has been properly filed who shall wrongfully either suppress, neglect or fail to cause the filing thereof to be noted at the proper time and in the proper place shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars or imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

Any act or omission declared to be an offense by the general laws of this state concerning primaries and elections shall also in like case be an offense concerning primary elections as provided for by this act, and shall be punished in the same manner and form as therein provided, and all penalties and provisions of the law governing elections, except as herein otherwise provided shall apply in equal force to primary elections as provided for by this act. *As amended, Stats. 1911, 347.*

**1766. State officers to prepare necessary forms.**

SEC. 32. It shall be the duty of the secretary of state and attorney-general to prepare all necessary forms to carry out the provisions of this act within sufficient time for the use of such forms. *As amended, Stats. 1911, 347.*

## GENERAL ELECTION

*An Act relating to elections.*

Approved March 12, 1873, 197

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## 1767. General election, when held.

SECTION 1. A general election shall be held in the several election precincts in this state, on the Tuesday next after the first Monday of November, one thousand eight hundred and seventy-four, and every two years thereafter, at which there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

See Const., sec. 373.

Justice of the peace, registry agent, sec. 4926.

Election of county commissioners, sec. 1531.

Recount, sec. 1513.

Board of county commissioners to canvass returns, sec. 1513.

District judge to canvass returns of legislators and commissioners, sec. 1513.

An election can only be held by virtue of some constitutional provision or legal enactment, either expressly or by direct implication authorizing that particular election. *Sawyer v. Haydon*, 1 Nev. 75.

An election cannot be held at a time not fixed by law for such election. *Daggett v. Collins*, 2 Nev. 351.

An election for removal of county-seat must be held within fifty days after petition. *Hess v. Washoe County*, 6 Nev. 104.

Where the attorney-general refuses to

bring an action against any person he has reason to believe unlawfully holds a state office, a person claiming an election to such office may, by leave of court, bring quo warranto on his own relation where he has no other remedy.

Quo warranto is the only remedy a person, who may be duly elected to a state office, has to oust one unlawfully holding the same, and have himself instituted. *State ex rel. McMillan v. Sadler*, 25 Nev. 131, 165 (58 P. 284, 59 P. 546, 63 P. 128).

## 1768. Precincts, how, when and where established—Inspectors of election—How appointed and notified.

SEC. 2. It shall be the duty of the boards of county commissioners to establish election precincts and define the boundaries thereof, and to alter, consolidate and abolish the same as public convenience or necessity may require; *provided*: First—That no new precinct shall be established except upon the petition of ten or more qualified electors, permanently residing in the district sought to be established, showing that they reside more than ten miles from any polling-place in said county, unless it shall appear to the satisfaction of said board that not less than fifty qualified electors reside in said precinct, in which event said precinct may be established without regard to the distance which said electors reside from another polling-place or precinct. Second—That no election shall be held in any precinct in which there shall not be at least ten qualified electors, permanently residing therein at the time notice of holding an election therein shall be given. Third—All qualified electors residing in any election precinct in which there are less than ten qualified electors permanently residing at the time notice of holding elections are given, shall be entitled to register and vote in the election precinct having a polling-place nearest their residence, by the usual traveled route. Fourth—That no election precinct shall be established or election held at any place in any precinct within one mile of another voting place in the same county, unless there shall have been polled, at said voting place, at the next preceding general election, not less than fifty votes. It shall also be the duty of said boards of commissioners, at their first regular meeting in October preceding each general election (and fifteen days preceding each special election), to appoint three capable and discreet persons, possessing the qualifications of electors (who shall not all be of the same political party), to act as inspectors of elections at each election precinct; and the clerk of said boards shall forthwith make and deliver to said inspectors personally, notice thereof in writing, or deposit the same in the postoffice, registered, and postage prepaid, directed to the registry agent of the precinct for which each of said inspectors is appointed, and it shall be the duty of said registry agents, within ten days after the receipt thereof, to serve the same upon each of said inspectors of elections. *As amended, Stats. 1875, 59; 1885, 21.*

Where a new polling place is carved out of the territory of an established election precinct after all the electors residing therein have been properly registered, it is the duty of the registry agent to prepare a duly certified check list of the electors registered by him, residing within the limits of the new polling place, and deliver the same to the inspectors thereof. *Stinson v. Sweeney*, 17 Nev. 310, 316 (30 P. 997).

The provision of this section that inspectors and clerks of election "shall not be appointed from the same political party" is directory, and noncompliance therewith, in the absence of fraud, is not sufficient ground for rejecting the vote of a county or precinct. *State ex rel. McMillan v. Sadler*, 25 Nev. 131, 166, 176 (55 P. 284, 59 P. 546, 63 P. 128).

It is only those provisions of the election

law relating to time and place of holding elections, the qualifications of voters and such others as are made essential prerequisites to the validity of an election, that are mandatory. *Idem.*

### 1769. Poll-books and supplies, how furnished and distributed.

SEC. 3. It shall be the duty of the board of county commissioners to cause their clerks to furnish the sheriff with poll-books and all other supplies required to be provided by said board for the inspectors and clerks of election, and the clerk shall at the same time deliver to the sheriff the ballot-boxes and keys, the official ballots, the sample ballots and the printed instructions which he is required to give for the guidance of voters for obtaining and marking their ballots, and the sheriff shall deliver said poll-books, supplies, ballot-boxes and keys, and said official ballots, sample ballots and printed instructions altogether to one of the inspectors of every election precinct in the county, at least one day before the time of holding any election. *As amended, Stats. 1899, 107.*

### 1770. Notice of election sent by clerk—Form of notice.

SEC. 4. The several boards of county commissioners shall cause their clerks at least twenty (20) days before any general election and at least fifteen (15) days before any special election, to make out, and send by mail to the respective registry agents of their counties, three (3) written or printed notices for the election, to be, as nearly as circumstances will admit, as follows:

Notice is hereby given that on the first Tuesday, the \_\_\_\_ day of \_\_\_\_\_ next, at the house of \_\_\_\_\_ (in city, town, district or precinct) of \_\_\_\_\_, in the county of \_\_\_\_\_, an election will be held for state, county, district, town or township officers (naming the offices to be filled, as the case may be), which election shall be opened not later than 8 o'clock a. m., and shall continue until 6 o'clock p. m. of the same day. Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_. (Signed) A. B., Clerk of the Board of County Commissioners. *As amended, Stats. 1899, 108.*

*Cited, State ex rel. Perry v. Arrington, 18 Nev. 413 (4 P. 735).*

*Cited, State ex rel. Winnie v. Stoddard, 25 Nev. 456 (62 P. 237).*

### 1771. Notice of election posted.

SEC. 5. The respective registry agents, to whom such notice shall be delivered, shall put up in three of the most public places of each precinct the notices referring to such precincts at least fifteen days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; one of said notices to be posted at the house where the election is authorized to be held, and the others at two of the most public and suitable places in the precinct. *As amended, Stats. 1899, 108.*

### 1772. Inspectors to notify board of unwillingness to serve—Failure to notify—Penalty.

SEC. 6. If in any precinct any of such inspectors are unwilling to serve as inspectors, they shall notify the board of county commissioners thereof, within five days after the receipt of the notice of their appointment, who shall immediately appoint some suitable person to fill the vacancy and to serve at such election. A failure to notify the board of county commissioners of an unwillingness to serve as an inspector, as herein provided, shall subject the person to a penalty of not less than ten nor more than one hundred dollars, to be sued for and recovered by said board of county commissioners, for the use of the county, before any justice of the peace of such county. If, through any accident, sickness, or inability, on the day of election, of such inspectors, or any one thereof, to serve, the inspector or inspectors present on the morning of the election may appoint some suitable person to fill the vacancy.

**1773. Inspectors to appoint clerks—Term of service.**

SEC. 7. The said inspectors shall choose two persons having similar qualifications with themselves to act as clerks of the election. The said inspectors shall be and continue inspectors of all elections of civil officers to be held at their respective precincts, until other inspectors shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the inspectors of election.

McMillan v. Sadler, 25 Nev. 131.

**1774. Oath to be taken by inspectors and clerks.**

SEC. 8. Previous to votes being taken the inspectors and clerks of election shall, severally, take the prescribed official oath, and, in addition thereto, an oath or affirmation in the following form, to wit: "I, A. B., do solemnly swear (or affirm, as the case may be) that I will perform the duties of inspector (or clerk as the case may be) of the election to be held this day, according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in any manner, in conducting the same. So help me God (or, if an affirmation, under the pains and penalties of perjury).

**1775. Inspectors may administer oaths.**

SEC. 9. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed inspector or clerk of the election, they are hereby empowered to administer the oath or affirmation to each other, and to the clerks of the election, and the person administering the oath or affirmation shall cause an entry thereof to be made and subscribed by him in the poll-books.

**1776. Opening and closing polls—Adjournment.**

SEC. 10. At all elections to be held under this act, the polls shall be opened at the hour of eight o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and, upon opening the polls, one of the clerks, under the direction of the inspectors shall make proclamation of the same; and thirty minutes before closing of the polls, proclamation shall be made in like manner, that the polls will be closed in half an hour; but the board may, in their discretion, adjourn the polls for one hour at any time they may think proper during the day, before four o'clock in the afternoon, proclamation of the same being made.

**1777. Ballot-box, how provided and kept.**

SEC. 11. There shall be provided and kept by the county commissioners of each county, at the expense of the county, a suitable ballot-box, with a lock and key, and furnish the same to the inspectors of each election precinct or district within their county.

**1778. Ballot-box, form and care of.**

SEC. 12. There shall be an opening through the lid of each box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the inspectors of election, that nothing may remain therein; it shall then be locked and the key thereof delivered to one of the inspectors, to be designated by the majority thereof, and shall not be opened during the election except in the manner and for the purposes hereinafter mentioned.

**1779. Ballots; form, color and size.**

SEC. 13. Every elector shall, in full view, deliver to one of the inspectors of the election a single ballot or piece of paper, on which shall be written or

printed the names of the persons voted for, with a pertinent designation of the offices to which each person so named is intended by him to be chosen. Said ballot may be open or folded, as the voter may choose, and the said ballot shall, in color, size, form, and texture, conform to the requirements set forth in the proclamation of the county commissioners of each county; and further, that said ballot or ticket shall be free from marks, characters, or device or thing that would enable any person to distinguish by the back, or when folded, from any other legal ticket or ballot.

The ballots are required to be printed on tinted watermarked paper, furnished by secretary of state, for general elections, sec. 1843, and on white watermarked paper, furnished by him, for primary elections, sec. 1747.

### 1780. Manner of voting—Must be registered to vote—Answer under oath.

SEC. 14. It shall be the duty of the board of county commissioners at the time of issuing their election proclamation, as provided in section 4 of this act, which shall be a part of the said proclamation, to designate fully the color, size, form and texture of all ballots to be used at the ensuing election. Said ballot shall be of sufficient width to allow names to be written thereon. It shall be the duty of the inspectors of election at each poll, at every election, to have before them a certified copy of the register of voters of the precinct or district for which they are the inspectors provided by law; and the inspector to whom any ticket may be delivered, shall, upon receipt thereof, pronounce with an audible voice the name of the person offering to vote, and another one of the inspectors shall examine the certified copy of the register; and if the name of the person is found thereon, his ticket shall immediately be put in the ballot-box without being inspected, if it be a folded ballot. The name of the elector shall then be checked on the certified copy of the register, and the clerks of election shall enter his name and number in the poll-book. No person shall be permitted to vote whose name is not on the register, and who shall refuse to comply with the requirements of section 13 of this act. Said register shall be to said inspectors of election conclusive evidence of the right of the person to vote whose name appears upon the same; *provided*, that said inspectors of election may require any person to give true answers under oath or affirmation, to all such questions as they may desire to ask touching the identity of the person with the name in or under which he may wish to vote; *provided*, that in all cases said ballots shall be printed on a good quality of white book paper.

See note under last preceding section, and see secs. 1833 and 1840.

Secs. 1731 and 1825 provide for oath and identification of voter.

Regarding ballots for primary elections, see sec. 1747.

Sec. 1851.

Under sec. 1714 certain electors may vote upon presentation of certificate and affidavit without being upon the register.

### 1781. Poll-lists to correspond.

SEC. 15. At each adjournment of the polls, the clerks shall, in the presence of the inspectors, compare their respective poll-lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of a majority of the inspectors, until such poll-lists shall be made in all respects to correspond.

### 1782. Care of ballot-box and poll-books.

SEC. 16. The ballot-box shall then be opened and the poll-books placed therein; and such box shall then be locked, and a covering, which shall be indorsed by one of the inspectors, sealed or pasted over the opening in the lid of the said box so as to entirely cover the same, and the key delivered to another of the inspectors, and the box to a third, to be designated by a majority of the inspectors.

**1783. Ballot-box and key to be kept separate.**

SEC. 17. The inspector having the key shall keep it in his own possession, and deliver it again to the board of inspectors at the next opening of the polls; and the inspector having the care of the box shall carefully keep it, without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly, in that condition, deliver it to the board of inspectors at the next opening of the polls, when the seal shall be broken and the box opened, the poll-books taken out, and the box again locked.

**1784. Ballot not to be exhibited.**

SEC. 18. No ticket or ballot shall on the day of election be given or delivered to, or received by, any person except the inspector, or a judge acting as inspector, nor fold any ticket or unfold any ballot which he intends to use in voting, or exhibit to another in any manner by which the contents thereof may be known, or request another person to exhibit or disclose the contents of any ticket or ballot, within one hundred feet of the polling-place; *provided*, that in case any elector voting an open ticket, the inspector, or judge acting as inspector, may fold the same before placing it in the ballot-box.

**1785. Names rejected, when.**

SEC. 19. If the names of more persons are designated on any ballot found in the ballot-box, for the same office, than are to be chosen for such office, then, except in the cases provided for in the next section, all the names designated for such office must be rejected; and the fact of such rejection, and the reason therefor, must, at the time of such rejection, be disposed of as provided in section 26 of this act.

**1786. Written and printed names for same office, which to be rejected.**

SEC. 20. When, upon a ballot being found in any ballot-box, a printed name and a name written with ink or with pencil appears, and there are not so many persons to be chosen for the office, the printed name opposite the written name must be rejected, and the written one counted; or when, upon a ballot found in any ballot-box, a name has been erased, and another one substituted therefor in any other manner than by the use of a lead pencil or common writing ink, the substituted name must be rejected, and the name erased, if it can be ascertained from an inspection of the ballot, must be counted, and the fact thereof noted, and the said ballots disposed of as provided in section 26 of this act.

Marks or names upon a ballot cast at the general election renders it void.

See secs. 1852, 1858.

**1787. Legality of ballots.**

SEC. 21. Whenever a question arises in the board as to the legality of a ballot, or any part thereof, and the board decide in favor of the legality, such action shall be taken as in case of a rejected ballot.

**1788. Betting on election a misdemeanor.**

SEC. 22. Every person who makes, offers, or accepts any wager or bet 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 person, is guilty of a misdemeanor.

**1789. Deputy sheriff's to be appointed.**

SEC. 23. It shall be the duty of the board of county commissioners of the several counties of the state at their regular meeting in October preceding any general election (and fifteen days preceding each special election) to determine the number of special deputy sheriffs to be appointed by the

sheriff of the several counties to serve at each election precinct, for the purpose of preserving order and making arrests, to be paid as other fees. *As amended, Stats. 1901, 69.*

#### 1790. Challenge at polls—Oath.

SEC. 24. A person offering to vote may be orally challenged by any elector of the precinct, upon the ground that he is not the person entitled to vote as claimed, or has voted before on the same day, in which case the inspector or one of the judges shall tender him the following oath: "You do swear (or affirm) that you are the person whose name is entered upon the registry list of this precinct." In case such person refuse to take the oath so tendered, he shall not be allowed to vote, and the clerk of the election shall write the word "Challenged" opposite the name of each person challenged upon the registry.

See sec. 1731, regarding challenge of voters in cities.

See sec. 1717.

#### 1791. Canvass to be public.

SEC. 25. As soon as the polls of the election shall be finally closed the inspectors shall immediately proceed to canvass the vote given at such election; and the canvass shall be public, and continue without adjournment until completed.

#### 1792. Manner of canvass.

SEC. 26. The canvass shall commence by a comparison of the poll-lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the inspectors, and opened so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed; and if, on comparison of the count with the poll-lists and the appearance of such ballots, a majority of the inspectors shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected, and carefully sealed up in an envelope, upon which shall be written the reason of their rejection, and shall be signed by the inspectors, and placed back in the ballot-box, to be retained with the other ballots, as provided in section 29 of this act.

#### 1793. Excess of ballots.

SEC. 27. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll-lists, they shall be replaced in the box after being purged as above, and one of the inspectors, with his back turned to the box, shall publicly draw out and destroy therefrom so many ballots, unopened, as shall equal the excess.

#### 1794. Counting—Form of returns.

SEC. 28. The ballots and poll-lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and for whom cast, and when completed the clerks shall set down in their poll-books the name of every person voted for, written at full length, the office for which such person received such votes and the number he did receive, the number being expressed in writing at full length and also in figures; such entry to be made, as nearly as the circumstances will admit, in the following form, to wit:

At an election, held at the house of A. B., in the town (or precinct) of \_\_\_\_\_, in the county of \_\_\_\_\_, and the State of Nevada, on the \_\_\_\_ day of \_\_\_\_\_,

A. D. ---, the following-named persons received the number of votes annexed to their respective names for the following-described offices, to wit:

- A. B. had --- votes for member of Congress.
- C. D. had --- votes for state treasurer.
- E. F. had --- votes for state controller.
- G. H. had --- votes for state superintendent of public instruction.
- I. J. had --- votes for member of the state senate.
- K. L. had --- votes for member of the assembly.

(And in like manner for any other person voted for.)

Certified by us:

M. N.,

O. P.,

Q. R.,

Inspectors of Election.

A. B.,

C. D.,

Clerks of Election.

Attest:

When no question is made as to the right of electors to vote, and no question made as to the correctness of the returns made by the inspectors of election, the failure of inspectors to take the oath of office, and

from thoughtlessness, to certify to the returns, as required by law, would not justify the exclusion of the votes. *Stinson v. Sweeney*, 17 Nev. 310.

**1795. Inspectors shall file and make returns—Manner of delivery—Custodian—Ballots subject to inspection, when.**

SEC. 29. The inspectors shall file the ballots on a string, inclose and seal the same together with one of the tally-lists and one of the poll-books, under cover, directed to the clerk of the board of county commissioners of the county in which such election was held, or such other officer as is herein provided, indorsed "Election Returns"; *provided*, that if said clerk of the board of county commissioners, as county clerk, or any one of the following-named county officers was voted for office at the last election, he shall not be the custodian of such election returns; but such returns shall be directed and delivered to the county officer who was not a candidate and voted for office in the following order: Second—The county recorder. Third—The county treasurer. Fourth—The county assessor. Fifth—The chairman of the board of county commissioners. Sixth—One of the county commissioners. And said custodian shall comply with the provisions of section 30 of this act. The packet thus sealed shall be conveyed by one of the inspectors or clerks of election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the inspectors, and delivered to said clerk of the board of county commissioners, or the county officer, as herein provided, at his office, within ten days from the close of the polls. The poll-book, tally-list, certified copy of register, ballot-box and ballots thus inclosed and sealed shall, after the canvass of the votes by the board of county commissioners, be deposited in the office of the clerk of the board of commissioners, and preserved until the next general election. The other poll-book and tally-list shall be deposited with one of the inspectors of election, to be determined by lot, if not otherwise determined, agreed upon, and said poll-book and tally-list, together with the poll-book and tally-list deposited with the board of county commissioners, shall be subject to the inspection of any elector, at any time thereafter who may wish to examine the same; *provided, however*, that the ballots so deposited with the board of county commissioners shall not be subject to the inspection of any one, except in cases of contested elections, and then only by the judge, body or board before whom such election is being contested. *As amended, Stats. 1879, 117.*

1796. Canvass of votes—Certificate of election—Tie vote; recount—New election—Compensation of election officers.

SEC. 30. On the tenth day (or if that day shall fall on Sunday, then on the Monday following) after the close of any election, or sooner, if all the returns be received, the board of county commissioners shall proceed to open said returns and make abstracts of the votes. Such abstract of votes for member or members of Congress shall be on one sheet; the abstract for votes for members of the legislature shall be on one sheet; and the abstract of votes for district and state officers shall be on one sheet; and the abstract of votes for county and township officers shall be on one sheet. And it shall be the duty of the board of county commissioners to cause a certificate of election to be made out by the respective clerks of said board of county commissioners to each of the persons having the highest number of votes for members of the legislature, district, county and township officers, respectively, and to deliver such certificate to the person entitled to it on his making application to said clerk at his office; *provided*, that when a tie shall exist between two or more persons for the senate or assembly or any other county, district or township officer, any of said persons shall have the right to demand of the board of county commissioners a recount of all the ballots cast for them for the office for which they were candidates; *and provided further*, that if after said recount has been had, the vote between them or any of them shall still remain a tie, the board of county commissioners shall order their clerk to give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the said clerk of the said board of county commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate of election, stating therein the compensation to which the inspectors and clerks of election may be entitled by law for their services, and lay the same before the board of commissioners at their next session; and the said board shall order the compensation aforesaid, if correct, to be paid out of the county treasury. *As amended, Stats. 1889, 42.*

Sec. 1513 provides that if any candidate for a legislative, county, or township office, has a majority of ten or less upon the canvass of the returns, the defeated candidate may demand a recount.

The legislature has power to provide for the manner in which the result of an election shall be determined and declared, and their enactment in reference thereto is binding.

State ex rel. Guinan v. Meder, 22 Nev. 264, 271 (38 P. 668).

If the election was legal, it was the duty of the canvassers to canvass the vote and issue the certificate of election. *Idem.*

1797. Transmission of abstract—Penalty for failure—Justices of supreme court to canvass—In case of no choice.

SEC. 31. The board of county commissioners, after making the abstract of votes as provided in section 30, shall cause their clerk, by an order made and entered in the minutes of their proceedings, to make a copy of said abstract and forthwith transmit the same to the secretary of state at the seat of government. If the board of county commissioners should neglect or refuse to make the order, as required by this act, they, and each of them, shall be guilty of a misdemeanor in office, and shall, on conviction thereof, be liable to a fine of not less than one hundred dollars or more than five hundred dollars each, and imprisonment in the county jail for not less than ten and not more than one hundred days each, or both such fine and imprisonment, and shall be removed from office. And on the third Monday of December succeeding such election, the chief justice of the supreme court and the associate justices, or a majority thereof, shall meet at the office of the secretary of state and shall open and canvass the vote for members of Congress, district and state officers; and the governor shall grant a certi-

ificate of election to and commission the persons having the highest number of votes, and shall also issue proclamation declaring the election of such persons. But in case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes for the same office, the senate and assembly shall convene in the assembly chamber on the second Monday of February, at the next regular session of the legislature after such election, and by joint vote of both houses elect one of said persons to fill said office; *provided*, when an election for electors of president and vice-president of the United States takes place, the vote thereof shall be canvassed at the same time and in the manner aforesaid. *As amended, Stats. 1881, 40; 1889, 31.*

The constitution provides for the canvass by the justices of the supreme court, sec. 297.

The canvass of the choice of the electors for United States senators is made in the same manner as for state officers, sec. 1890; Const., sec. 297.

### 1798. Defect or informality in returns—Certificate not withheld.

SEC. 32 No certificate shall be withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such returns what office is intended, and who is entitled to such certificate; nor shall any commission be withheld by the governor, or board of county commissioners on account of any such defect or informality of any returns made to the office of the secretary of state or to the board of county commissioners.

### 1799. Delayed returns—Messenger, compensation of.

SEC. 33. If the returns of the election of any county in the state shall not be received at the office of the secretary of state on or before said third Monday of December succeeding such election, the said secretary may forthwith send a messenger to the clerk of the board of county commissioners of such county, whose duty it shall be to furnish said messenger with a copy of such returns; and the said messenger shall be paid out of the treasury of such county the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county. Whenever it shall be necessary, in the opinion of the board of county commissioners, to employ a messenger to convey the returns to the seat of government, and deliver them to the secretary of state, the person performing such service shall also be entitled to receive, as compensation, mileage at the rate of thirty cents per mile, computing the distance from the county-seat to the seat of government by the usual traveled route.

### 1800. District returns, how made—Abstract of votes.

SEC. 34. When two or more counties are united in one senatorial, representative, or judicial district for the election of any officers, the board of county commissioners of each county shall canvass the votes, according to law, of the voters of their respective counties for said officer or officers; and the commissioners of the county whose initial is the lowest on the alphabet shall transmit to the commissioners of the county of the highest initial a copy of the abstract of the votes for such officer or officers, when the said last commissioners shall make a final abstract and aggregate of said votes, and shall proceed to cause to be issued certificates of election, and otherwise to act as is provided in this and the two preceding sections.

### 1801. County clerk's duties in transmitting abstract—Penalty for neglect or failure—Certificate of postmaster.

SEC. 35. Whenever the returns are required to be transmitted by one clerk of a board of county commissioners to the secretary of state, it shall be the duty of such clerk, if not otherwise directed by the board of county commissioners, to deliver the same to some postmaster of the county, at the

postoffice, to be transmitted by mail, taking from such postmaster, if it can be obtained, a certificate setting forth the time when such reports were deposited in the postoffice, which certificate the clerk shall file in his office. If the clerk of the board of county commissioners should neglect, or refuse to make out and transmit, the returns, or abstract, as required by this act, he shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, or more than five hundred dollars, and imprisonment in the county jail for not less than one month, or more than six months, or both such fine and imprisonment, in the discretion of the court, and shall be removed from office. *As amended, Stats. 1881, 41.*

Cited, in opinion of Hawley, J., dissenting, *State ex rel. Galusha v. Davis*, 20 Nev. 231 (19 P. 894).

### 1802. Per diem of inspector and clerk of election—Mileage of messenger.

SEC. 36. There shall be allowed out of the county treasury of such county to each inspector and each clerk of election five dollars per diem, but in no case to exceed twenty dollars for all services required by law to be performed by each of them at any one election. And to the person carrying the poll-books from the place of election to the clerk's office, and to the clerk of the board of county commissioners for attending at another county to canvass votes, the sum of fifteen cents per mile for going and fifteen cents per mile for returning, to be paid out of the county treasury. *As amended, Stats. 1889, 35; 1899, 99.*

### 1803. Any elector may contest election—Causes of contest.

SEC. 37. Any elector, of the proper county, may contest the right of any person declared duly elected to an office exercised in and for such county; and, also, any elector of a township may contest the right of any person declared duly elected to any office in and for such township, for any of the following causes: First—For malconduct on the part of the board of inspectors, or any member thereof. Second—When the person whose right to the office is contested was not at the time of election eligible to such office.

Offering, before election, to make a bond conditioned that, if elected, the candidate would return to the county treasury each month a portion of his salary, does not disqualify from holding office. *Egan v. Jones*, 21 Nev. 433, 434 (32 P. 929).

### 1804. Contest—Effect of misconduct of inspectors.

SEC. 38. When any election, held for an office exercised in and for a county, is contested on account of any malconduct on the part of the board of inspectors of any precinct, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct shall change the result as to such office in the remaining vote of the county.

This section construed to mean: "A person officially declared elected shall not be disturbed by vain and fruitless contests, and unless a different result of the election can be reached, his election shall not be contested." *Lynip v. Buckner*, 22 Nev. 435 (30 L. R. A. 354, 41 P. 762).

### 1805. Statement on contest—Time for filing—What to state.

SEC. 39. When any elector shall choose to contest the right of any person declared duly elected to such office, he shall, within forty days thereafter, file with the clerk of the district court a written statement, setting forth, specifically: First—The name of the party contesting such election, and that he is a qualified elector of the district, county, or precinct (as the case may be), in which such election was held. Second—The name of the person whose right to the office is contested. Third—The office. Fourth—The particular cause or causes of such contest. Said statement shall be veri-

fied by the affidavit of the contesting party that the matters and things therein contained are true, to the best of his knowledge and belief.

See secs. 1894, 1895.

### 1806. Allegations and proceedings when contest for illegal votes—Jurisdiction of district courts.

SEC. 40. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that illegal votes were given to the person whose election is contested in the specified precinct or precincts, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of illegal votes unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony shall be received of any illegal votes except such as are specified in such lists; *provided*, that in all cases of contested elections, the district court of the respective districts shall have original jurisdiction to try and determine all such cases, and may, by mandamus or otherwise, obtain all documentary evidence required by either of the parties litigant.

Complaint in an election contest held sufficient. *Greeley v. Holland*, 14 Nev. 320, 323.

Held insufficient. *Egan v. Jones*, 21 Nev. 433 (32 P. 929).

The time of notice required to be given as to illegal votes relied upon, must be computed by including the first and excluding the last day, and the notice must be given three days before the trial commences, without regard to whether any evidence is introduced on the first day of the trial. *Stinson v. Sweeney*, 17 Nev. 310 (30 P. 997).

This section confers original jurisdiction upon district courts in this class of cases and section 44 provides that a certified copy of the judgment of the supreme court may be used as proof in certain cases. Nothing is said, in direct terms, upon the subject of new trials and appeals. The civil practice act provides a mode for review upon motion for new trial or appeal in all cases tried by district courts, and in enacting the election

law, it was unnecessary to provide for any other mode of procedure. *Lynip v. Buckner*, 22 Nev. 435 (30 L. R. A. 354, 41 P. 762).

In an election contest, the ballots themselves furnish the primary and controlling evidence as to which party to the contest received the greater number of votes. *Schneider v. Bray*, 22 Nev. 272, 278 (39 P. 326).

The rule that, as between the ballots and a canvass of them, the ballots control, has no application where the ballots have been tampered with after they have been deposited in the box. *Dennis v. Caughlin*, 23 Nev. 188, 193 (44 P. 818).

The writ of prohibition does not lie to restrain a district judge from canvassing the returns in an election contest, since the party aggrieved by any erroneous action of the court has an adequate remedy by appeal. *Turner v. Langan*, 29 Nev. 281, 283 (88 P. 1088).

### 1807. Statement not rejected or proceedings dismissed for want of form.

SEC. 41. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed, by any court before which such contest may be brought for trial, for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceedings or cause for which such election is contested.

### 1808. Time and place for hearing contest, how fixed.

SEC. 42. Upon such statement being filed, it shall be the duty of the clerk of the district court to inform the judge thereof, who shall fix the time and place to hear and determine such contested election; and the clerk shall give notice thereof, not less than ten nor more than twenty days from the date of such notice to the parties contesting, which said notice shall be served by the sheriff of the county upon the respective parties, as in other cases.

### 1809. Witnesses, subpoenas for.

SEC. 43. The said clerk shall issue subpoenas and subpoenas duces tecum, as in civil actions at law, for witnesses in such contested election, at the

request of either party, which shall be served by the sheriff as other subpoenas; and the district court shall have full power to issue attachments to compel the attendance of witnesses who shall fail to attend, who shall have been duly subpoenaed.

#### 1810. Certificate of election—To whom shall issue.

SEC. 44. Upon the certified copy of a judgment of the district court, or a certified copy of the judgment of the supreme court, as the case may be, the clerk of the board of county commissioners shall issue a certificate to the person declared to be entitled to such certificate of election.

See *Lynip v. Buckner*, under section 40 of this act.

#### 1811. Fees of clerk, sheriff and witnesses.

SEC. 45. The clerk, sheriff, and witnesses shall receive, respectively, the same fees from the party against whom the judgment is given as are allowed for similar services in the district court.

In special proceedings costs will not be allowed except by legislative action. Nor will fees be given to officers by the courts unless specially provided for by statute. *Garrard v. Gallagher*, 11 Nev. 382, 386.

As there is no provision made for the fees of officers or costs expended in a contest for members of the legislature, the remedy is left entirely to the discretion of the legislature. *Idem*.

#### 1812. Office, when becomes vacant.

SEC. 46. Whenever an election shall be annulled and set aside by the judgment of the district court, and no appeal has been taken therefrom within thirty days, such certificate, if any has been issued, shall thereby be rendered void, and the office become vacant.

A judgment of the district court in an election contest declaring the election of a candidate whom the official returns showed had been defeated is not an annulment of

an election within the meaning of this section. *Lynip v. Buckner*, 22 Nev. 426, 434 (30 L. R. A. 354, 41 P. 762).

#### 1813. Contest of election of district judge.

SEC. 47. In case of any contest in regard to any election to fill the office of district judge, such contest shall be tried in like manner before the district court of the district nearest adjoining thereto.

#### 1814. District attorney may bring action for unlawfully holding office.

SEC. 48. Any such action may be brought by the district attorney, in the name of the State of Nevada, upon his own information, or upon the complaint of any private party, against any person who unlawfully holds any public office within the state; and it shall be the duty of the district attorney to bring such action whenever he has reason to believe that any such office is unlawfully held or exercised by any person, or when he is directed so to do by the governor.

#### 1815. When defendant arrested and held.

SEC. 49. Whenever such action is brought, the district attorney, in addition to the statement and cause of action, may also set forth in the complaint the name of the person rightly entitled to the office or franchise, with a statement of his right thereto; and in such case, upon proof by affidavit or otherwise, that the defendant has received fees or emoluments belonging to the office or franchise, by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail in the same manner and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

**1816. Damages recoverable.**

SEC. 50. If the judgment be 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 of the office or franchise by the defendant.

**1817. One action brought against several persons.**

SEC. 51. When several persons claim to be entitled or elected to the same office, one action may be brought by or against all such persons, in order to try their respective rights to such office.

**1818. Contest for members of the legislature—Conduct of.**

SEC. 52. In case of contest for senator or assemblyman in any county in this state, the party contesting shall file a statement in the office of the county clerk of the county in which such senator or assemblyman may be a resident, a concise statement of the grounds upon which he intends to rely, which statement shall be verified by affidavit; and it shall be the duty of the clerk to issue a commission, directed to a justice of the peace of such county, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the filing of such papers, for the purpose of taking the deposition of such witnesses as the parties to such contest may wish to examine, and notice shall be served upon the person whose right to such office is contested, by the sheriff of the county, the same as provided for by law in like cases. *As amended, Stats. 1899, 114.*

These proceedings are special and the courts have no jurisdiction. *Garrard v. Gallagher*, 11 Nev. 382, 385.

When the statute gives a special remedy it must be followed, and the proceedings thereunder in contested election cases are substantially different from any common-law remedy. *Idem.*

The fact that the contestant of an election for the office of legislator had a remedy by this section, does not preclude him from prosecuting his remedy by recourt before the board of county commissioners. *Wright v. Washoe Co.*, 27 Nev. 34, 40 (71 P. 145).

**1819. Justice of the peace empowered to issue subpoena—Written testimony.**

SEC. 53. Said justice of the peace shall have power at any time to issue subpoenas for witnesses at the request of either party, to be served by the sheriff, as other subpoenas; and said justice shall have the same power to issue attachments and assess fines against witnesses as is given to justices of the peace in other trials instituted before him; and all testimony taken before him during such proceeding shall be in writing, and shall be certified to and forwarded by mail or express, or delivered to the clerk of the county. *As amended, Stats. 1899, 115.*

**1820. County clerk to seal and transmit all papers to secretary of state.**

SEC. 54. It shall be the duty of the said clerk to seal up such depositions, together with the original statement of the grounds of such contest, and a copy of the notice served upon the party whose right is contested, and the commission issued to the justice of the peace, and transmit the same by mail to the secretary of state, indorsing thereon the names of the contesting parties and the branch of the legislature before which such contest is to be tried. *As amended, Stats. 1899, 115.*

[Sec. 55 repealed, Stats. 1899, 115.]

**1821. Duty of secretary of state.**

SEC. 56. It shall be the duty of the secretary of state to deliver the same, unopened, to the presiding officer of the house in which such contest is to be tried, on or before the second day after the organization of the legislature next after taking such depositions; and such presiding officer shall immediately give notice to said house that said papers are in his possession.

### 1822. When either party may take depositions.

SEC. 57. At any time after notice of any contest shall be given, and before the trial of such contested election before the proper branch of the legislature, it may be lawful for either party to such contest to take depositions, to be read on the trial thereof in like manner and under the same rules as are allowed and required in cases of depositions to be read on any trial pending in the district court; and such depositions, when thus taken, shall be sealed up by the officer taking the same and directed to the secretary of state, who shall keep the same, unopened, and deliver them to the presiding officer of the house in which such contest is to be tried, to be disposed of by such officer as the depositions specified in the preceding section.

### 1823. Contesting election of state officers—Who may contest, and how.

SEC. 58. Any qualified elector of the state may contest the election of any person declared duly elected to any state office within this state by filing a specification of the grounds of such contest with the clerk of the supreme court, which specification shall be verified by oath or affirmation, and it is hereby made the duty of the attorney-general to prosecute such action in the name of the people of the state, before the supreme court, who shall have original jurisdiction in such cases; the justices, or either of them, shall have power to issue such process as may be necessary to the complete hearing and final determination of such action.

Sections 59 to 82, inclusive, of this act were repealed by implication by Stats. 1909, 293, after sections 59 to 62, inclusive, had been held unconstitutional as not germane to the title, in *Bell v. District Court*, 28 Nev. 280, 163 A. S. 854, 1 L. R. A. (N. S.) 843, 81 P. 875. See sec. 275, ante.

This last-named act was afterward incorporated in the criminal practice and crimes and punishments acts, and will be found in sections 6878-6907.

The object of this section is to protect the public from corrupt and neglectful officials by removing them from office. *Bell v. District Court*, 28 Nev. 298, 163 A. S. 854, 1 L. R. A. (N. S.) 843, 81 P. 875.

### 1824. Fraudulent action of officers of election—Felony.

SEC. 83. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, shall be deemed guilty of felony, and punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

### 1825. Refusing to take oath or to answer questions—Misdemeanor.

SEC. 84. Every person who, after being required by the board of judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such board touching his right or the right of any other person to vote, is guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

See secs. 1726, 1731 and 1780 providing for oath and identification of voter.

### 1826. Fraudulent voting and other acts, felony.

SEC. 85. Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot-box, or adds or attempts to add any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully provided, other ballots while the same are being counted

or canvassed, or abstracts any ballots lawfully polled, at any other time with intent to change the result of such election, or carries away or destroys, or attempts to carry away or destroy, any poll-list or ballots, or ballot-box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with voters lawfully exercising their right of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, shall be guilty of felony, punishable by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

See sec. 1780.

### 1827. Fraudulent attempt to vote, misdemeanor.

SEC. 86. Every person not entitled to vote who fraudulently attempts to vote, or who being entitled to vote, attempts to vote more than once at any election, or who procures, aids, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, shall be guilty of a misdemeanor, punishable by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

### 1828. For prying into secrecy of ballot, felony.

SEC. 87. Every inspector, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same into the ballot-box, or makes or places any mark or device on any folded ballot, with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge, or clerk has fraudulently or illegally discovered to have voted for by such elector, is punishable by a fine of not less than fifty nor more than five hundred dollars. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward, when no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in the place of the true returns of a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term of not less than two nor more than ten years.

[Secs. 88, 89, 90 omitted, being now, respectively, secs. 537, 538 and 540 of crimes and punishments act, secs. 6802, 6803, 6319.]

### 1829. Offering to appoint or procure appointment to any office in consideration of votes—Felony.

SEC. 91. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, position, or employment as an inducement or consideration to any person to vote for, or procure, or aid in procuring the election of such candidate, or person not being a candidate, who communicates any offer made in violation of this and the preceding section, to any person with intent to induce him to vote for, or to procure or aid in procuring the election of the candidate, shall be deemed guilty of felony, punishable by imprisonment not exceeding five years or a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

### 1830. Selling liquor on election day—Misdemeanor.

SEC. 92. No person shall sell, give away, or furnish, or cause to be sold, given away, or furnished, either for or without pay, within this state, on any

day upon which any general election is held, nor within the limits of any county or city on any day upon which any special or municipal election is held therein, any spirituous, malt, or fermented liquors or wines; and any one so doing 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 one thousand dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the court; and it shall be the duty of judges of the district courts of the several judicial districts in this state, to specially give this act in charge to every grand jury impaneled in their respective districts.

### 1831. Governor to offer rewards for arrest and conviction.

SEC. 93. The governor is hereby authorized and directed, at least thirty days previous to any general election and fifteen days previous to any special election, to issue a proclamation offering a reward of one hundred dollars for the arrest and conviction of any person violating any of the provisions of this act, when the crime is a misdemeanor; and a reward of two hundred dollars for the arrest and conviction of any person guilty of a felony, as herein provided; and such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of ten thousand dollars, payable out of any moneys in the state treasury not otherwise appropriated. And all moneys collected under the provisions of this act shall revert to the general school fund of the several counties where such case was brought.

### 1832. Secretary of state to issue this act in pamphlet form.

SEC. 94. It shall be the duty of the secretary of state to cause to be printed in pamphlet form a requisite number of copies of this act, with marginal notes and properly indexed, a suitable number of which shall be forwarded by him to the county clerks of the several counties of this state, at least sixty days previous to the holding of any general election, and at least twenty days previous to the holding of any special election; and it is hereby made the duty of the said county clerks to inclose in each and every ballot-box sent out by them to be used at the various precincts of their respective counties, five or more copies of said act, as in their judgment they may deem proper.

### *An Act relating to elections and to more fully secure the secrecy of the ballot.*

Approved March 13, 1891, 40

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| 1833. Ballots furnished by county.   | 1845. Number of ballots and how bound.   |
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### 1833. Ballots furnished by county.

SECTION 1. All ballots cast in elections for public officers within this state

shall be printed and distributed at public expense, as hereinafter provided. The printing of general tickets and cards of instruction for the electors of each county, and the delivery of the same to the election officers, as provided for in this act, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses, and in case of separate elections for city, town or district officers, the printing and delivery of tickets and cards of instruction shall be a charge upon the city, town or district in which said tickets and cards are to be used, the payment of which shall be provided for in the same manner as the payment of other city, county or district expenses.

See secs. 1779, 1780, 1858, 1861.

Regarding supplying and expense for ballots and supplies for primary election, see sec. 1744 and note.

### 1834. Nominations, how made—Convention defined.

SEC. 2. Any convention, as hereinafter defined, held for the purpose of making nominations for public office, and also electors to the number hereinafter specified, may nominate candidates for public offices, to be filled by election within the state. A convention within the meaning of this act is an organized assemblage of delegates representing a political party, which, at the last election, before the holding of such convention, polled at least three per cent of the entire vote cast in the state, county, district or other political division, for which the nomination is made.

As to nominations for most offices, see secs. 1737–1740.

### 1835. Nominations, how certified.

SEC. 3. All nominations made by any such convention shall be certified as follows: The certificate of nomination, which must be in writing, shall contain the name of each person nominated, his residence and the office for which he is nominated, and shall designate the party or principle which such convention represents. It shall be signed by the chairman and secretary of such convention, who shall add to their signatures their respective places of residence, and make oath, before an officer authorized to administer the same, that the matters stated in such certificate are true to the best of their knowledge and belief, and a certificate of the said oath shall be annexed to said certificate of nomination.

See sec. 1737.

### 1836. Nominations otherwise than by convention, how made.

SEC. 4. A candidate for public office may be nominated otherwise than by a convention in the manner following: A certificate of nomination containing the name of the candidate to be nominated, with the other information required to be given in the certificate provided for in section 3 of this act, shall be signed by electors residing within the district or political division for which candidates are to be presented equal in number to at least ten per cent of the entire vote cast at the last preceding election in the state, district or political division for which the nomination is to be made; *provided*, that such certificate shall not be valid unless signed by five voters. Said signatures need not all be appended to one paper, but each signer shall add to his signature his place of residence. One of the signers of each such certificate shall swear that the statements therein made are true to the best of his knowledge and belief, and a certificate of such oath shall be annexed. Such certificate of nomination shall have the same effect as the certificate of nomination made by a party convention. *As amended, Stats. 1893, 113.*

See sec. 1737.

### 1837. Certificates filed with secretary of state for state offices; with county clerk for other offices.

SEC. 5. Certificates of nomination of candidates for offices to be voted for

by the electors of the entire state, shall be filed with the secretary of state. Certificates of nomination of candidates for all other public offices shall be filed with the clerks of the respective counties wherein the officers are to be voted for and where a district embraces more than one county, such certificate shall be filed with the clerk of each of said counties.

See sec. 1741.

### 1838. Restrictions in making nominations.

SEC. 6. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating, under the provisions of section 4 of this act, more than one nominee for each office to be filled, and no person who has voted in a convention, either in person or by proxy, for or against a candidate for any office, shall join in nominating, in any manner, any other nominee for that office, and no person shall accept a nomination to more than one office.

### 1839. Certificates of nomination, when filed—Vacancy, how filled.

SEC. 7. Certificates of nomination required to be filed with the secretary of state shall be filed not more than sixty days nor less than fifty days before the day of election when the nomination is made by a convention, and not more than sixty days and not less than forty-five days before the day of election when the nomination is made under the provisions of section 4 of this act. Certificates of nomination required to be filed with the county clerks shall be filed not more than fifty days nor less than forty days before the day of election, when the nomination is made by a convention, and not more than fifty days nor less than thirty days before the day of election, when the nomination is made under the provisions of section 4 of this act. Should a vacancy occur from any cause in the list of nominees for any office, such vacancy may be filled at any time before the day of election by the convention or by a committee to which the convention has delegated power to fill such vacancies, or by petitioners as provided for by section 4 of this act. The chairman and secretary of such convention, or of such committee, or such petitioners, shall make out and file with the proper officer a certificate setting forth the name of the person nominated to fill such vacancy, the office for which he is nominated, the name of the person for whom the new nominee is to be substituted, and such further information as is required to be given in an original certificate of nomination. When such certificate is filed the officer with whom it is filed shall substitute the name of the person therein for the original nominee, by printing, if practicable, or by writing the name of the person there substituted. *As amended, Stats. 1891, 88; 1893, 113.*

No provision is made for the resignation of a candidate nominated for a public office. If such right exists it is wholly by implication under a strained construction of this section. *State ex rel. McMillan v. Sadler, 25 Nev. 190 (58 P. 284, 59 P. 546, 63 P. 128).*

This section recognizes that vacancies may exist "for any cause" which includes withdrawal after nomination.

See sec. 1761.

The candidate, having the unquestioned power to withdraw, when he gives proper notice of such withdrawal, a vacancy is created in the nomination for such office, which vacancy the proper committee has the power to fill, if it sees fit so to do. (*Per Norcross, J., dissenting.*) *State ex rel. Donnelly v. Hamilton, 33 Nev. — (111 P. 1030, 1032).*

### 1840. Secretary of state to certify names—County clerks to have ballots printed: maximum cost, fifty dollars per thousand.

SEC. 8. Not less than thirty-five days before an election to fill any public office, the secretary of state shall certify to the county clerk of each county within this state the name of each person and the name of the office for which he is nominated, as specified in the certificate of nomination filed with him. *As amended, Stats. 1893, 113.* (Section four.) The county clerks of

the several counties of this state shall supervise the printing of the ballots, and such ballots, shall be printed at some newspaper or printing office in the county where the ballots are to be voted, and in case there is no newspaper or printing office in the county in which the work can be done, then said clerk is hereby authorized, empowered and directed to have said printing done in any newspaper or printing office in the state; *provided*, that the cost of printing said ballots shall not exceed the sum of fifty dollars per thousand. *As supplemented, Stats. 1893, 114, and amended, Stats. 1899, 92.*

Names of candidates for United States senator to be certified and placed on the ballot, sec. 1897.

The secretary of state is required to furnish to the county clerks tinted paper for ballots, with watermark, for general elections, sec. 1843, and to furnish white watermarked paper for primary elections, sec. 1747.

Separate ballots without the names of candidates for town or city officers are to be provided for voters residing within the precinct but without the limits of the city or the town, sec. 1868.

Clerk is to have the sample ballots for primary elections printed on yellow paper, sec. 1748.

The provisions of the law governing elections are made applicable to primary elections, except as otherwise provided, sec. 1765.

Regarding expense for ballots and supplies for primary elections, see sec. 1744.

### 1841. Nominations published.

SEC. 9. Not less than ten days before an election to fill any public office or offices, the county clerk shall cause to be published all the nominations certified to or filed with him. Said nominations shall be published in a newspaper printed within the county. When no newspaper is printed within the county, the publication shall be made by posting a copy of the ballot in a public place in each election precinct within the county, one of which copies shall be posted at the court house door. When publication is made by printing in newspapers, at least two publications by such newspaper shall be required, one of which shall appear in the last regular issue of such paper before election day.

### 1842. Secretary of state to certify questions.

SEC. 10. When any proposed constitution, constitutional amendment or other question is to be submitted to the popular vote, the secretary of state shall, within ninety days before the election at which such constitution, constitutional amendment or question is to be voted upon, certify the same to each county clerk of this state, sending to each of said clerks enough copies of such constitution, constitutional amendments or other questions to supply each inspector of election and enough additional copies to carry out the provisions of this act. And it is hereby made the duty of the county clerks of each county to have posted, ten days before the election, in each election precinct, three copies of said constitution, constitutional amendments or other questions to be voted on, one of which copies shall be posted at the place of holding the polls. If there is a newspaper published in the county, the county clerk shall cause to be published said constitution, constitutional amendment or other questions therein three times; one publication thereof shall be at least thirty days before election; another not less than twenty days, and the other not more than ten days before said election. Any secretary of state or county clerk of this state who shall fail to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than \$100, nor more than \$500. *As amended, Stats. 1903, 204.*

Const. 283; see secs. 1796-9, 1880, 1881.

### 1843. Ballots. how furnished—Secretary of state to provide paper.

SEC. 11. It shall be the duty of the county clerk to provide printed ballots for every election for public offices, in which any voters within the county participate, and to cause to be printed in the ballot prescribed herein, the

name of each and every candidate whose name has been certified to, or filed with him, as provided in this act. Ballots other than those printed, as provided in this act, shall not be cast, or counted in any election. All ballots shall be printed on tinted paper, furnished by the secretary of state. It shall be the duty of the secretary of state to obtain, and keep on hand, a sufficient supply of such paper for ballots, and to furnish the same in quantities ordered to any county clerk. Said paper shall be watermarked with a design furnished by the secretary of state, in such manner that the said watermark shall be plainly discernible on the outside of such ballot when properly folded. Such design shall be changed for each general election, and the same design shall not be used again at any general election within the space of eight years, but at any special or separate local election paper marked with the design used at any previous election may be used.

Regarding ballots and printing, see secs. 1779, 1780, 1833, 1857, 1864.

Cited, *Lynip v. Buckner*, 22 Nev. 437 (30 L. R. A. 354, 41 P. 762).

#### 1844. Ballots, how made—What to contain—Questions other than the election of officers.

SEC. 12. On each ballot a perforated line shall extend from top to bottom, one-half inch from the right-hand side of such ballot, and upon the half-inch strip thus formed there shall be no writing or printing, except the number of the ballot, which shall be upon the back of the strip in such position that it shall appear on the outside when the ballot is folded. The number on each ballot shall be the same as that on the corresponding stub, and the ballots and stubs shall be numbered consecutively in each county. Where the names of candidates are printed in separate columns, the columns shall be separated by heavy rules, and on all ballots the names of candidates shall be separated by a rule extending to the extreme right of the column. All ballots shall contain the name of each and every candidate whose nomination for any office specified in the ballot has been certified to and filed according to the provisions of this act, and no other name. The names of the candidates for each office shall be arranged under the designation of the office in alphabetical order, according to surname, except that the names of candidates for presidential electors shall be arranged in groups as presented in the several certificates of nomination, and the names of the candidates for president and vice-president shall precede the proper groups of presidential electors; the political designation of each candidate shall be printed opposite his name. There shall be left at the end of the list of candidates for each office one blank space to be used when substituting names to fill vacancies. There shall be a margin at the right-hand side of the names at least one-half inch wide, so that the voter may clearly indicate in the way hereinafter described the candidate or candidates for whom he wishes to vote. Whenever any question is to be submitted to the vote of the people, it shall be printed upon the ballot in such manner as to enable the electors to vote upon the question in the manner hereinafter provided. There shall be printed on the ballots opposite the designation of each office such words as will aid the voter to indicate his choice of candidates, such as "vote for one," "vote for three," and the like.

See sec. 1897 regarding candidates for United States senator.

Cited, *Sweeney v. Hjul*, 23 Nev. 427 (48 P. 1036).

#### 1845. Number of ballots and how bound.

SEC. 13. All ballots when printed shall be bound in stub-books of five, ten, twenty-five, fifty and one hundred ballots each. A record of the number of ballots printed for them shall be kept by the respective county clerks. *As amended, Stats. 1899, 100.*

Cited, *Sweeney v. Hjul*, 23 Nev. 427 (48 P. 1036).

**1846. Number per registered voter.**

SEC. 14. The county clerks shall provide for each election precinct in the county at least two ballots for each voter registered therein, and not more than five ballots in excess thereof. *As amended, Stats. 1899, 100.*

**1847. Error in or omission of name—How corrected.**

SEC. 15. Whenever it shall appear, by affidavit, that an error or omission has occurred in the publication of the name or description of any of the candidates nominated, or in the printing of the ballots, any member of the board of county commissioners, upon application by any voter, shall issue an order requiring the county clerk to correct such error.

**1848. New election may be held.**

SEC. 16. Before the opening of the polls, at any election, the county clerk shall cause to be delivered to the board of election of each election precinct in his county the proper number of tickets of the kind to be used in the election precinct. In case of prevention of an election in any precinct by reason of the loss or destruction of the ballots intended for that precinct, or for any other cause, the inspector or other election officer for the precinct shall make an affidavit setting forth the fact and transmit it to the governor of the state. Upon receipt of such affidavit, and upon the application of any candidate for any office to be voted for by the voters of such precinct, the governor shall order a new election in such precinct.

*Cited, State ex rel. McMillan v. Sadler, 25 Nev. 191 (58 P. 284, 59 P. 546, 63 P. 128).*

**1849. How ballots to be furnished to voters.**

SEC. 17. At the same time and in the same manner as inspectors and judges of election are now appointed in the state, there shall be appointed two clerks of election, who shall have charge of the ballots on election day, and shall furnish them to the voters in the manner hereinafter provided for. Said clerks of election shall possess the same qualifications, and receive the same compensation as inspectors of election. Said clerks shall be selected from the political parties which polled the largest and the next largest votes in the precinct at the last preceding general election.

**1850. Booths, how provided.**

SEC. 18. The board of county commissioners shall provide, at each polling-place within the county, a sufficient number of places, booths or compartments, in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others, and a guard rail shall be so placed that only such persons as are inside said rail can approach within six feet of the ballot-box, and of such booths or compartments. The arrangements shall be such that neither the ballot-box nor the booths or compartments shall be hidden from the view of those just outside the guard rail. The number of such booths or compartments shall be not less than one for each fifty or fraction of fifty voters registered in the precinct. Each of said booths or compartments shall be kept provided with proper supplies and conveniences for marking ballots. No person, other than voters engaged in receiving, preparing or depositing their ballots, shall be permitted inside said guard rail during the time the polls are open, except by authority of the board of election, and in that case only for the purpose of keeping order and enforcing the law.

**1851. How elector shall vote.**

SEC. 19. Any person desiring to vote shall give his name and address to one of the clerks of election, who shall announce the same, and if the other clerk shall find the name upon the registry list he shall repeat the name and address. One ballot shall then be given to the voter, and the number of the

said ballot shall be written by one of the clerks of election upon the registry list opposite the name of the voter receiving it.

See sec. 1780.

Certain electors may vote upon presentation of certificate and affidavit without being upon the register, under sec. 1714, as amended in 1911.

Cited, *Sweeney v. Hjul*, 23 Nev. 427 (48 P. 1036).

### 1852. Regulations as to voting.

SEC. 20. On receiving his ballot the voter shall immediately retire alone to one of the places, booth or compartments. He shall prepare his ballot by stamping a cross or X in the square, and in no other place, after the name of the person for whom he intends to vote for each office. In case of a constitutional amendment or other question submitted to the voters the cross or X shall be placed after the answer which he desires to give. Such stamping shall be done only with a stamp in black ink, which stamp, ink and ink-pad shall be furnished in sufficient number by the county clerk for each election precinct in the county. Before leaving the booth or compartment the voter shall fold his ballot in such a manner that the watermark and the number of the ballot shall appear on the outside, without exposing the stamps upon the ballot, and shall keep it so folded until he has voted. Having folded his ballot, the voter shall deliver it with the stamp, ink and ink-pad to the inspector, who shall announce the name of the voter and the number of his ballot. The clerk having the registry list in charge, if he finds the number to agree with the number of the ballot delivered to the voter, shall repeat the name and number, and shall mark opposite the name, the word "voted." The inspector shall then separate the strip bearing the number from the ballot, and shall deposit the ballot in the ballot-box. Said strip and number shall be immediately destroyed. *As amended, Stats. 1901, 112.*

Cited, *Sweeney v. Hjul*, 23 Nev. 427 (48 P. 1036).

Cited, *Dennis v. Caughlin*, 22 Nev. 453 (58 A. S. 761, 29 L. R. A. 731, 41 P. 768).

Cited, *State ex rel. McMillan v. Sadler*, 25 Nev. 190 (58 P. 284, 59 P. 546, 63 P. 128).

Examples of distinguishing marks. *Stro-nsider v. Turner*, 30 Nev. 155, 160, 162 (133 A. S. 710, 93 P. 502).

A ballot having the appearance of an attempt to make a second impression of the stamp to make it clearer, or to rectify some defect, is valid, though the second stamping does not exactly cover the first. *Idem.*

A ballot first marked with a cross with

a corner of the stamp and then marked with a proper stamp beside the illegal one, was held illegal. *Idem.*

Instead of trying to rectify a mistake in marking the ballot, the voter should return it to the election officers and obtain a new one. *Idem.*

A ballot is unobjectionable, though some of the crosses stamped on it are imperfect. *Idem.*

### 1853. Occupation of booth.

SEC. 21. But one person shall occupy any one booth or compartment at one time, and no person shall remain in a booth or compartment longer than may be necessary to prepare his ballot, and in no case longer than ten minutes. *As amended, Stats. 1893, 114.*

### 1854. Spoiled ballots, how treated.

SEC. 22. Any voter who shall accidentally spoil a ballot may return such spoiled ballot to the clerks of election, and receive another one in its place. All the ballots thus returned shall be immediately canceled, by writing the word canceled across the face of the ballot, and, with those not distributed to the voters, shall be returned with the election returns. A voter who does not vote the ballot delivered to him shall, before leaving the space inside the guard rail, return such ballot to the clerks, who shall immediately cancel the same and return it in the same manner as a spoiled ballot. The clerks of election shall account for the ballots delivered to them, by returning a sufficient number of unused and spoiled ballots to make up, when added to the number of official ballots cast, the number of ballots delivered to them.

**1855. Physical disability—Assistance.**

SEC. 23. A voter who declares under oath that, by reason of physical disability, he is unable to mark his ballot, shall at his request be permitted to receive the assistance, in such marking, of an elector, other than any election officer, but no person shall be permitted to go inside the guard rail as an assistant to more than one voter.

**1856. Ballot not deposited, when.**

SEC. 24. No ballot shall be deposited in the ballot-box unless the watermark, as hereinbefore provided, appears thereon, and unless the slip containing the number of the ballot has been removed therefrom by the inspector.

Cited, *Sweeney v. Hjul*, 23 Nev. 428 (48 P. 1036); *Lynip v. Buckner*, 22 Nev. 443 (30 L. R. A. 354, 41 P. 762).

**1857. Sample ballots—Instructions to voters.**

SEC. 25. The county clerk shall cause to be printed on plain white paper, without watermark or endorsement, except the words "sample ballot," at least as many copies of the form of ballot provided for use in each precinct as there shall be registered voters in any election precinct. And said county clerk shall furnish to each board of election, as many sample ballots as there shall be registered voters in said precinct, and on election day, the board of election shall furnish each voter on application one such sample ballot. Said county clerk shall also cause to be printed in plain type on cards, instructions for the guidance of voters for obtaining and marking their ballots. He shall furnish twelve such cards to the board of elections of each election precinct in the county, at the time and in the manner that ballots and sample ballots are furnished. The board of election shall post at least one of such cards in each booth provided for the preparation of ballots, and not less than three of such cards at other public places in and about the polling-places on the day of election. There shall be printed on such cards sections 27, 28, 29 and 30 of this act. *As amended, Stats. 1899, 100.*

See secs. 1779, 1780, 1833, 1857 and 1864.

**1858. Irregular ballots thrown out.**

SEC. 26. In counting the votes any ballots not bearing the watermark, as provided in this act, shall not be counted, but such ballot must be preserved and returned with the other ballots. When a voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office, his vote for such office shall not be counted. Any ballot upon which appears names, words or marks written or printed, except as in this act provided, shall not be counted.

See secs. 1513, 1786.

Where inspectors fail to remove strips containing the numbers from the ballots before placing them in the ballot box, but it satisfactorily appeared that this was done through an innocent mistake and that it was not and could not have been used for purposes of bribery or intimidation, this fact should not have caused the rejection of the ballots. (*Belknap, J., dissenting.*) *Lynip v. Buckner*, 22 Nev. 426, 446 (30 L. R. A. 354, 41 P. 762).

One purpose of this law was to exclude

all ballots containing distinguishing marks, but marks satisfactorily appearing to have been inadvertently or accidentally made, and not for an evil purpose, should not be construed as identifying or distinguishing marks. *Dennis v. Caughlin*, 22 Nev. 447, 457 (58 A. S. 761, 29 L. R. A. 731, 41 P. 768).

*Sweeney v. Hjul*, 23 Nev. 409 (48 P. 1036).

Examples of distinguishing marks. *Idem.*

*State ex rel. McMillan v. Sadler*, 25 Nev. 131 (58 P. 284, 59 P. 546, 63 P. 128).

**1859. False or fraudulent certificate of nomination—False oath and other acts deemed felony.**

SEC. 27. Any person who shall falsely make or fraudulently deface or destroy any certificate of nomination or any part thereof, or file any certificate of nomination knowing the same or any part thereof to be false, or

suppress any certificate of nomination which has been duly filed, or any part thereof, or make use of, keep or furnish to others, except as in this act provided, any paper watermarked in imitation of ballot paper, or disclose to any person not engaged in the making, printing or distribution of ballots or ballot paper under the direction of the proper officer, the design of the watermark to be placed on the ballot paper, or print or be concerned in printing or have in his possession any imitation of an official ballot, or make any mark or indorsement on any ballot, or stub, by which the ballot can be distinguished from other ballots, or falsely swear that he is unable to mark his ballot by reason of physical disability, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for a term not less than one year and not more than five years.

#### 1860. Destruction of supplies.

SEC. 28. Any person who shall, during an election, remove or destroy any of the supplies or other conveniences placed in the booths or compartments, or shall, during an election, remove, tear down, or deface the cards of instruction posted, as prescribed by this act, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, and not exceeding five hundred dollars, or by imprisonment in the county jail for a term not less than one month and not exceeding six months.

#### 1861. Neglect of duty—Penalty.

SEC. 29. Any public officer, upon whom any duty is imposed by this act, who shall wilfully neglect or refuse to perform any such duty, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for a term not less than one year and not exceeding five years.

#### 1862. Various acts made misdemeanor.

SEC. 30. No person except a member of the board of election shall receive from any voter a ballot prepared by such voter. No person shall examine such ballot or solicit a voter to show the same. No person shall remove any ballot from any polling-place before the closing of the polls. No person shall apply for or receive a ballot at any election precinct other than the one on which he is entitled to vote. No person shall show his ballot to any person, after marking it, so as to reveal any of the names voted for. No person shall ask another within one hundred feet of the polling-place for whom he intends to vote. No voter shall receive a ballot from any other person than one of the clerks of election, nor shall any other person than a clerk of election deliver such ballot to such voter. No voter shall deliver to the board of election or to any member thereof any ballot other than the one received from a clerk of election. No voter shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars, and not exceeding five hundred dollars, or by imprisonment in the county jail for a term not less than one month and not exceeding six months.

*An Act supplementary to an act entitled "An act relating to elections and to more fully secure the secrecy of the ballot," approved March 13, 1891.*

Approved March 18, 1901, 78.

#### 1863. Rejected ballots canvassed on separate sheet—Returns posted and transmitted.

SECTION 1. Before the close or final adjournment of any board of election in any voting precinct in this state, the inspectors shall canvass and count

any and all ballots rejected by them, on a separate tally-sheet, in the same manner as legal ballots are now canvassed and counted, and transmit said sheet to the board of county commissioners in the ballot-box, with the other papers and documents, and the result of the vote cast for any and all candidates, and on any and all questions submitted, so far as can be determined, shall be posted immediately thereafter in some conspicuous place on the building in which the election is held, a duplicate copy of which shall be placed in the ballot-box with the other election returns and papers, to the board of county commissioners, and the county clerk shall keep a record of the same.

See sec. 1873.

*An Act supplemental to an act entitled "An act relating to elections and to more fully secure the secrecy of the ballot."*

Approved March 19, 1901, 82

**1864. Reasons for rejection to be endorsed on ballot—Unlawful to mark.**

SECTION 1. It shall be unlawful for any clerk or inspector of election to place any mark whatsoever upon any ballot other than a "spoiled" ballot; *provided, however*, that when such clerks or inspectors of election shall reject a ballot for any alleged defect or illegality, it shall be the duty of such inspectors of election to certify over their signatures upon the back of each and every ballot rejected that such ballot or ballots were in fact rejected and briefly stating their reasons therefor.

*An Act relating to elections.*

Approved March 6, 1889, 73

**1865. Voting places not to have over 480 voters.**

SECTION 1. The several boards of county commissioners in the counties of this state in providing for and proclaiming election precincts shall so arrange and divide the voting places in their respective counties, so that no greater number than four hundred voters shall vote in one precinct; *provided*, that where there are registered over four hundred and less than four hundred and eighty, then one polling-place shall be sufficient for said precinct.

See sec. 1768.

*An Act concerning the election of town and city officers in this state and matters properly connected therewith.*

Approved March 22, 1897, 113

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| 1866. Voters in and out of town registered separately. | 1869. Ballots with town candidates for town voters only. |
| 1867. Residence to be designated on register.          | 1870. Manner of voting.                                  |
| 1868. Different ballots for voters out of town.        | 1871. Applicable to wards.                               |

**1866. Voters in and out of town registered separately.**

SECTION 1. The registry agents of every voting precinct in this state, containing within its limits a town or city, the boundaries of which are described by metes and bounds, shall register all voters, residents of said town or city, separately from the voters who reside within the said voting precinct but without the limits of said town or city, or he shall designate after the name of each voter whether he is a resident within or without said town or city; *provided*, that when there are no officers to be elected exclusively for said town or city such separate registration shall not be required.

See secs. 1707 and 1727.

**1867. Residence to be designated on register.**

SEC. 2. The registry agents, in preparing the official register for any vot-

ing precinct as described in section 1 of this act for the use of election officers, of the precinct and the wards thereof, if any there be, shall designate after the name of each voter, or in some other appropriate and intelligible manner, the residence of the voter, whether within or without the limits of the town or city, so that the election officers can readily determine whether or not voters are qualified to vote for town or city officers, if any such are to be elected.

#### 1868. Different ballots for voters out of town.

SEC. 3. The county clerk shall cause to be placed upon the official ballots to be used at any voting precinct containing within its limits a town or city, as described in section 1 of this act, the names of all candidates for office for said town or city, in manner as now provided by law to be voted for exclusively by the electors of said town or city; *provided*, that he shall furnish sufficient ballots without the names of candidates for town or city officers, for use of the voters of the precinct who reside without the limits of said town or city, and the number of all ballots furnished for use in said precincts, and the wards thereof, if any there be, shall be as now provided by law, and shall be apportioned according to the relative number of each class of voters as herein designated.

See secs. 1840, 1843-1846.

#### 1869. Ballots with town candidates for town voters only.

SEC. 4. The election officers of every voting precinct and the wards thereof, if any there be, shall, in manner as now provided by law, furnish the voters of said precinct or the wards thereof, with ballots with or without the names of the candidates for town, or city officers, according as the voter is a resident within or without the limits of said town or city as shown by the official registry list for use of the election officers of said precincts, or the wards thereof, as in this act provided, and no ballot containing names of candidates to be voted for exclusively by residents of the town or city shall be given to any voter who resides without the limits of said town or city.

#### 1870. Manner of voting.

SEC. 5. Except as herein specially provided, the manner of voting and conducting the election shall be as now provided by law.

#### 1871. Applicable to wards.

SEC. 6. Whenever any officer or officers of any town or city as herein mentioned are to be voted for exclusively by the qualified voters of any ward or wards of said town or city, then all of the provisions of this act concerning the registration and manner of voting for town or city officers shall apply to said ward or wards.

*An Act providing for the closing of polls at elections in certain cases.*

Approved March 6, 1899, 66

#### 1872. Polls to be closed when all votes cast.

SECTION 1. Whenever at any election all the votes of the precinct, as shown by the registry list, shall have been cast, the inspectors shall immediately close the polls and shall forthwith begin the counting of the ballots, and continue the same without unnecessary delay until the count is completed.

*An Act to provide for the transmission of ballots, poll-books, and tally-lists by mail in certain cases.*

Approved March 6, 1889, 67

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| 1873. Inspectors shall post bulletin.                 | 1876. Returns to be kept in sealed package.          |
| 1874. Ballots and returns by registered mail, sealed. | 1877. Ballot box to remain in custody of inspectors. |
| 1875. Inspector, how paid for mailing returns.        |  |

### 1873. Inspectors shall post bulletin.

SECTION 1. At every election hereafter to be held in this state, in precincts which are, by the usually traveled route, more than fifty miles distant from the county-seat, and wherein less than fifty voters shall be registered for that election, the inspectors shall, before they adjourn, post conspicuously at the polling-place, a bulletin, signed by each of them, stating the number of ballots cast for each candidate and for and against each question which has been voted upon.

See sec. 1863.

### 1874. Ballots and returns by registered mail, sealed.

SEC. 2. They shall also, before they adjourn, seal the ballots in a strong envelope, writing across the back thereof the words "Ballots (here give the name) Precinct," and also sign the names thereon. They shall then place the envelope containing the ballots, together with one of the tally-lists and one of the poll-books, in a sealed package, the weight of which, including the wrapper or box, must be less than the limit of weight allowed to be transmitted by mail. They shall then address the same to the proper officer at the county-seat, stating in writing on the outside of the package the contents thereof, and deliver it to one of their number, to be chosen by lot, who shall immediately, without opening it or permitting it to be opened, deliver it to the nearest postmaster and pay the postage thereon, and have the package registered.

### 1875. Inspector, how paid for mailing returns.

SEC. 3. The inspector who delivers the package shall be paid the amount expended by him in paying the postage on the package, and fifteen cents per mile for going to and fifteen cents per mile for returning from the postoffice, in the same manner and out of the same fund as other election expenses are paid; *provided*, that no such mileage shall be paid unless the total distance necessarily traveled in going and returning be greater than two miles.

### 1876. Returns to be kept in sealed package.

SEC. 4. In cases where this act shall apply the ballots shall, after they reach the county-seat, be kept in sealed packages by the proper officer, instead of in the ballot-boxes.

### 1877. Ballot-box to remain in custody of inspectors.

SEC. 5. In precincts where this act shall apply, the ballot-box may remain in the custody of the inspectors until the next election, when it shall be turned over to the inspectors of said election, and in such cases the tally-lists, poll-books and other books and papers may be sent in sealed packages by registered mail to one of the inspectors.

*An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada.*

Approved March 5, 1887, 122

1878. Board of examiners shall order proposed amendments published.

1880. Commissioners' proclamation.

1881. Canvass and return.

1879. Publisher shall print and clerk mail copies of paper to voters.

### 1878. Board of examiners shall order proposed amendments published.

SECTION 1. Whenever the conditions prescribed by the constitution of the State of Nevada for amending the same have been complied with by the legislature, the state board of examiners shall order such proposed amendments to the constitution published in one daily newspaper of general circulation, published in the State of Nevada, for a period of ninety days next preceding

any general election held in this state, when any proposed amendments are pending.

Const. 283, sec. 1842.

This act is a reasonable requirement, sanctioned by the constitution, and amendments voted on without compliance with such requirements are inoperative. (Hawley, J., dissenting.) State ex rel. Galusha v. Davis, 20 Nev. 222-227 (19 P. 894).

The adoption by the legislature of the registry lists of the general election of 1888

for the special election held three months later in 1889 is not obnoxious to constitutional requirements, but on the contrary is commendable as being calculated to facilitate, rather than to impede, the exercise of the right to vote. State ex rel. Boyle v. Board of Examiners, 21 Nev. 69 (9 L. R. A. 385, 24 P. 614).

**1879. Publisher shall print and clerk mail copies of paper to voters.**

**SEC. 2.** The publisher of the newspaper publishing the proposed amendments, as required by this act, shall print and send to the county clerk of each county in this state, as many copies of said newspapers containing the publication of said proposed amendments as there were registered voters for the general election of eighteen hundred and eighty-six, and the printing and mailing of said extra copies required under this act shall be done by the publisher without expense to the state. It is hereby made the duty of the clerk of each county to mail to every registered voter within his county a copy of the newspaper containing the proposed amendments.

**1880. Commissioners' proclamation.**

**SEC. 3.** The several boards of county commissioners in this state, before the next general election after final agreement by the legislature to any proposed amendments to the constitution, shall, in their proclamation, order that there be printed on the ballots: "Amendment No. ----, Yes"; or "Amendment No. ----, No."

See sec. 1770.

**1881. Canvass and return.**

**SEC. 4.** The vote on an amendment to the constitution shall be canvassed and returned in the same manner as is or may be provided by law for the canvass and return of votes for elective officers.

See secs. 1796, 1842, 1863, 1884.

*An Act to provide for submitting certain acts of the legislature for approval by the qualified electors of the State of Nevada in accordance with the referendum provisions of the constitution.*

Approved March 24, 1909, 249

1882. Referendum petition.

1885. Question to be printed on ballot.

1883. More than one petition allowed.

1886. Majority of voters control on referendum.

1884. Secretary of state to certify questions—County clerks to publish.

**1882. Referendum petition.**

**SECTION 1.** Whenever ten per centum or more of the voters of this state, as shown by the number of votes cast at the last preceding general election for justice of the supreme court, shall express their wish that any law or resolution made by the legislature be submitted to the vote of the people, they shall file with the secretary of state, not less than four months before the time set for such general election, a petition, which petition shall contain the names and residences of at least ten per centum of the voters of this state, demanding that a referendum vote be had by the people of the state at the next general election upon the bill or resolution on which the referendum is demanded.

Const. 412.

**1883. More than one petition allowed.**

SEC. 2. The names of the electors so petitioning need not all be upon one petition, but may be contained in one or more petitions; but each petition must be verified by at least one of the voters who has signed such petition, and such voter making such verification must swear that the persons signing said petition are qualified voters of this state. Said petition may be verified upon information and belief.

**1884. Secretary of state to certify questions—County clerks to publish.**

SEC. 3. That upon receipt of said petition by the secretary of state he shall file the same, and at the next general election shall submit the question of the approval or disapproval of said law or resolution to the people of the state to be voted upon at the next ensuing election wherein any state or congressional officer is to be voted for, or wherein any question may be voted upon by the electors of the entire state. And the secretary of state shall certify the said law to the several county clerks in this state, and they shall publish the same in accordance with the provisions of law requiring the said county clerks to publish questions and constitutional amendments which are to be submitted for popular vote.

See secs. 1770, 1880, 1881, 1841, 1878.

**1885. Question to be printed on ballot.**

SEC. 4. That the title of the act shall be set out on the ballot, and the question printed upon the ballot for the information of the voter shall be as follows: Shall the act (setting out the title thereof) be approved? And the votes cast upon such question shall be counted and canvassed as are the votes for state officers counted and canvassed.

See secs. 1843-46, 1868.

**1886. Majority of electors control on referendum.**

SEC. 5. When a majority of the electors voting at a state election shall by their vote signify approval of a law or resolution, such law or resolution shall stand as the law of the state, and shall not be overruled, annulled, set aside, suspended or in any way made inoperative, except by a direct vote of the people. When a majority shall so signify disapproval, the law or resolution so disapproved shall be void and of no effect.

*An Act to provide for taking the votes of electors of the State of Nevada, who may be in the military service of the United States.*

Approved March 14, 1899, 108

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| 1887. Adjutant-general to certify to secretary of state list of electors in military service. | 1890. Ballot to be official—Board of officers to count the votes—Form of certificate. |
| 1888. Certified copies to be transmitted to commanding officer.                               | 1891. Transmission and receipt of returns—Canvassing of.                              |
| 1889. Manner of taking votes of volunteers.   | 1892. State and district officers.  |
|   | 1893. Secretary of state to furnish necessary ballots and supplies.                   |

**1887. Adjutant-general to certify to secretary of state list of electors in military service.**

SECTION 1. For the purpose of taking the vote of the electors of this state, who may be in the service of the United States Volunteers, and at the time beyond the territorial limits of the state, the adjutant-general of the state shall, in due time to carry out the provisions of this act, make and deliver to the secretary of state duly certified separate lists for each county, having soldiers in the service, of the names of all qualified electors under the laws of this state, at the time of their enlistment, who may be in the military service of the United States, classified and arranged in alphabetical

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order, showing the regiment, battalion, squadron, battery and company, or other division to which each elector belongs, also the county and precinct in which he is entitled to vote.

The state constitution provides that the right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be in the military or naval service of the United States, sec. 252.

**1888. Certified copies to be transmitted to commanding officer.**

SEC. 2. The secretary of state shall immediately transmit duly certified copies of such proper lists to the commanding officer of each said organizations of which electors may be members.

**1889. Manner of taking votes of volunteers.**

SEC. 3. Between the hours of eight o'clock a. m. and six o'clock p. m. on the day of election, a ballot-box, or other suitable receptacle, shall be opened under the immediate charge and supervision of the three officers highest in command, for the reception of votes from the electors whose names are upon said lists, at each place where a regiment, battalion, squadron, battery, company or other division of soldiers from this state in the military service of the United States may be on that day, at which time and place said electors shall be entitled to vote for all officers, for which by reason of their residence in the several counties of this state, they are entitled to vote, as fully as they would be entitled to vote if present in the respective counties and precincts of their residence; and the votes so given by such electors, at such time and place, shall be considered taken, held, canvassed and counted by the respective canvassing boards of election in this state as if they had been given by them in the respective counties and precincts in and of which they were qualified electors at the time of their enlistment.

**1890. Ballot to be official—Board of officers to count the votes—Form of certificate.**

SEC. 4. The ballot to be cast by such electors shall be the official ballot provided by law. The name of each elector voting as aforesaid shall be checked at the time of voting, by one of said officers in charge of the ballot-box, upon said list. The said officers having charge of the said election shall proceed to count the votes and compare the numbers with the checked lists immediately after the close of the polls, and on completing the count the said officers shall make and sign a return or certificate of the result, in substance as follows, to wit:

Return of soldiers' vote in the (here insert the regiment or other command as the case may be). We, the undersigned (here insert rank and command), do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, the electors belonging to our said command cast the following number of votes for the several persons and the officers herein named, to wit:

For governor (here name each person voted for for governor, to the number of votes each received, written in full, also in figures, against and following the name of each person). For lieutenant-governor (here insert names of all voted for, number of votes for each, written in full, also in figures, against and following the name of such person), and so continue until the list is completed. Witness our hands this \_\_\_\_ day of \_\_\_\_\_.

A. B. (with rank and command).

C. D. (same).

E. F. (same).

**1891. Transmission and receipt of returns—Canvassing of.**

SEC. 5. All the ballots cast, together with the said voting lists, checked as aforesaid, and said return, shall be immediately sealed up and sent forthwith by the commanding officer to the secretary of state at the seat of gov-

ernment, on receipt of which the secretary of state shall, in the presence of the chief justice of the supreme court, open said returns and immediately certify to the board of county commissioners of the proper county the soldier vote of such county for the various officers as returned to him, and such board of county commissioners shall canvass and count such vote, as soon as practicable after receiving the same.

**1892. State and district officers.**

SEC. 6. For state and district officers the said returns shall be canvassed by the state board of canvassers.

Const. 297.

**1893. Secretary of state to furnish necessary ballots and supplies.**

SEC. 7. The secretary of state is hereby required to furnish, prepare and have printed the necessary ballots, and if he is not in possession of the names of the candidates for county and township officers, said names may be omitted from the ballot. He shall also furnish each commanding officer the necessary check and poll-lists, together with the proper and sufficient blanks for said returns and all necessary instructions for the taking of the votes in their respective commands.

*An Act limiting the time in which proceedings for contesting the election of any officer may be begun.*

Approved March 25, 1903, 219

[Secs. 1 and 2 are repealed.]

See sec. 5821.

**1894. When time begins to run.**

SEC. 3. Delays arising from any cause tending to prevent the obtaining of evidence upon which a contest is brought shall not cause such contest to fail, but the time provided in this act shall begin to run only from the day, when such evidence may be freely available to the person contesting the election of another, and from and after the passage of this act.

See sec. 1805.

**1895. When demand for recount must be made.**

SEC. 4. Demands for recounts must be made within sixty days from the day of election, or after the passage of this act if the recount is to be had of votes cast at the last general election preceding the passage of this act.

See sec. 1805.

**ELECTION OF UNITED STATES SENATOR**

*An Act to secure the election of United States senator in accordance with the will of the people and the choice of the electors of the state, and to obtain an expression of such choice, and to prevent fraud and official dereliction of duty in connection with such election.*

Approved March 14, 1899, 86

1896. Candidates nominated, how.

1897. Certificates of nomination filed with the secretary of state—Ballot, how prepared.

1898. Candidates to be submitted at general election—Secretary of state to transmit result of official canvass to the legislature.

1899. Not to apply to vacancies, when.

1900. No reward used in aid of candidates.

**1896. Candidates nominated, how.**

SECTION 1. At the general election next preceding the expiration of the time for which any United States senator was elected or appointed to represent the State of Nevada in Congress, candidates for the choice of the electors of this state for United States senator may be nominated in the same

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manner as provided by law for the nomination of state officers, and they may be nominated either by certificate of nomination, by a party convention, or under the provisions of any direct primary law which may now or hereafter be enacted, or by certificate of nomination signed by electors equal to ten per cent of the entire vote cast at the preceding election. *As amended, Stats. 1909, 158.*

See sec. 1737.

**1897. Certificate of nomination filed with the secretary of state—Ballot, how prepared.**

**SEC. 2.** Such certificates of nomination shall be filed with the secretary of state, who shall certify the names of all candidates as shown therein to the various county clerks as now required by law in case of candidates for state offices, and the several county clerks in preparing the ballots to be voted at any such general election shall place thereon the names of all such candidates under the words "Choice for United States Senator, vote for one," and there shall be a margin at the right-hand side of these names, at least one-half inch wide, where the voter may indicate his choice of said candidates by making a cross or X.

See secs. 1840, 1844.

**1898. Candidates to be submitted at general election—Secretary of state to transmit result of official canvass to the legislature.**

**SEC. 3.** The names of all candidates so-nominated shall be submitted to the electors of the state for them to express their choice at every such general election, and the vote upon such choice shall be taken, returned, canvassed and certified by the same authority and in the same way as the vote for state officers is taken, canvassed, returned and certified, and in manner and form complying with the requirements and provisions of an act relating to elections and to more fully secure the secrecy of the ballot, approved March 13, 1891, and of the various acts amendatory thereof and supplementary thereto, and the secretary of state shall, within five days after the convening of the next session of the legislature following any such election, transmit to each branch thereof the result of the official canvass of the vote upon said choice and candidates.

**1899. Not to apply to vacancies, when.**

**SEC. 4.** The provisions of this act shall not apply to the filling of any vacancy in the office of United States senator which may occur by death, resignation or removal between the date sixty days prior to any general election and the adjournment of the next session of the legislature.

**1900. No reward used in aid of candidate.**

**SEC. 5.** No person shall, either in aid of his own candidacy or election, or in aid of the candidacy or election of any other person for the choice of the electors for United States senator, give, pay, expend or promise any money or reward to any one whomsoever.

STATUTES OF THE UNITED STATES RELATIVE TO ELECTION OF UNITED STATES SENATORS

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|--|--|
| 1901. When senators to be elected.                                 | 1904. Vacancy during session of legislature, how filled. |
| 1902. Mode of election.  |  |
| 1903. Vacancy occurring before meeting of legislature, how filled. | 1905. Election of senators certified.                    |
|  | 1906. Countersign of certificate.                        |

U. S. Revised Stats. secs. 14-19

**1901. When senators to be elected.**

**SEC. 14.** The legislature of each state which is chosen next preceding the

expiration of the time for which any senator was elected to represent such state in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a senator in Congress.

Nevada Const. 292.

### 1902. Mode of election.

SEC. 15. Such election shall be conducted in the following manner: Each house shall openly, by a viva voce vote of each member present, name one person for senator in Congress from such state, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each house, shall be entered on the journal of that house by the clerk or secretary thereof; or if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person has received a majority of all the votes in each house, he shall be declared duly elected senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose by viva voce vote of each member present, a person for senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected. If no person receives such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature, and shall take at least one vote, until a senator is elected.

### 1903. Vacancy occurring before meeting of legislature, how filled.

SEC. 16. Whenever on the meeting of the legislature of any state a vacancy exists in the representation of such state in the senate, the legislature shall proceed, on the second Tuesday after meeting and organization, to elect a person to fill such vacancy, in the manner prescribed in the preceding section for the election of a senator for a full term.

### 1904. Vacancy during session of legislature, how filled.

SEC. 17. Whenever during the session of the legislature of any state a vacancy occurs in the representation of such state in the senate, similar proceedings to fill such vacancy shall be had on the second Tuesday after the legislature has organized and has notice of such vacancy.

### 1905. Election of senators certified.

SEC. 18. It shall be the duty of the executive of the state from which any senator has been chosen, to certify his election, under the seal of the state, to the president of the senate of the United States.

### 1906. Countersign of certificate.

SEC. 19. The certificate mentioned in the preceding section shall be countersigned by the secretary of state of the state.

## *An Act prescribing the manner of electing United States Senators.*

Approved March 7, 1865, 238

1907. Elections, when held.

1908. Joint convention to proceed to elect.

1909. How held—Voting viva voce—Majority necessary to elect.

1910. Absence of majority causes adjournment until next day.

1911. When governor shall convene joint convention.

1912. Presiding officer.

1913. Certificate of election.

1914. Temporary appointment, how made and transmitted.

### 1907. Elections, when held.

SECTION 1. All regular elections of United States senators for this state shall be held at the regular session of the legislature which convenes next preceding the commencement of the term which is to be filled. All special elections shall be held by the legislature in session at the time any vacancy or vacancies may occur in such senatorial representation, or at the succeeding session of the legislature which may convene after the occurrence of such vacancy.

Nevada Const. sec. 292; U. S. Const. sec. 93.

### 1908. Joint convention to proceed to elect.

SEC. 2. Whenever an election is to be held for a United States senator, in pursuance of the constitution of the United States, the senate and assembly shall, within twenty days after the commencement of the session of the legislature, meet together in joint convention, in the assembly chamber, on such a day, and at such an hour, as may by joint or concurrent resolution of the two houses be agreed upon, and by joint vote proceed to such election; and until an election is had, such joint convention may adjourn from time to time as may be determined by a majority of the members comprising such joint convention, upon a vote to be taken by "ayes and noes."

### 1909. How held—Voting viva voce—Majority necessary to elect.

SEC. 3. At all such elections the voting shall be viva voce, and a majority of all the votes given shall be necessary to elect a senator.

Const. sec. 254.

### 1910. Absence of majority causes adjournment until next day.

SEC. 4. The joint convention shall do no act, except to adjourn, during the absence of a majority of all the members-elect of either the senate or assembly; and the withdrawal or absence of such majority shall cause an adjournment of such joint convention until the succeeding legislative day, at twelve (12) m.

### 1911. When governor shall convene joint convention.

SEC. 5. If the legislature shall, at any time as herein provided, fail to unite in joint convention within twenty days after the commencement of the session of the legislature for the election of such senator, it shall be the duty of the governor of this state, by proclamation, to convene the senate and assembly in joint convention within not less than five days, nor exceeding ten days, from the publication of his proclamation for such purpose; and the joint convention, when so assembled, shall proceed to elect the senator or senators as herein provided.

### 1912. Presiding officer.

SEC. 6. At all sessions of such joint conventions the president of the senate, or, in his absence, the president pro tem. of such senate shall be the presiding officer.

### 1913. Certificate of election.

SEC. 7. When any such election is made, the presiding officer of the senate for the time being, and the speaker of the assembly, shall certify the same to the governor of the state, and he shall cause a credential thereof to be made out, with the great seal of state affixed thereto, certifying to such election and deliver or transmit the same to the person so elected.

### 1914. Temporary appointment, how made and transmitted.

SEC. 8. Whenever the executive of this state shall, by virtue of the constitution of the United States, make a temporary appointment of a senator,

he shall deliver or transmit to such senator a credential, under the great seal of the state, certifying said appointment, and may in case of emergency, telegraph the matter of such appointment, which shall have like effect as if certified in the manner hereinbefore provided.

U. S. Const. sec. 94.

## EMPLOYER AND EMPLOYEE

Employers' liability act of March 24, 1911, sections 1915-1928.

Act to provide for the arbitration of differences between employers and employees, approved March 29, 1907, sections 1929-1935.

Act to prohibit false advertising or deception in procuring employees to work, approved March 22, 1911, sections 1936-1938.

Act prohibiting the issuance of non-negotiable acknowledgments of indebtedness in payment for wages, approved March 15, 1911, sections 1939, 1940.

Act specifying that men working on the surface of underground mines shall not labor more than eight hours in one day, approved March 24, 1911, sections 1941, 1942.

Act making it a misdemeanor to collect hospital fees in certain cases, approved March 14, 1903, sections 1943-1945.

Other provisions for an eight-hour day: In underground mines, sec. 6554; in smelters, quartz mills, and reduction plants, sec. 6555; in plaster and cement mills, sec. 6559.

*An Act determining certain employments and industries to be especially dangerous, establishing a system of compensation for accidents to workmen engaged therein, requiring employers or contractors carrying on such industries to pay compensation, entitling injured workmen or their legal representatives to receive such compensation, fixing the amount of same and the manner of payment, fixing the time within which such claims for compensation must be made, prescribing the manner and method of giving notice to such owner or contractor of such accident, providing for the manner of settling disputed claims by arbitration, providing for their final determination by courts of justice, and granting to courts of justice certain additional powers in proceedings under this act, determining what persons shall be liable under this act.*

Approved March 24, 1911, 362

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### 1915. Employer liable for injury or death of workman.

SECTION 1. If in any employment to which this act applies personal injury disabling a workman from his regular service for more than ten days, or death by accident, arising out of and in the course of employment is caused to a workman, the workman so injured, or in case of death, the member of his family, as hereinafter defined, shall be entitled to receive from his employer, and the said employer shall be liable to pay, the compensation provided for in this act; *provided*, that recovery hereunder shall not be barred where such employee may have been guilty of contributory negligence where

such contributory negligence is slight and that of the employer is gross in comparison, but in which event the compensation may be diminished in proportion to the amount of negligence attributable to such employee, and it shall be conclusively presumed that such employee was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employees contributed to such employee's injury; and it shall not be a defense: (1) That the employee either expressly or impliedly assumed the risk of the hazard complained of; (2) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow-servant. No contract, rule or regulation shall exempt the employer from any of the provisions of the preceding section of this act.

#### 1916. Terms defined.

SEC. 2. "Employer" includes any body of persons corporate or incorporate and the legal personal representative of a deceased employer. "Workman" includes every person who is engaged in an employment to which this act applies, whether by way of manual labor or otherwise, and where his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom compensation is payable. "Dependents" means wife, father, mother, husband, sister, brother, child or grandchild; *provided*, that they were wholly or partly dependent upon the earnings of the workman at the time of his death.

#### 1917. Hazardous callings enumerated.

SEC. 3. This act shall apply to workmen engaged in manual or mechanical labor in the following employments within this state, each of which is hereby determined to be especially dangerous, in which from the nature, condition or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessarily or substantially unavoidable, and to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

(a) The erection or demolition of any bridge or building in which there is, or in which the plans or specifications require iron or steel framework;

(b) The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of material in connection with the erection or demolition of such bridge or building;

(c) Work on scaffolds of any kind elevated twenty feet or more above the ground, water or floor beneath, in the erection, construction, painting, alteration or repair of buildings, bridges or structures;

(d) Construction, operation, alteration, or repair of wires, cables, switchboards or apparatus charged with electric currents;

(e) The operation on railroads of locomotives, engines, trains, motors or cars propelled by gravity, steam, electricity or other mechanical power, or the construction or repairs of railroad tracks and roadbeds over which such locomotives, engines, trains, motors, or cars are operated;

(f) Construction, operation, alteration, or repairs of locomotives, engines, trains, motors or cars in or about the shops, round-houses, or other places, where the same is done;

(g) Construction, operation, alteration or repairs to mills, smelters or mines, including every shaft or pit in the course of being sunk, and every crosscut, drift, station, winze, level or inclined planes through which workmen pass to and from work, and all works, machinery, tramways, ladders or passages, both below ground and above ground, in and adjacent to any mine;

(h) All work necessitating dangerous proximity to gunpowder, blasting

powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry;

(i) The construction of tunnels.

The employers to whom this act shall apply shall be any person or persons, association, partnership or corporation carrying on any such industry as aforesaid.

#### 1918. Prompt notice of accidents to be given employers.

SEC. 4. Notice of accidents must be given to the employer as soon as practicable after the happening thereof, and the claim for compensation with respect to such accident within six months from the occurrence of such accident causing the injury, or in case of death, within six months from the time of death; *provided, always*, that the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defense by the want, defect or inaccuracy, and that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause. Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, if known, the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers. The notice may be served by delivering the same to or at the residence or place of business of the person upon whom it is to be served, or the notice may also be served by post, by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered. Where the employer is a body of persons, natural or artificial, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

#### 1919. Compensation. how determined in case of death.

SEC. 5. The amount of compensation in case death results from injury, or for death accruing within five years as a result of injury, shall be:

(a) If the workman leave any person or persons who at the time of the accident were wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of two thousand dollars, whichever of these sums is the greater, but not exceeding in any case three thousand dollars; *provided*, that the total sum of any weekly payments made under this act shall be deducted from such sum; and if the period of the workman's employment by the same employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be nine hundred and thirty-six times his average daily earnings during the period of his actual employment under the same employer.

(b) If the workman leave only person or persons who at the time of the accident were partly dependent upon his earnings, a sum equal to 50 per cent of the amount payable under the foregoing provisions of this section;

(c) If the workman leave no person at the time of the accident who was dependent upon his earnings, the reasonable expenses of his medical attendance and burial, not exceeding in all three hundred dollars.

Whatever sum is payable under this section in case of death of the injured workman shall be paid to his legal representatives for the benefit of such dependents, and if he leaves no such dependents, then to the public admin-

istrator, for the benefit of the person or persons to whom the expenses of medical attendance and burial are due.

### 1920. Compensation, how determined in temporary or permanent injury.

SEC. 6. The amount of compensation in case of total or partial disability resulting from injury shall be:

(a) A weekly payment during the disability, beginning within ten days after the injury, 60 per cent of his average weekly earnings in such employment during the previous twelve months if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, so long as there is complete disability; and that proportion of the said percentage which the depleted earning capacity for that service bears to the total disability when the injury is only partial, but in no event shall the total of all payments under this act exceed the sum of three thousand dollars;

(b) In addition to the foregoing payments, if the injured person lose both feet or both hands, or one foot and one hand, or both eyes or one eye and one foot or one hand, he shall receive, during a full period of five years, 40 per cent of his average weekly earnings, or if he lose one foot, one hand or one eye, the additional compensation therefor shall be 15 per cent of his average weekly earnings, the amount of such earnings to be computed in the same manner as the foregoing 60 per cent; *provided*, that in no case shall all the payments received herein exceed in any month the whole wages earned when the injury occurs, nor shall the added percentages continue longer than to make all payments aggregate three thousand dollars.

### 1921. Employee must submit to physical examination.

SEC. 7. Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. A copy of the report of the examining physician shall be furnished to the workman. If a dispute then exists as to the workman's condition or amount of weekly compensation such dispute shall be determined by arbitration under this act, or by judicial procedure as hereinafter provided; *provided, also*, that any and all disputes arising under this act may be first submitted to a board of arbitration, and in case of failure to settle it, resort may be had to courts of justice.

### 1922. Arbitration, how conducted.

SEC. 8. Arbitration proceedings shall be as follows: The employer and the workman may each choose one arbitrator, the two arbitrators thus chosen shall choose a third, and the three arbitrators shall hear the facts of the dispute within three months after having been chosen, and within two weeks thereafter, render a decision, which, if unanimous, shall be final and binding on both parties.

### 1923. Failure of arbitration, court proceedings.

SEC. 9. On failure of the board of arbitration to reach an adjustment of the dispute above referred to, either party may apply to a court of competent jurisdiction, and have an adjudication as in any other controversy. And the findings and judgment of the court shall be conclusive on all parties concerned. Said courts may compel the attendance of witnesses and the production of evidence, as in all other cases provided for by law, and the judgment of said court may continue and diminish or increase the weekly payments, subject to the maximum provided in this act. The prevailing party in any action, brought under the provisions of this act, shall be entitled

to his costs of suit and reasonable attorney's fees; *provided*, that nothing in this act shall operate to defeat the constitutional right of appeal.

#### 1924. Employer responsible for contractor or subcontractor.

SEC. 10. If any employer who shall be the principal, enters into a contract with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, the said principal shall be liable to pay to any workman employed in the execution of the work, any compensation under this act, which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, then reference to the principal shall be substituted for reference to the employer, except the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor or employer by whom he is immediately employed. Where such principal is liable to pay compensation he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section. Nothing in this section shall be construed as preventing a workman from recovering compensation under this act, from the contractor or subcontractor, instead of the principal; nor shall this section apply in any case where the accident shall occur elsewhere than on or in or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

#### 1925. Employee not compelled to proceed under this act—Choice of remedies.

SEC. 11. Nothing in this act contained shall be held or deemed to require any workman or his personal representatives to proceed under its terms and provisions for the recovery of compensation of damages for death or accidental injury. But if the workman or his personal representatives shall so elect, he or they may disregard the provisions of this act and may pursue any other remedy at law for the recovery of such compensation of damages for or on account of such death or injury. The right of election or choice of remedies shall be exercised solely by such workman or his representatives.

#### 1926. Claim for compensation preferred debt.

SEC. 12. A claim for compensation for the injury or death of any employee or any reward or judgment entered thereon shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employee shall be so preferred, but this section shall not impair the lien of any judgment entered upon any award.

#### 1927. Assignment, when claim becomes legal.

SEC. 13. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employee shall operate as an assignment of any assignable cause of action in tort which the employee or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

#### 1928. Claims may be compromised.

SEC. 14. Nothing in this act contained shall be construed as impairing the right of parties interested after the injury or death of an employee to compromise or settle upon such terms as they may agree upon any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the dependents of any injured employee any interest which he may not divert by such settlement or for which he or his

estate shall in the event of such settlement by him be accountable to such dependents or any of them.

*An Act to provide for the amicable adjustment of differences that may arise between employers and employees.*

Approved March 29, 1907, 375

1929. Arbitration—Governor to act.

1930. Board of arbitration.

1931. Decision of arbitrators.

1932. May issue subpoenas and compel attendance.

1933. Agreements must be acknowledged—  
Report to governor.

1934. Obligations of parties.

1935. Compensation of arbitrators.

### 1929. Arbitration—Governor to act.

SECTION 1. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer and his employees, seriously interrupting or threatening to interrupt the business of the employer, the governor shall, upon the request of either party to the controversy, with all practicable expedition, put himself in communication with the parties to such controversy, and shall use his best efforts, by mediation and conciliation, to amicably settle the same. He may either exercise such powers of conciliation himself, or appoint a commission for such purpose. If such efforts of conciliation shall be unsuccessful, the governor shall at once endeavor to bring about an arbitration of such controversy in accordance with the provisions of this act.

### 1930. Board of arbitration.

SEC. 2. That whenever such controversy shall arise between an employer and his employees which cannot be settled by mediation and conciliation in the manner provided in the preceding section, such controversy may, with the consent of the parties to the controversy, be submitted to the arbitration of a board of three persons who shall be chosen in the manner following: One shall be named by the employer directly interested; the other by the labor organization to which the employees directly interested belong, or if they belong to more than one, such arbitrator shall be agreed upon and designated by the concurrent action of all such labor organizations. The two thus chosen shall select the third commissioner of arbitration, but in the event of their failure to name such arbitrator within five days after their first meeting, the three arbitrators shall be named by the governor. A majority of said arbitrators shall be competent to make a binding and valid award under the provisions hereof. The submission shall be in writing, shall be signed by the employer and by the labor organization or organizations representing employees, shall specify the time and place of meeting of such board of arbitration, shall state the questions to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate as follows:

First—That the board of arbitration shall commence their hearings within ten days from the date of the appointment of the third arbitrator, and shall find and file their award within thirty days from the date of the appointment of the third arbitrator; and that pending the arbitration the status existing immediately prior to the dispute shall not be changed; *provided*, that no employee shall be compelled to render personal service without his consent.

Second—That the award and the papers and proceedings, including the testimony relating thereto certified under the hands of the arbitrators, shall be filed in the clerk's office of the district court for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon both parties, unless set aside for error of law apparent on the record.

Third—That the respective parties to the award will each faithfully execute

the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit; *provided*, that no injunction or other legal process shall be issued which shall compel the performance by any laborer against his will of a contract for personal labor or service.

Fourth—That employees dissatisfied with the award shall not by reason of such dissatisfaction quit the service of the employer before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of their intention so to quit. Nor shall the employer dissatisfied with such award dismiss any employee or employees on account of such dissatisfaction before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of his intention so to discharge.

Fifth—That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation, and no new arbitration upon the same subject between the same employer and the same class of employees shall be had until the expiration of said one year if the award is not set aside as provided.

### 1931. Decision of arbitrators.

SEC. 3. That the award being filed in the clerk's office of the district court, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent on the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of either by said district court or on appeal therefrom. At the expiration of ten days from the decision of the district court upon exception taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the supreme court of the State of Nevada. In such case only such portion of the record shall be transmitted to the supreme court as is necessary to a proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said supreme court upon said questions shall be final, and being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award, but in such case the parties may agree upon a judgment to be entered disposing of the subject-matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon award.

### 1932. May issue subpoenas and compel attendance.

SEC. 4. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpoenas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation, as may be ordered by the courts; and may invoke the aid of the said courts to compel witnesses to attend and testify, and to produce such books, papers, contracts, agreements and documents as the courts shall determine to be material and competent evidence.

### 1933. Agreements must be acknowledged—Report to governor.

SEC. 5. That every agreement of arbitration under this act shall be acknowledged by the parties before a notary public or clerk of the district court of the state, and when so acknowledged a copy of the same shall be filed with and recorded by the county recorder of the county in which the

arbitration is entered into, and a copy shall also be sent to the governor who shall file the same in the office of the secretary of state, who shall cause a notice in writing to be served upon the arbitrators, fixing the time and place for a meeting of said board, which shall be within fifteen days from the execution of said agreement of arbitration; *provided, however*, that the governor shall decline to call a meeting of the arbitrators under such agreement unless it be shown to his satisfaction that the employees signing the submission represent or include a majority of all the employees in the service of the same employer and of the same grade and class, and that an award pursuant to said submission can justly be regarded as binding upon all such employees.

#### 1934. Obligations of parties.

SEC. 6. That during the pendency of arbitration under this act it shall not be lawful for the employer, party to such arbitration, to discharge the employees, parties thereto, except for inefficiency, violation of law, or neglect of duty; nor for the organization representing such employees to order, nor for the employees to unite in, aid or abet, strikes against said employer; nor, during a period of three months after an award under such an arbitration, for such employer to discharge any such employees, except for the causes aforesaid, without giving thirty days' written notice of an intent so to discharge; nor for any of such employees, during a like period, to quit the service of said employer without just cause, without giving to said employer thirty days' written notice of an intent so to do; nor for such organization representing such employees to order, counsel, or advise otherwise. Any violation of this section shall subject the offending party to liability for damages; *provided*, that nothing herein contained shall be construed to prevent any employer, party to such arbitration, from reducing the number of its or his employees whenever in its or his judgment business necessities require such a reduction.

#### 1935. Compensation of arbitrators.

SEC. 7. The agreement of arbitration shall provide for the compensation of arbitrators, and their traveling and other necessary expenses.

*An Act to prohibit the use of deception, misrepresentation, false advertising or false pretenses in the procuring of employees to work in any department of labor in the State of Nevada, and fixing penalties, criminal and civil, for the violation thereof.*

Approved March 22, 1911, 315

#### 1936. Unlawful to misrepresent labor conditions.

SECTION 1. It shall be unlawful for any person, persons, company, corporation, society, association or organization of any kind doing business in this state, by himself, itself, themselves, his, its, or their agents, or attorneys to induce, influence, persuade or engage workmen to change from one place to another in this state, or to bring workmen of any class or calling into this state to work in any of the departments of labor in this state, through means of false or deceptive representations, false advertising or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of their employment, or as to the existence or nonexistence of a strike, or other trouble pending between employer and employees at the time of or prior to such engagement, proposal or contract for such employment of workmen.

#### 1937. Penalties.

SEC. 2. Any person, persons, company, corporation, society, association or organization of any kind doing business in this state, as well as his, their,

or its agents, attorneys, servants or associates found guilty of violating section one (1) of this act, or any part thereof, shall be fined in a sum not less than two hundred dollars (\$200), nor more than two thousand dollars (\$2,000), or confined in the county jail for a period of not less than sixty days nor more than one year, or when the defendant or defendants is or are a natural person or persons, by both such fine and imprisonment.

### 1938. Right of action defined.

SEC. 3. Any workman of this state or any workman of another state who has been or shall be influenced, induced or persuaded to engage with any person mentioned in section one (1) of this act, or any company, corporation, or society or organization mentioned in section one (1) of this act, through or by means of any of the things therein prohibited, after this act becomes in force and effect, and each of such workmen shall have a cause of action for recovery and may recover at law, for all damages that each of such workmen shall have sustained in consequence of the false or deceptive representations, false advertising or false pretenses, used to induce him to change his place of employment, or place of abode in case such workman shall not be then employed at the time of such inducement and hiring, against any person or persons, corporations, companies or associations, directly or indirectly causing such damages; and in any action under this act, for the recovery of such damages, the court shall have the power to award a reasonable attorney's fee in favor of the prevailing party and to be taxed as costs against the losing party therein.

*An Act to prohibit the issuance of non-negotiable acknowledgments of indebtedness in payment for wages due employees, and providing a punishment for the violation of the provisions of this act.*

Approved March 15, 1911, 66

### 1939. Checks and orders must be negotiable.

SECTION 1. No person or corporation engaged in any business or enterprise of any kind in this state shall issue, in payment, or as evidence of, any indebtedness for wages due an employee, any order, check, memorandum, or other acknowledgment of indebtedness unless the same is a negotiable instrument payable without discount, in cash on demand, at some bank or other established place of business; *provided, however*, that nothing herein contained shall in any way limit or interfere with the right of any such employee, by agreement, to accept from any such person or corporation, as an evidence or acknowledgment of indebtedness for wages due him, a negotiable instrument, payable at some future date with interest.

### 1940. Penalty.

SEC. 2. Any violation of this act shall be a misdemeanor or punishable by a fine of not exceeding \$500.

*An Act to regulate the hours of work or labor of men employed or working on or about the surface of underground mine workings, and providing for the punishment of violations of this act.*

Approved March 24, 1911, 373

### 1941. Legal day's work for surface employees.

SECTION 1. The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, top men, and all workmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours, except in cases of emergency where life or property is in imminent danger.

### 1942. Penalties.

SEC. 2. Any person who violates any of the provisions of this act, or any person, corporation, employer or agent who hires, contracts with, or in any manner causes or induces any person to work or labor on or about the surface or surface workings of any underground mine workings for more than eight hours in any period of twenty-four hours, except in cases of emergency where life or property is in imminent danger, 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 in the county jail for not longer than six months, or by both such fine and imprisonment.

See secs. 289 to 295, inclusive, of crimes act, post, secs. 6554 to 6560, annotated.

*An Act making it a misdemeanor to collect hospital fees from persons in certain cases.*

Approved March 14, 1903, 113

### 1943. Hospital fees, when collection unlawful.

SECTION 1. It is hereby made unlawful for any person or persons, contractor or contractors, firm, company, corporation, or association, or the managing agent of any person or persons, contractor or contractors, firm, company, corporation, or association, to collect, demand, force, compel, or require, either monthly, annually, or for any other period of time, any sum of money for hospital fees from any person or laborer at any place in this state where no convenient, comfortable, and well-equipped hospital is maintained at some town or place for the accommodation, relief and treatment of persons in his or their employ, and from whom hospital fees are collected; *provided*, that any person or persons, contractor or contractors, firm, company, corporation, or association, or the managing agent of same, may care for or cause to be cared for, any person in his or their employ, from whom hospital fees are collected, at any private or public hospital, sanitarium, or other convenient and comfortable place, without expense to the person or patient from whom hospital fees are collected; *and provided further*, the distance and facilities for the comfort and conveyance of any patient come within the intent and meaning of section 2 of this act.

### 1944. Act construed.

SEC. 2. For the purpose of this act, the words "town or place," mentioned in section 1 of this act, shall be construed to mean any town, headquarters, or place, at which town, headquarters, or place, and tributary places, sufficient hospital fees are collected to maintain a hospital in keeping with the hospital fees collected, and the words "distance and facilities for the comfort and conveyance of any patient," mentioned in section 1 of this act, shall be construed to mean the nearest hospital, and most comfortable means of conveyance at hand, or that can be procured in a reasonable time; *provided*, that if at the nearest hospital the proper medical treatment cannot be secured, then it shall not be a misdemeanor to take any person or patient a greater distance or to another hospital.

### 1945. Penalty.

SEC. 3. Any person or persons violating the provisions of this act shall, upon conviction thereof, be fined in any sum not less than two hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than one hundred days nor more than two hundred and fifty days, or by both such fine and imprisonment.

## EXPLOSIVES

*An Act authorizing and requiring the boards of county commissioners of the several counties of Nevada to prohibit, under certain conditions, the storage of explosive or combustible materials within a certain distance of the limits of any town or incorporated city in this state.*

Approved March 17, 1905, 203

### 1946. On petition, commissioners to prohibit storage—Exceptions.

SECTION 1. Whenever there shall be filed with the board of county commissioners of any county in this state a petition signed by ten per cent of the residents of any town or incorporated city within said county, said ten per cent to be computed from the number of persons paying taxes in said town or incorporated city according to the last preceding assessment roll, praying that the storage of gunpowder, or explosive or combustible materials be prohibited within the limits of such town or city, said board shall, at the meeting of such board when such petition is filed, make and enter on the minutes of its proceedings an order prohibiting the storage of explosive or combustible materials within such distance of said town or city as said board may deem safe and proper; *provided*, that the distance named in said order for such storage shall not be less than one-fourth mile from the limits of such town or city; *provided further*, that nothing in this act contained shall be so construed as to prohibit or prevent the storage by any person, firm or corporation within the limit prescribed by the order of any board, of not more than one hundred pounds of black and smokeless gun or rifle powder, and not more than five hundred gallons of kerosene oil, nor to prohibit or prevent the keeping within such limits of shotgun or rifle shells and cartridges and cartridge percussion caps by any business firm or individual, nor to prohibit or prevent the storing of powder under ground in mines.

### 1947. Misdemeanor of county commissioners—Penalty.

SEC. 2. Any board of county commissioners, or any member thereof, failing, neglecting or refusing to comply with all of the provisions of section 1 of this act, shall be deemed guilty of a misdemeanor and proceedings shall at once be instituted by the district attorney of the county, or may be instituted by any citizen of the county, against such board, or against any member thereof, and upon conviction in any court of competent jurisdiction, the members or any member of such board shall be fined in a sum not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or imprisonment in the county jail not less than thirty (30) days nor more than six months, or may be punished by both such fine and imprisonment in the discretion of the court. Such conviction shall ipso facto remove such board, or any member thereof so convicted, from office, notice of the vacancy thereby created to be certified by the district attorney of the county to the governor of the state, and the governor, within twenty days from the receipt of such notice, to make appointments to fill such vacancy as may be created.

### 1948. Order published.

SEC. 3. The order mentioned in section 1 of this act to be made by said board may be published by the clerk of said board for two weeks successively in some newspaper published and printed in the town to which said order applies, or, a copy of such order shall be conspicuously posted in three public places in said town or city, which said publication or posting shall constitute due notice to all concerned, and any person, firm, company or corporation continuing to store any explosive or combustible materials within the limit prescribed by such order and notice, after two weeks subsequent to the giv-

ing of such notice or after three weeks subsequent to the making of such order, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or imprisoned in the county jail for a term not less than thirty days nor more than six months, or may be punished by both such fine and imprisonment in the discretion of the court.

## FEDERAL JURISDICTION

Act ceding jurisdiction over certain lands owned by the United States, approved January 18, 1883, sections 1949, 1950.

Act ceding jurisdiction over certain lands to be acquired by the United States, approved February 24, 1885, sections 1951, 1952.

### SPECIAL STATUTES OMITTED

Act ceding jurisdiction over land for the United States branch mint at Carson City, Stats. 1869, p. 71.

Act ceding jurisdiction over land for the Indian School in Ormsby County, Stats. 1897, p. 49.

*An Act ceding the jurisdiction of this state over certain lands owned by the United States.*

Approved January 18, 1883, 13

### 1949. Jurisdiction ceded to the United States—Reservation by state—Plat to be filed—Service of process.

SECTION 1. That the jurisdiction of this state is hereby ceded to the United States of America over all such pieces or parcels of land within the limits of this state as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting postoffices, custom houses or other structures exclusively owned by the general government and used for its purposes; *provided*, that an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of this state; *and further provided*, that this cession is upon the express condition that the State of Nevada shall so far retain concurrent jurisdiction with the United States in and over all lands acquired or hereafter acquired as aforesaid; that all civil or criminal process issued by any court of competent jurisdiction, or officers having authority of law to issue such process, and all orders made by such court, or any judicial officer duly empowered to make such orders, and necessary to be served upon any person, may be executed upon said lands and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid.

### 1950. Exemption from taxation.

SEC. 2. The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments so long as the same shall remain the property of the United States.

*An Act ceding the jurisdiction of this state over certain lands to be acquired by the United States.*

Approved February 24, 1885, 40

### 1951. Ceding jurisdiction—Exception.

SECTION 1. The jurisdiction of this state is hereby ceded to the United States of America over all pieces or parcels of land within the limits of this

state that may be selected or acquired by the United States for the purpose of erecting thereon a public building or public buildings for the accommodation of the United States courts, the postoffice and other government offices; and the United States shall have exclusive jurisdiction over the same during the time said United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this state, and the service of any civil process therein or thereon.

Under the provisions of art. 1, sec. 8, U. S. Const. (ante, 127), land purchased for the purposes therein enumerated ipso facto falls within the exclusivs jurisdiction of the United States.

Postoffices and federal court houses are "needful buildings" under the provisions of said section.

Where a state cedes to the United States exclusive jurisdiction over land purchased

as a site for a public building, "for all purposes except the administration of the criminal laws of this state," the state has no jurisdiction for the punishment of crimes committed on the purchased land but only the right to execute criminal process thereon for the violation of its laws committed elsewhere within the state. *State ex rel. Jones v Mack*, 23 Nev. 362, 366 (62 A. S. 811, 47 P 763).

**1952. Lands exempt from taxation.**

**SEC. 2.** The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments so long as the same shall remain the property of the United States.

For a similar act, see secs. 1949-1950.

**FEDERAL TOWNSITES**

United States statutes relating to townsites, sections 1953-1979.

Act prescribing regulations for the execution of the trust under the act of Congress of March 2, 1867, providing for the patenting of townsites and for the relief of inhabitants of cities and towns upon the public lands, approved February 20, 1869, sections 1980-1988.

Act amendatory of that act, approved March 8, 1871, sections 1989-1991.

Act supplementary to the first-named act, approved February 8, 1875, sections 1992, 1993.

**UNITED STATES LAWS**

- 1953. County-seat townsites.
- 1954. Townsites reserved by president.
- 1955. Secretary of interior to make surveys and sales of lots.
- 1956. Townsites platted by occupants—Disposition of lots.
- 1957. Adjustment of extension limits after public survey.
- 1958. Secretary of interior may have survey and plat of town or city made, when.
- 1959. Adjustment of size of lots; excessive area.
- 1960. Title of lots subject to recognized veins.
- 1961. Townsites entered by corporate authorities or judges of county courts as trustees.
- 1962. Entry to be noticed; statement to be filed.
- 1963. Limits of townsite; regulation as to.
- 1964. Certain acts of trustees void.
- 1965. Title to mines cannot be acquired.
- 1966. Land for federal purposes exempted.
- 1967. Costs of surveying; expenses to be paid by claimants.
- 1968. Area for townsite limited.
- 1969. Restriction of townsite by other entries.
- 1970. Excessive area; election of part of the lands.
- 1971. Town may make additional entry.
- 1972. Lands for towns may be reserved on reclamation projects—Reservations for public purposes.
- 1973. Sale of lots; expenses; proceeds.
- 1974. Public reservations; improvement of.
- 1975. Water rights for established towns; payment for.
- 1976. Surplus power may be leased by secretary of interior.
- 1977. Secretary of interior may withdraw and dispose of certain townsites.
- 1978. Townsites on mineral lands—Exemption of veins—Surface rights.

NOTE—Section numbers refer to United States Revised Statutes.

**1953. County-seat townsites.**

**SEC. 2286.** There shall be granted to the several counties or parishes of each state and territory, where there are public lands, at the minimum price

for which public lands of the United States are sold, the right of preemption to one quarter section of land, in each of the counties or parishes, in trust for such counties or parishes, respectively, for the establishment of seats of justice therein; but the proceeds of the sale of each of such quarter sections shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same. And the seat of justice for such counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located.

Act approved May 26, 1824 (4 Stat. 50, sec. 1).

#### 1954. Townsites reserved by president.

SEC. 2380. The president is authorized to reserve from the public lands, whether surveyed or unsurveyed, townsites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population.

#### 1955. Secretary of interior to make surveys and sales of lots.

SEC. 2381. When, in the opinion of the president, the public interests require it, it shall be the duty of the secretary of the interior to cause any of such reservations, or part thereof, to be surveyed into urban or suburban lots of suitable size, and to fix by appraisalment of disinterested persons their cash value, and to offer the same for sale at public outcry to the highest bidder, and thence afterward to be held subject to sale at private entry according to such regulations as the secretary of the interior may prescribe; but no lot shall be disposed of at public sale or private entry for less than the appraised value thereof. And all such sales shall be conducted by the register and receiver of the land office in the district in which the reservations may be situated, in accordance with the instructions of the commissioner of the general land office.

Act approved March 3, 1863 (12 Stat. 754).

Not applicable to Indian reservations, *King v. McAndrews*, 111 Fed. 869.

Applicable to Alaska, *Sawyer v. Van Hook*, 1 Alaska, 108.

#### 1956. Townsites platted by occupants—Disposition of lots.

SEC. 2382. In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the recorder for the county in which the same is situated, a plat thereof, for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the general land office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of an organized land district, a similar map and statement shall be filed with the register and receiver, and at any time after the filing of such map, statement, and testimony in the general land office it may be lawful for the president to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private

entry at such minimum, or at such reasonable increase or diminution thereafter as the secretary of the interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property. But any actual settler upon any one lot, as above provided, and upon any additional lot in which he may have substantial improvements shall be entitled to prove up and purchase the same as a preemption, at such minimum, at any time before the day fixed for the public sale.

Purpose of act, *Jones v. Petaluma*, 36 Cal. 230; *Aleman y. Petaluma*, 38 Cal. 553.

Decisions judicial in character and not subject to collateral attack. *King v. McAndrews*, 111 Fed. 860.

Possessory rights cannot be destroyed without compensation. *V. & T. R. R. v. Lynch*, 13 Nev. 92.

### 1957. Adjustment of extension limits after public survey.

SEC. 2383. When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases.

### 1958. Secretary of interior may have survey and plat of town or city made, when.

SEC. 2384. If within twelve months from the establishment of a city or town on the public domain, the parties interested refuse or fail to file in the general land office a transcript map, with the statement and testimony called for by the provisions of section 2382, it may be lawful for the secretary of the interior to cause a survey and plat to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by such provisions, with this exception, that they shall each be at an increase of fifty per centum on the minimum of ten dollars per lot.

Act approved July 1, 1864 (13 Stat. 343, secs. 2, 3, and 4).

*King v. McAndrews*, 111 Fed. 860.

### 1959. Adjustment of size of lots; excessive area.

SEC. 2385. In the case of any city or town, in which the lots may be variant as to size from the limitation fixed in section 2382, and in which the lots and buildings, as municipal improvements, cover an area greater than six hundred and forty acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim under the provisions of that section; but the minimum price of each lot in such city or town, which may contain a greater number of square feet than the maximum named in that section, shall be increased to such reasonable amount as the secretary of the interior may by rule establish.

### 1960. Title of lots subject to recognized veins.

SEC. 2386. Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

Act approved March 3, 1865 (13 Stat. 530, sec. 2). (See sec. 2392, Rev. Stats. and sec. 16, act of March 3, 1891, 26 Stat. 1101, *infra*.)

See secs. 1965, 1978.

See note after sec. 1978.

See sec. 2418.

Mineral rights cannot be acquired under this section. *Steel v. St. Louis S. Co.*, 106 U. S. 447; *Poire v. Wells*, 6 Colo. 406; Tal-

cott v. King, 6 Mont. 76; *Silver Bow M. Co. v. Clarke*, 5 Mont. 378; *Deffeback v. Hawke*, 115 U. S. 392; *Dower v. Richards*, 73 Cal. 477.

### 1961. Townsites entered by corporate authorities or judges of county courts as trustees.

**SEC. 2387.** Whenever any portion of the public lands have been or may be settled upon and occupied as a townsite, not subject to entry under the agricultural preemption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the state or territory in which the same may be situated.

Government's interests totally relinquished, *McDaid v. Oklahoma*, 150 U. S. 209; *Bockfingner v. Foster*, 190 U. S. 116; *Chisolm v. Weisse*, 2 Okla. 611.

"Corporate authorities" defined, *Clarke v. Roy*, 20 Wis. 478; *Perry v. Superior City*, 26 Wis. 64.

Duty of judge to make entry, *McTaggart v. Harrison*, 12 Kan. 62.

Expenses of entering not a lien on trust property. *Emmert v. De Long*, 12 Kan. 67.

Authority to employ counsel. *Hayward v. Red Cliff*, 20 Colo. 33.

Evidence for identification. *Wilder v. St. Paul*, 12 Minn. 192; *Mankato v. Meagher*, 17 Minn. 265; *Murray v. Hobson*, 10 Colo. 166; *Hamlin v. Hobson*, 24 Colo. 284.

Parties. *Emmert v. De Long*, 12 Kan. 61.

Nature of trust. *Martin v. Hoff*, 64 P. 445; *Clark v. Titus*, 2 Ariz. 147; *Denver v. Kent*, 1 Colo. 336; *Lockwitz v. Larsen*, 16 Utah, 275; *Newhouse v. Simino*, 3 Wash. 648; *Aspen v. Rucker*, 10 Colo. 184; *Rund v. Jensen*, 3 Wash. 785.

Title to occupied lots vested in trustee for benefit of occupants. *Jones v. Eureka Imp. Co.*, 53 Ark. 191; *Winfield T. Co. v. Maris*, 11 Kan. 128; *Sherry v. Sampson*, 11 Kan. 611; *Mankato v. Meagher*, supra; *Goldberg v. Kidd*, 5 S. D. 169; *Eakin v. McCraith*, 2 Wash. 112; *Stringfellow v. Cain*, 99 U. S. 610; *Mallard v. Anderson*, 36 La. Ann. 834.

Title to unoccupied lots. *Denver v. Kent*, supra; *Aspen v. Rucker*, supra.

The trusteeship as to unoccupied lots continues. *Hartman v. Smith*, 6 Mont. 295.

Location and occupancy after entry. *Lechler v. Chapin*, 12 Nev. 71; *Winfield Town Co. v. Maris*, 11 Kan. 128; *Leech v. Rauch*, 3 Minn. 454; *Castner v. Gunther*, 6 Minn. 119; *Lockwitz v. Larson*, 16 Utah, 275.

Estate vested in trustees and not in municipality. *Smith v. Piper*, 3 Colo. 187; *Georgetown v. Glaze*, 3 Colo. 234; *Aspen v. Rucker*, 10 Colo. 184; *Burbank v. Ellis*, 7 Neb. 156.

Bill by corporation to prevent abuse of trust. *Denver v. Kent*, 1 Colo. 336; *Georgetown v. Glaze*, supra; *Aspen v. Rucker*, 10 Colo. 184.

Title passes to successor. *Smith v. Hill*, 89 Cal. 122; *Smith v. Piper*, 3 Colo. 187;

*Georgetown v. Glaze*, supra; *Aspen v. Rucker*, supra.

Suit to protect title. *Hartman v. Smith*, 6 Mont. 295.

Formation of new county from part of old county. *Whittlesey v. Hoppenyan*, 72 Wis. 140; *Tucker v. Whittlesey*, 74 Wis. 74.

Corporate authorities not successors of county judge. *Wheeler v. Wade*, 1 Colo. App. 66; *Webber v. Petty*, 2 Colo. App. 63; *Rice v. Goodwin*, 2 Colo. App. 267.

Decisions of trustees judicial in character. *King v. McAndrews*, 111 Fed. 860; *Larned v. Jenkins*, 113 Fed. 634; *New Dunderberg M. Co. v. Old*, 79 Fed. 598; *Smith v. Piper*, supra; *Poire v. Wells*, 6 Colo. 406; *Aspen v. Aspen Co.*, 10 Colo. 191; *Chever v. Horner*, 11 Colo. 68; *Schnepel v. Mellen*, 3 Mont. 118; *Helena v. Albertose*, 8 Mont. 499; *Ming v. Foote*, 9 Mont. 201; *Horsky v. Moran*, 21 Mont. 345; *Mills v. Paynter*, 1 Neb. 440; *Tierney v. Cornell*, 3 Neb. 267; *Green v. Barker*, 47 Neb. 934; *Board of Education v. Mansfield*, 95 N. W. 286; *Rathbone v. Sterling*, 2 Kan. 448.

Void deed attacked collaterally. *Treadway v. Wilder*, 9 Nev. 67; *Poire v. Wells*, supra.

Acts and conveyances presumptively valid. *Poire v. Wells*, supra; *Setter v. Alvey*, 15 Kan. 157; *Marysville Investment Co. v. Munson*, 44 Kan. 491; *Green v. Barker*, 47 Neb. 934; *Matthews v. Buckingham*, 22 Kan. 166.

Finding of fact conclusive. *Twine v. Carey*, 2 Okla. 249; *Bassett v. Mitchell*, 3 Okla. 177; *Myers v. Berry*, 3 Okla. 612; *King v. Thompson*, 3 Okla. 644; *Cummings v. McDermid*, 4 Okla. 272; *Carter v. Thompson*, 65 Fed. 329.

No vendor's lien for expenses of administering trust. *Berry v. Ginaca*, 5 Fed. 475.

Controversy between claimants a federal question. *Dunton v. Muth*, 45 Fed. 390.

Deed cannot be attacked by stranger. *Murray v. Hobson*, 10 Colo. 66; *Chever v. Horner*, supra; *Hanlon v. Hobson*, 24 Colo. 284; *Laughlin v. Denver*, 24 Colo. 260; *Sherry v. Sampson*, 1 Kan. 611; *Marysville Investment Co. v. Munson*, supra; *Taylor v. Winona R. Co.*, 45 Minn. 66; *Ming v. Foote*, supra; *Holland v. Buchanan*, 19 Utah, 11;

Tucker v. Chicago R. Co., 91 Wis. 576; Jackson v. Winfield Town Co., 23 Kan. 542; Ready v. Kearsley, 14 Mich. 215.

Trustee without authority to dedicate streets. *Aleman* v. *Petaluma*, 38 Cal. 553; *Aspen* v. *Rucker*, supra; *Pueblo* v. *Budd*, 19 Colo. 579; *Laughlin* v. *Denver*, supra; *Winfield Town Co.* v. *Maris*, supra; *Buffalo* v. *Harling*, 50 Minn. 551; *Edwards* v. *Tracey*, 2 Mont. 49; *Hall* v. *Ashby*, 2 Mont. 48, 91, affirmed 119 U. S. 526; *Parchen* v. *Ashby*, 5 Mont. 68; *Helena* v. *Albertose*, supra; *Guthrie* v. *Beamer*, 3 Okla. 652; *Bingham* v. *Walla Walla*, 3 Wash. 68.

Only occupants beneficiaries. *Clark* v. *Titus*, 2 Ariz. 147; *Ricks* v. *Reed*, 19 Cal. 551; *Biddick* v. *Kobler*, 110 Cal. 191; *Cook* v. *Rice*, 2 Colo. 131; *Clayton* v. *Spencer*, 2 Colo. 378; *Adams* v. *Binkley*, 4 Colo. 247; *Aspen* v. *Rucker*, supra; *Aspen* v. *Aspen Co.*, supra; *Mitchell* v. *Arkell*, 3 Colo. App. 253; *Winfield Town Co.* v. *Maris*, supra; *Sherry* v. *Sampson*, supra; *Guffin* v. *Linney*, 25 Kan. 717; *Matter of Selby*, 6 Mich. 193; *Leech* v. *Rauch*, supra; *Carson* v. *Smith*, 12 Minn. 560; *Treadway* v. *Wildner* 8 Nev. 98; 9 Nev. 67; *Lechler* v. *Chapin*, supra; *Lockwitz* v. *Larson*, supra; *Holland* v. *Buchanan*, supra; *Callahan* v. *James*, 71 P. 104; *Morris* v. *Watson*, 15 Minn. 212.

Priority of occupancy. *Sawyer* v. *Van Hook*, 1 Alaska, 108; *Webber* v. *Petty*, 2 Colo. App. 63.

Who may be occupants. *Greiner* v. *Fulton*, 46 Kan. 405; *Hager* v. *Wikoff*, 2 Okla. 580; *Downman* v. *Saunders*, 3 Okla. 227; *Blue Earth County* v. *St. Paul R. Co.*, 28 Minn. 503; *Setter* v. *Alvey*, 15 Kan. 157; *Winfield Town Co.* v. *Maris*, supra; *Marysville Investment Co.* v. *Munson*, supra; *Greiner* v. *Fulton*, supra; *Mankato* v. *Meagher*, 17 Minn. 265.

Occupation for speculative purposes not allowed. *Marysville Investment Co.* v. *Holle*, 58 Kan. 773; *Clark* v. *Titus*, supra; *Pascoe* v. *Green*, 18 Colo. 326; *Lechler* v. *Chapin*, supra.

Requisites of occupancy. *Garrard* v. *Silver Peak Mines*, 82 Fed. 578; *Ritter* v. *Lynch*, 123 Fed. 930; *Sawyer* v. *Van Hook*, 1 Alaska, 108; *Prie* v. *Broekway*, 1 Alaska, 233; *Singer Mfg. Co.* v. *Tillman*, 21 Pac. 818; *Martin* v. *Hoff*, 64 Pac. 445; *Mankato* v. *Meagher*, 17 Minn. 265; *Schnepel* v. *Mellen*, supra; *Eureka M. Co.* v. *Way*, 11 Nev. 171; *Lechler* v. *Chapin*, supra; *Jackson* v. *Thornton*, 8 Okla. 331.

Meaning of "settled upon and occupied." *Sawyer* v. *Van Hook*, supra; *Osgood* v. *Donnelly*, 1 Alaska, 385; *Stringfellow* v. *Cain*, 99 U. S. 610; *Hussey* v. *Smith*, 99 U. S. 20.

Necessity of retaining possession. *West* v. *Child*, 8 Utah, 223; *West* v. *Utah Nat. Bank*, 8 Utah, 374.

Showing title to each lot claimed. *Carter* v. *Ruddy*, 166 U. S. 493.

Actual residence not required. *Greiner* v. *Fulton*, supra; *Leech* v. *Rauch*, supra.

Merely platting the land. *Carson* v. *Smith*, 12 Minn. 546; *Weisberger* v. *Tenny*, 8 Minn. 459.

Interest of occupants. *Davis* v. *Murphy*,

3 Minn. 119; *West* v. *Child*, supra; *West* v. *Utah Nat. Bank*, supra; *Gillett* v. *Gaffney*, 3 Colo. 351.

A right of disposition belongs to the occupant. *Hussey* v. *Smith*, 99 U. S. 20; *Stringfellow* v. *Cain*, supra; *Cannon* v. *Pratt*, 99 U. S. 619; *Hager* v. *Wikoff*, supra; *Guthrie* v. *Beamer*, supra; *Clawson* v. *Wallace*, 16 Utah, 300; *United States* v. *Tithing Yard*, 9 Utah, 274.

Recording conveyance of interest. *Davis* v. *Murphy*, 3 Minn. 119; *Carson* v. *Smith*, supra; 77 Am. Dec. 539.

Interest descendible. *Stringfellow* v. *Cain*, supra; *Eversdon* v. *Mayhew*, 65 Cal. 163; 85 Cal. 1; *Gillett* v. *Gaffney*, supra; *West* v. *Child*, supra; *West* v. *Utah Nat. Bank*, supra; *Coy* v. *Coy*, 15 Minn. 119.

Descendible interest lost by abandonment. *Stringfellow* v. *Cain*, supra; *West* v. *Child*, supra; *West* v. *Utah Nat. Bank*, supra.

Bare right of possession. *Oklahoma City* v. *Hill*, 6 Okla. 114.

Right vested at date of entry. *Cook* v. *Rice*, 2 Colo. 131; *Clayton* v. *Spencer*, supra; *Adams* v. *Binkley*, supra; *Pascoe* v. *Green*, supra; *Pueblo* v. *Budd*, supra; *Winfield Town Co.* v. *Maris*, supra; *Rathbone* v. *Sterling*, 25 Kan. 444; *Leech* v. *Rauch*, supra; *Castner* v. *Gunther*, 6 Minn. 119; *Castner* v. *Echard*, 6 Minn. 149; *Helena* v. *Albertose*, supra; *Lechler* v. *Chapin*, supra; *Guthrie* v. *Beamer*, supra; *Lockwitz* v. *Larson*, supra.

Meaning of term "entry." *Lockwitz* v. *Larson*, supra.

Ownership. *Goldberg* v. *Kidd*, 5 S. Dak. 169; *Cofield* v. *McClelland*, 16 Wall. 334; *Stringfellow* v. *Cain*, 99 U. S. 610.

Rights are affected by government's failure to act. *Lockwitz* v. *Larson*, supra.

The legal title vests in occupant. *Murray* v. *Hobson*, supra; *Mills* v. *Hobson*, 10 Colo. 78.

When trustee to execute deed. *Aspen* v. *Rucker*, supra; *Mankato* v. *Meagher*, supra.

The failure of the deed to recite the authority. *Burbank* v. *Ellis*, 7 Neb. 156.

Execution of deeds only after filing of plat and survey. *Hershfield* v. *Rocky Mountain Bell Telephone Co.*, 12 Mont. 102.

When land taxable. *Topeka Commercial Security Co.* v. *McPherson*, 7 Okla. 332.

Rights of individuals in streets and alleys. *Parchen* v. *Ashby*, 5 Mont. 68; *Ashby* v. *Hall*, 119 U. S. 526; *Dooly Block* v. *Salt Lake Rapid Transit Co.*, 9 Utah, 31.

Streets and alleys to which public right attaches. *Bingham* v. *Walla Walla*, 3 Wash. Ter. 68; *Ashby* v. *Hall*, supra; *Mills* v. *Hobson*, supra.

Title to half of street. *Mankato* v. *Willard*, 13 Minn. 13; 97 Am. Dec. 208; *Harlington* v. *St. Paul R. Co.*, 17 Minn. 215; *Mankato* v. *Meagher*, supra.

Estoppel of occupant by dedication. *Diamond Match Co.* v. *Ontonagon*, 72 Mich. 249.

Person without title estopped by dedication. *Mankato* v. *Willard*, supra; *Mankato* v. *Meagher*, supra; *Mankato* v. *Warren*, 20 Minn. 144.

Loss of right by abandonment. *Boise*

City v. Flanagan, 6 Idaho, 149; Wesiberger v. Tenny, supra; Brown v. Parker, 2 Okla. 264.

No dedication shown. Cerf v. Pflieger, 94 Cal. 131.

Abandonment a question of fact. Cook v. McCord, 9 Okla. 200.

Voluntary withdrawal from lot. Stringfellow v. Cain, supra.

When land liable to loss by abandonment. Young v. Tiner, 4 Idaho, 269; Thompson v. Holbrook, 1 Idaho, 609.

Facts insufficient to show abandonment. Webber v. Petty, supra.

Purpose of provision. Diamond Match Co. v. Ontonagon, supra.

State acts regulating disposal of lots. Hussey v. Smith, supra; Hussey v. Merritt, 99 U. S. 25; Robertson v. Martin, 76 Pac. 614; Ricks v. Reed, 19 Cal. 551; Ryan v. Tomlinson, 31 Cal. 11; Cerf v. Pflieger, supra; Amador County v. Gilbert, 133 Cal. 51; Coffield v. McClellan, supra; Tucker v. McCoy, 8 Colo. 368; Aspen v. Rucker, supra; Graves v. Steele, 4 Greene (Iowa), 377; Winfield Town Co. v. Maris, supra; Inde-

pendence Town Co. v. De Long, 11 Kan. 152; Allen v. Houston, 21 Kan. 194; Remillard v. Blacknarr, 49 Minn. 490; Schepel v. Mellen, supra; Helena v. Albertose, supra; Ming v. Foote, supra; State v. Webster, 28 Mont. 104; Tierney v. Cornell, supra; Lechler v. Chapin, supra; Goldberg v. Kidd, supra; Linck v. Salt Lake City, 6 Utah, 109; Drake v. Reggel, 10 Utah, 376; Newhouse v. Simino, 3 Wash. 648; Kellogg v. Sessions, 4 Wash. 814.

Extent of legislative control. Ashby v. Hall, supra; Clark v. Titus, supra; Denver v. Kent, supra; Pueblo v. Budd, supra; Lechler v. Chapin, supra; Robertson v. Martin, supra; Aspen v. Rucker, supra; Winfield Town Co. v. Maris, supra; Newhouse v. Simino, supra; Kellogg v. Sessions, supra.

Limiting time for application for title. Goldberg v. Kidd, supra.

Payment of purchase price by occupant. Robertson v. Martin, supra.

Compliance with legislative regulations. Amador County v. Gilbert, supra.

## 1962. Entry to be noticed; statement to be filed.

SEC. 2388. The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a townsite shall be filed with the register of the proper land office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States; but in any territory in which a land office may not have been established, such declaratory statements may be filed with the surveyor-general of the surveying district in which the lands are situated, who shall transmit the same to the general land office.

## 1963. Limits of townsite; regulation as to.

SEC. 2389. If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands authorized by law; and where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed.

## 1964. Certain acts of trustees void.

SEC. 2391. Any act of the trustees not made in conformity to the regulations alluded to in section 2387 shall be void.

Act approved March 2, 1867 (14 Stat. 541). (See similar act approved May 23, 1844, 5 Stat. 657, repealed by act approved July 1, 1864, 13 Stat. 344, sec. 5).

Acts approved June 23, 1874 (18 Stat. 254, sec. 3), and March 3, 1877 (19 Stat. 392).

## 1965. Title to mines cannot be acquired.

SEC. 2392. No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnabar, or copper; or to any valid mining claim or possession held under existing laws.

Act approved March 2, 1867 (14 Stat. 542), and act approved June 8, 1868 (15 Stat. 67). (See sec. 2386, Rev. Stats., supra, and sec. 16, act of March 3, 1891, 26 Stat. 1101, infra.)

See secs. 1960, 1978, 2418.

See citations under sec. 1961.

#### 1966. Lands for federal purposes exempted.

SEC. 2393. The provisions of this chapter shall not apply to military or other reservations heretofore made by the United States, nor to reservations for lighthouses, custom houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the land office by title derived from the crown of Spain, or otherwise.

Act approved March 2, 1867 (14 Stat. 542).

#### 1967. Costs of surveying; expenses to be paid by claimants.

SEC. 2394. The inhabitants of any town located on the public lands may avail themselves, if the town authorities choose to do so, of the provisions of sections 2387, 2388, and 2389; and, in addition to the minimum price of the lands embracing any townsite so entered, there shall be paid by the parties availing themselves of such provisions all costs of surveying and platting any such townsite, and expenses incident thereto incurred by the United States, before any patent issues therefor; but nothing contained in the sections herein cited shall prevent the issuance of patents to persons who have made or may hereafter make entries, and elect to proceed under other laws relative to townsites in this chapter set forth.

Act approved June 8, 1868 (15 Stat. 67).

#### 1968. Area for townsite limited.

That the existence or incorporation of any town upon the public lands of the United States shall not be held to exclude from preemption or homestead entry a greater quantity than twenty-five hundred and sixty acres of land, or the maximum area which may be entered as a townsite under existing laws, unless the entire tract claimed or incorporated as such townsite shall, including and in excess of the area above specified, be actually settled upon, inhabited, improved, and used for business and municipal purposes.

#### 1969. Restriction of townsite by other entries.

SEC. 2. That where entries have been heretofore allowed upon lands afterwards ascertained to have been embraced in the corporate limits of any town, but which entries are or shall be shown, to the satisfaction of the commissioner of the general land office, to include only vacant unoccupied lands of the United States, not settled upon or used for municipal purposes, nor devoted to any public use of such town, said entries, if regular in all respects, are hereby confirmed and may be carried into patent; *provided*, that this confirmation shall not operate to restrict the entry of any townsite to a smaller area than the maximum quantity of land which, by reason of present population, it may be entitled to enter under said section 2329 of the Revised Statutes.

#### 1970. Excessive area; election of part of lands.

SEC. 3. That whenever the corporate limits of any town upon the public domain are shown or alleged to include lands in excess of the maximum area specified in section 1 of this act, the commissioner of the general land office may require the authorities of such town, and it shall be lawful for them, to elect what portion of said lands, in compact form and embracing the actual site of the municipal occupation and improvement, shall be withheld from preemption and homestead entry; and thereafter the residue of such lands shall be open to disposal under the homestead and preemption laws. And upon

default of said town authorities to make such selection within sixty days after notification by the commissioner, he may direct testimony respecting the actual location and extent of said improvements, to be taken by the register and receiver of the district in which such town may be situated; and, upon receipt of the same, he may determine and set off the proper site according to section 1 of this act, and declare the remaining lands open to settlement and entry under the homestead and preemption laws; and it shall be the duty of the secretary of each of the territories of the United States to furnish the surveyor-general of the territory for the use of the United States a copy duly certified of every act of the legislature of the territory incorporating any city or town, the same to be forwarded by such secretary to the surveyor-general within one month from date of its approval.

#### 1971. Town may make additional entry.

SEC. 4. It shall be lawful for any town which has made, or may hereafter make entry of less than the maximum quantity of land named in section 2389 of the Revised Statutes to make such additional entry, or entries, of contiguous tracts, which may be occupied for town purposes as when added to the entry or entries theretofore made will not exceed twenty-five hundred and sixty acres; *provided*, that such additional entry shall not together with all prior entries be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in said section 2389.

Act approved March 3, 1877 (19 Stat. 392).

#### 1972. Lands for towns may be reserved on reclamation projects—Reservations for public purposes.

That the secretary of the interior may withdraw from public entry any lands needed for townsite purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, not exceeding one hundred and sixty acres in each case, and survey and subdivide the same into town lots, with appropriate reservations for public purposes.

#### 1973. Sale of lots: expenses: proceeds.

SEC. 2. That the lots so surveyed shall be appraised under the direction of the secretary of the interior and sold under his direction at not less than their appraised value at public auction to the highest bidders, from time to time, for cash, and the lots offered for sale and not disposed of may afterwards be sold at not less than the appraised value under such regulations as the secretary of the interior may prescribe. Reclamation funds may be used to defray the necessary expenses of appraisal and sale, and the proceeds of such sales shall be covered into the reclamation fund.

#### 1974. Public reservations: improvement of.

SEC. 3. That the public reservations in such townsites shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as municipal corporations the said reservations shall be conveyed to such corporations by the secretary of the interior, subject to the condition that they shall be used forever for public purposes.

#### 1975. Water rights for established towns: payment for.

SEC. 4. That the secretary of the interior shall, in accordance with the provisions of the reclamation act, provide for water rights in amount he may deem necessary for the towns established as herein provided; and may enter into contract with the proper authorities of such towns, and other towns or cities on or in the immediate vicinity of irrigation projects, which shall have a water right from the same source as that of said project for the delivery

of such water supply to some convenient point, and for the payment into the reclamation fund of charges for the same to be paid by such towns or cities, which charges shall not be less nor upon terms more favorable than those fixed by the secretary of the interior for the irrigation project from which the water is taken.

#### 1976. Surplus power may be leased by secretary of interior.

SEC. 5. That whenever a development of power is necessary for the irrigation of lands under any project undertaken under the said reclamation act, or an opportunity is afforded for the development of power under any such project, the secretary of the interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the moneys derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived; *provided*, that no lease shall be made of such surplus power or power privilege as will impair the efficiency of the irrigation project.

Act approved April 16, 1906 (34 Stat. 116).

#### 1977. Secretary of interior may withdraw and dispose of certain townsites.

SEC. 4. Whenever, in the opinion of the secretary of the interior, it shall be advisable for the public interest, he may withdraw and dispose of townsites in excess of one hundred and sixty acres under the provisions of the aforesaid act, approved April sixteenth, nineteen hundred and six, and reclamation funds shall be available for the payment of all expenses incurred in executing the provisions of this act, and the aforesaid act of April sixteenth, nineteen hundred and six, and the proceeds of all sales of townsites shall be covered into the reclamation fund.

Act approved June 27, 1906 (34 Stat. 520).

#### 1978. Townsites on mineral lands—Exemption of veins—Surface rights.

SEC. 16. That townsite entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto; *provided*, that no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

Act approved March 3, 1891 (26 Stat. 1101). (See secs. 2386 and 2392, Rev. Stats. supra.)

See secs. 1960, 1965.

Sec. 2386, construed, *Talbott v. King*, 6 Mont. 76; *Silver Bow Mng. Co. v. Clarke*, 5 Mont. 378, 5 P. 570.

What value of mineral land must contain. *Deffeback v. Hawke*, 115 U. S. 392, 29 L. Ed. 423; *Golden v. Murphy*, 31 Nev. 395.

Owner of mineral vein tunneling under townsite lot without consent of owner, *Dower v. Richards*, 73 Cal. 477.

Sec. 2392 construed generally, *Deffeback*

*v. Hawke*, 115 U. S. 392, 29 L. Ed. 423; *Dower v. Richards*, 151 U. S. 658, 38 L. Ed. 305, affirming 81 Cal. 44; *Callahan v. James*, 141 Cal. 291; *Hartman v. Smith*, 7 Mont. 19, 14 P. 648; *Golden v. Murphy*, 31 Nev. 395, 103 P. 394.

Mining locations cannot be acquired under townsite act, *Dower v. Richards*, 151 U. S. 658, 38 L. Ed. 305, affirming 81 Cal. 44; *Davis v. Weibbold*, 139 U. S. 507, 35 L. Ed. 238;

Deffebach v. Hawke, 115 U. S. 392; 29 L. Ed. 423; Sparks v. Pierce, 115 U. S. 408; Steel v. St. Louis Smelting Co., 106 U. S. 447, 27 L. Ed. 226; O'Keefe v. Cannon, 52 Fed. 898; Richards v. Dower, 64 Cal. 62, 81 Cal. 44, affirmed 151 U. S. 658, 38 L. Ed. 305; Hunt v. Steese, 75 Cal. 620; Jones v. Petaluma, 36 Cal. 230; Reilly v. Berry, 2 Ariz. 272; Blackmore v. Reilly, 2 Ariz. 442; Butte City Smoke House Lode Cases, 6 Mont. 397; King v. Thomas, 6 Mont. 409, 12 P. 865; Talbott v. King, 6 Mont. 76; Silver Bow M. Co. v. Clarke, 5 Mont. 378.

Known mines excepted from townsite grant, Davis v. Weibbold, 139 U. S. 520; 35 L. Ed. 238; Colo. Coal Co. v. United States, 123 U. S. 307; McLaughlin v. United States, 107 U. S. 526; Larned v. Jenkins, 113 Fed. 634; Silver Bow M. Co. v. Clarke, 5 Mont. 378, 5 P. 570; United States v. Reed, 12 Sawy. 99; Richards v. Dower, 81 Cal. 44, affirmed 151 U. S. 658, 38 L. Ed. 305; Gold Hill Quartz M. Co. v. Ish, 5 Ore. 104; The Tombstone Townsite Cases, 15 P. 26; Moyle v. Bullene, 7 Colo. App. 308, 44 P. 69; Golden v. Murphy, 31 Nev. 395.

Where mineral is known to exist at time of patent, Moran v. Horsky, 21 Mont. 345,

**NOTE**—The following excerpt from a bulletin issued by the United States general land office, 1909, under the title "United States Laws and Regulations Relating to Townsites, etc.," is given here as showing the construction placed on the statutes relating to mineral townsites by the authorities of the general land office:

#### TOWNSITES ON MINERAL LANDS.

In view of the numerous inquiries touching the rights of claimants for mineral lands situated within townsites, as opposed to rights which may be acquired to such lands under the townsite laws, it is deemed appropriate to herein recite the principal rules applicable to the subject, so far as they seem clear from the law itself or are indicated by the trend of adjudicated cases.

The general townsite laws, comprised in secs. 2380 to 2394, U. S. Rev. Stats., authorize the entry of townsites, or the sale of lots therein, upon public lands which may include unpatented mineral claims, but the rights of mineral claimants upon any land entered or sold under said townsite laws are expressly protected by secs. 2386 and 2392. These two sections recognize the superior rights, as against any townsite claimant—whether corporate, community, or individual—of all claimants for mineral veins possessed agreeably to local custom, or for any valid mining claim or possession held under existing law. The precedence and superiority so accorded to mineral claims, however, depend in final analysis upon the question of fact whether, at date of townsite entry or lot sale, the lands claimed under the mining laws were "known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them" (31 L. D. 87). Where an affirmative showing in such behalf is made in due course by the mineral claimant, his right to a patent for the land (subject to the distinction hereinafter noted as to incorporated towns) will not be prejudiced by any previous townsite entry, deed, or patent covering the same land (26 L. D. 144; 29 L. D. 426; 32 L. D. 211; 34 L. D. 276 and 596).

Under said general townsite laws, as construed by the department and the courts, an entry including unpatented mineral lands may be made for an incorporated town as well as for an unincorporated town, the law requiring that in the former case the entry shall be made by the corporate authorities, and in the latter by the county judge (34 L. D. 24). While such general right of entry by or for incorporated towns and cities is therefore independent of

178 U. S. 205, 44 L. Ed. 1038; Borden v. N. P. R. Co., 154 U. S. 288, 38 L. Ed. 992; Davis v. Weibbold, 139 U. S. 507, 35 L. Ed. 238; Deffebach v. Hawke, 115 U. S. 392, 29 L. Ed. 423; Larned v. Jenkins, 113 Fed. 634; Kas. City Mng. Co. v. Clay, 3 Ariz. 326; Richards v. Dower, 81 Cal. 44, affirmed 151 U. S. 658, 38 L. Ed. 305; Smith v. Hill, 89 Cal. 122, 26 P. 644; Golden v. Murphy, 31 Nev. 395, 103 P. 394.

Townsite patent not subject to collateral attack, Moran v. Horsky, 21 Mont. 345, 178 U. S. 205, 44 L. Ed. 1038; Borden v. N. P. R. Co., 154 U. S. 288, 38 L. Ed. 1038; Davis v. Weibbold, 139 U. S. 507, 35 L. Ed. 238; Steel v. St. Louis Smelting Co., 106 U. S. 447; New Dunderberg Mng. Co. v. Old, 79 Fed. 598; Buena Vista Petroleum Co. v. Tulare Oil Co., 67 Fed. 226; Carter v. Thompson, 65 Fed. 329; Pac. Coast Mng. Co. v. Spargo, 16 Fed. 348; Bd. of Education v. Mansfield, 95 N. W. 286; McCormick v. Sutton, 97 Cal. 373, 32 P. 444; Abbot v. Primcaux, 16 Nev. 361.

See 17 Op. Atty.-Gen. 248.

See Fed. Stat. Anntd. vol. 6, pp. 343, 351-52.

See Cent. Dig., title "Public Lands," vol. 41, sec. 85.

anything contained in sec. 16 of the act of March 3, 1891 (26 Stats. 1095), it will be seen that that section in terms announces the right to enter mineral lands. The protection afforded to mineral claims by the body of sec. 16 is similar to that given generally in said secs. 2386 and 2392, Rev. Stats., but the proviso to sec. 16 is as follows:

*Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

This department has never viewed said proviso as warranting, under any circumstances, the allowance of entry for a mineral vein independently of "the surface ground appertaining thereto," nor is such an entry provided for in the general mining laws. But said proviso creates one distinction between unincorporated and incorporated towns as regards the relative rights of townsite occupants and mineral claimants, which is, that whereas the townsite patent will, in either case, carry absolute title to any mineral not known to exist at the date of townsite entry, the adverse rights of mineral and townlot claimants within incorporated towns are hinged upon priority of initiation. That is to say, that after entry is made for such town, no entry by a mineral-vein applicant will be allowed for any land owned and occupied under the townsite law by a party whose possession antedated the inception of the mineral applicant's claim, even though such land was known, at date of the townsite entry, to contain valuable minerals.

Subject to the distinction above noted, the foregoing principles apply to all mineral claims within townsites entered or disposed of under any of the laws above mentioned, and also to mineral claims within townsites disposable under special acts containing no reference to the rights of mining claimants.

The law does not require that townsite entries shall exclude any mineral claim or possession except such as may have been patented (29 L. D. 21). Mineral claims which have not been patented may be excluded from a townsite entry at the option of the townsite applicant, who must, in that event, furnish satisfactory proof that the exclusion covers a "valid mining claim or possession held under existing law" (33 L. D. 542). The exclusion of a millsite claim from a townsite entry is necessary only in cases where the millsite claimant shall have been in occupation of the ground, under regular location, from a time antedating its occupation for townsite purposes. The issue of priority in such cases may be raised by the townsite applicant, the millsite claimant, or the government.

### 1979. Townsites in Walker River lands.

And when such allotments shall have been made, and the consent of the Indians obtained as aforesaid, the president shall, by proclamation, open the land so relinquished to settlement, to be disposed of under existing laws.

Act approved May 27, 1902 (32 Stat. 261). See proclamation of September 26, 1906 (34 Stat. 3237).

NOTE—For general authorities concerning the various sections of the townsite laws, see: Fed. Stat. Annd. vol. 6, pp. 341-362, cases and notes; Cent. Dig. vol. 41, title "Public Lands," secs. 83-100; also, Dec. Dig., under same title.

### STATE LAWS

*An Act prescribing rules and regulations for the execution of the trust arising under the act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven.*

Approved February 20, 1869, 68

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1987. If lots are not conveyed within one year, they are to be sold—Exceptions.
1988. Trustees may discharge trust after going out of office.

### 1980. Corporate authorities required to convey title.

SECTION 1. When the corporate authorities of any city or town, or the judge of the district court for any county or district in this state, in which any unincorporated town may be situate, shall have entered at the proper land office the land, or any part of the land, settled and occupied as the site of such city or town, pursuant to and by virtue of the act of the Congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven, it shall be the duty of such corporate authorities or judge to dispose of and convey the title to such lands, or to the several blocks, lots, parcels, or shares thereof, to the persons hereinafter specified.

Cited, *Wright v. Cradlebaugh*, 3 Nev. 345; *Smith v. Stewart*, 13 Nev. 66.

The act of Congress was intended for the benefit and protection of the actual citizens of the town against those making claim to the land for purely speculative purposes.

Said act is the paramount law, and the legislature cannot limit or extend the rights of claimants, or dispose of the trust in any other manner than is prescribed by said act.

There is nothing in said act which limits the proof upon the part of claimants to their interests in the land at the time of entry thereof in the land office. If the land at that time is vacant, it is subject to location and occupancy by any person at any time prior to the issuance of a patent.

It was not the intention of Congress, nor of the legislature that the unoccupied lands within the townsite at the time of the entry should become the property of the citizens of the town. *Lechler v. Chapin*, 12 Nev. 67, 74.

To entitle an applicant to a deed, he must be an actual occupant, or entitled to the occupancy of the land. *Idem*.

If a party abandons the land, or fails to keep his title good and leaves it vacant and unoccupied, he cannot strengthen his claim to the land by any act committed by him after the actual occupancy of the premises by another person. *Idem*.

### 1981. Title conveyed to whom—Deed to be executed so as to admit of record.

SEC. 2. Any such corporate authorities or judge holding the title to any such land in trust, as declared in said act of Congress, shall, 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 or persons who shall have, possess, or be entitled to the right of possession or occupancy thereof, according to his, her or their several and respective right or interest in the same, as they existed in law or equity at the time of the entry of such lands, or to his, her or their heirs or assigns; and when any parcel or share of such lands shall be occupied or possessed by one or more persons claiming the same by grant, lease, or sale from one or more other persons, the respective right and interest of such persons, in relation to each other, in the same, shall not be changed or impaired by any such conveyance. Every deed of conveyance made by such corporate authorities or judge, pursuant to the provisions of this act, shall be so executed and acknowledged as to admit the same to be recorded.

Cited, *In re Smith*, 4 Nev. 257.

The facts authorizing the grantees to receive a deed from the trustee need not be recited in the deed. A bargain and sale deed in the usual form reciting a consideration of one dollar is sufficient to convey the

title to the land and is prima facie evidence that it was delivered to the party intended to receive it. *Terry v. Berry*, 13 Nev. 514, 522.

**1982. Notice to be given within ninety days after the receipt of patent—How given.**

SEC. 3. Within ninety days after the receipt by them or him of a patent for such lands, the corporate authorities or judge entering the same shall give public notice thereof by publishing such notice in a newspaper printed and published in the county in which such city or town shall be situated, or in case there shall not be any newspaper published in said county, then in some newspaper printed and published at the seat of government of this state. Such notice shall be so published once in each week for at least six successive weeks, or thirty days daily; and said notice shall also be posted in six of the most public places in said city or town for thirty days, and shall contain a correct description of the lands so entered, as the same is stated in the patent. *As amended, Stats. 1871, 163.*

It is not open to a lot claimant who files application for a lot in pursuance of a notice published on the receipt of receiver's duplicate receipt from the U. S. land office before the issuance of the patent to question the sufficiency and regularity of the notice. *State ex rel. Jennett v. Stevens, 33 Nev. — (116 P. 601).*

**1983. Claimant to sign statement in writing—When debarred—How made in certain cases.**

SEC. 4. Each and every person, company of persons, associations, or corporations, claiming to be an occupant or occupants, or to have, possess, or be entitled to the right of occupancy or possession of such lands, or any block, lot, share, or parcel thereof, shall, within six months after the first publication of such notice, in person, or by his, her, their, or its duly authorized agent or attorney, sign a statement in writing, containing a correct description of the particular parcel or parts in which he, she, they, or it claim to be entitled to receive, and deliver the same to or into the office of such corporate authorities or judge; and all persons failing to sign and deliver such statement within the time specified in this section, shall be forever debarred the right of claiming or recovering such lands, or any interest or entail therein, or in any part, parcel, or share thereof, in any court of law or equity; *provided*, that the bar to the right of claiming or recovering such lands, or any interest or entail therein, as in this section provided, shall not apply to minors or insane persons; *and, provided further*, that all applications for conveyances under this act for the benefit of minors and insane persons shall be made by the guardian or trustee of such minor or insane person, and all applications for such conveyances for the benefit of married women may be made by their husbands, if in this state; but in case of the absence of the husband from this state, or his refusal to make such application, then such married woman may apply in her own name. *As amended, Stats. 1871, 163.*

Under former act (Stats. 1866, 54) it was held, though an occupant of a town lot, by neglecting to present his claim may be barred of the "right of claiming or recovering such lands or any interest or estate therein," there is nothing to prevent him from showing, in defense to ejectment by a person who procures a deed, that such plaintiff has no title and thus protecting his possession. *Treadway v. Wilder, 8 Nev. 92, 98, 99.*

**1984. When proceedings to be certified to district court—Clerk to serve notice—Conveyance to be made upon final determination of contest.**

SEC. 5. Should two or more persons claim adversely the title to any lot or lots, or parcels of land within the boundaries of such city or town, the corporate authorities or judge having entered the same, shall immediately after the time for filing claims has expired, certify and transmit all proceedings and papers had or being before them or him in the premises, to the district court of the county in which said lot or lots, or parcels of land are situated. Upon the receipt of the papers, properly certified, and upon payment of court

fee and costs, the clerk of such district court shall enter the case upon the register of actions, the name of the claimant whose claim was first filed with and by such corporate authorities or judge being entered upon such register as plaintiff, and the other claimant or claimants as defendant, and thereafter the cause shall proceed in all respects as in cases originally brought in said court. The clerk shall, upon the receipt by him of such papers and proceedings, serve upon each claimant, his agent, or attorney, a written notice that the claim of such claimant is contested, which notice shall specify the particular lot, block, or parcel so contested, and the name of the adverse claimant. Upon the final determination of such contest, the clerk of the district court, or supreme court as the case may be, shall forthwith certify the decision to the corporate authorities or judge; and upon the receipt of such decision, duly certified, the corporate authorities or judge shall, as in other cases, make out, execute, and deliver to the party or parties in whose favor the decision is made, a conveyance in fee simple for the lot or lots, or parcels of land awarded in such decision.

### 1985. Appeal.

SEC. 6. Any party in such action deeming himself or herself aggrieved by the determination or judgment of the district court in such cases, may appeal therefrom to the supreme court, as in other cases.

### 1986. Deed to be made out on payment of purchase money and expenses— Limitation of fees and costs—Deeds to minors or insane persons, how made.

SEC. 7. After the issuance of the patent for such lands, it shall be the duty of the corporate authorities or judge to whom such patent shall issue, to make out, execute, and deliver to each person, company, association, or corporation, who may be legally entitled to the same, a deed in fee simple for such part or parts, lot or lots, of land on payment of his, her, their, or its proper and due proportion of the purchase money for such land, together with his, her, their, or its proportion of such sums as may be necessary to pay for streets, alleys, squares, and public grounds, not to exceed fifty cents for each lot, and also such further sums as shall be a reasonable compensation for executing and acknowledging such deed, not exceeding the sum of three dollars for the first, and one dollar for each additional lot claimed by the same owner, for counsel fee, and for moneys expended in the acquisition of the title and the administration of the trust, including reasonable charges for time and services while employed in such trust, not exceeding the sum of one dollar for each lot; *provided*, that no estimate shall be made for counsel fee, unless the same shall have been actually and necessarily expended; and the foregoing charges shall be full payment for all expenses attending the execution, except for revenue stamps; *provided*, that deeds made under the provisions of this act for the benefit of minors and insane persons, shall be to the guardian or trustee of such minor or insane person, as the case may be, in trust for such minor or insane person. *As amended, Stats. 1871, 164.*

A deed given by a trustee under above act of Congress is not conclusive in its effect; and if given to one not an occupant or having the right of occupancy as contemplated, that fact may be shown and the deed in such case will fall, as absolutely void and of no effect. *Treadway v. Wilder*, 8 Nev. 92, 98, 99.

If the grantee was not in occupancy or entitled to occupancy of the land, the trustee could have no authority to execute a deed,

and it may be collaterally attacked as void and of no effect. *Idem*.

A district judge who acts as trustee of a townsite, acts by virtue of his office as judge, and he is not an inferior officer to his associate judge of the district, and such associate judge cannot by mandamus control the action of the trustee. *Jennett v. Stevens*, 33 Nev. — (111 P. 1025, 1026).

The compensation allowed under this sec-

tion to trustee, although he became such trustee by virtue of his office as district judge, is not a fee or perquisite of the office of district judge within the meaning of Const., art. 6, sec. 10 (ante, 325), nor is it an office within the provision of the constitution prohibiting a judge from accepting any office other than a judicial office during the term for which he is elected (ante, sec. 326).

Since the duties of townsite trustee do not naturally belong to the office of district judge and it is not incumbent upon a district judge to accept such trust, he may accept compensation for his services as trustee. State ex rel. Jennett v. Stevens, 33 Nev. — (116 P. 601).

The words "together with" show that the limitation of 50 cents was the maximum that could be apportioned to buy all the land within the townsite, inclusive of that within the streets, alleys, squares and public grounds, and does not apply merely to the amount for the streets, alleys, squares and public grounds.

The word "including" shows that the charges for time and services of the trustee were to be embraced within the maximum

charge, which was also to be inclusive of counsel fees and for moves expended in the acquisition of the title and the administration of the trust. State ex rel. Jennett v. Stevens, 33 Nev. — (116 P. 601). —

Though a writ of mandate would lie to compel a townsite trustee to make a deed to a claimant, as required by this section, on payment of the maximum amount which the trustee could impose where the tender is of a less amount, the writ will not lie. State ex rel. Jennett v. Stevens, 33 Nev. — (116 P. 601).

Under this section, prohibition is a proper remedy to prevent the sale of the lots where the failure to legally convey to the proper owners is due to the imposition of excessive charges by the townsite trustee as a condition precedent thereto. State ex rel. Schloss v. Stevens, 33 Nev. — (116 P. 605).

Where a townsite trustee on the refusal of a lot claimant to pay excessive charges imposed, proceeds to sell the lot, there is no adequate remedy but by writ of prohibition; individual suits to settle the rights of the claimant not being an adequate remedy. Idem.

## 1987. If lots are not conveyed within one year, they are to be sold— Exceptions.

SEC. 8. If all the lots, blocks, shares, or parcels of such land are not legally conveyed to the proper owners before the expiration of one year after the same shall have been passed upon by the corporate authorities or judge, or in case of contest, within thirty days after such contest shall have been finally determined, the same shall be sold to the highest bidder, and the proceeds applied to the erection of public buildings for the benefit of such city or town, or to the construction of water-works for the purpose of conveying water into such city or town, after paying their proportionate share of the purchase money and other expenses, including expenses incurred by publication and sale. Notice of the sale authorized by this section shall be published as is provided for the notice required by section 3 of this act; *provided*, that the provisions of this section shall not apply to the sale of real estate belonging to minors or insane persons, except upon an order of court authorizing such sale, which order may be made by the court upon an *ex parte* application, under oath, of the trustee named in this act. *As amended, Stats. 1877, 186.*

## 1988. Trustees may discharge trust after going out of office.

SEC. 9. Any corporate authorities or judge becoming a trustee under said act of Congress, who shall, prior to the final execution of their trust, as provided in this act, go out of office, shall be and they are hereby authorized and empowered to discharge and execute all trusts which they may have assumed, in all respects in the same manner and subject to the same duties and requirements as if they had continued in office.

[Sec. 10 superseded. See sec. 1991.]

It seems that a deed made by a trustee purporting to act under the law of Congress of May 23, 1844, providing for the disposition of townsites to the occupants is not conclusive in its effect; and if given to one not an occupant or having the right of occupancy as contemplated, that fact may

be shown and the deed in such case will fall, as absolutely void and of no effect. Treadway v. Wilder, 8 Nev. 91; 9 Nev. 67.

See Lechler v. Chapin, 12 Nev. 65.

Facts authorizing grantee to receive deed need not be recited. Terry v. Berry, 13 Nev. 514.

*An Act to amend an act entitled an act prescribing rules and regulations for the execution of trust, arising under the act of Congress entitled "An act for the relief of the inhabitants of cities and towns on public lands," approved March second, eighteen hundred and sixty-seven; approved February tenth, eighteen hundred and sixty-nine.*

Approved March 8, 1871, 163

[Secs. 1, 2, and 3 are inserted in the preceding act in lieu of the sections which they amend.]

### 1989. Claimants not to be affected—Publication.

SEC. 4. Nothing in this act shall be so construed as to in any manner affect any of the provisions contained in section 4 of the act of which this act is amendatory, in those cases where notice to claimants prior to the passage of this act has been published in a newspaper for ten or more successive weeks, and at least six months shall have elapsed since the first publication of said notice; but the trust shall in all particulars be carried out and executed in accordance with the provisions of said section 4.

### 1990. Survey of townsites—How paid for.

SEC. 5. In all cases where it shall become necessary in the opinion of the citizens of the town to make a survey of any townsite for the purpose of identifying or locating the lots, blocks, squares, streets, or alleys contained within the limits of said townsite, a fee of ----- cents for each lot shall be paid to the trustees to defray the expenses of said survey, which said fee shall be paid by the claimants pro rata.

Under this section, a claimant, who not only fails to show that the charges made by the trustee for a survey is illegal, but who relies on the survey made by him, will not be heard to question the validity as affect-

ing the right of a trustee to compensation therefor.

Under this section the maximum fee for each lot is one dollar. State ex rel. Jennett v. Stevens, 33 Nev. — (116 P. 601).

### 1991. Failure or disability of trustee, how remedied.

SEC. 6. In case of death, or ninety days' absence from this state, or other disability of the trustees to execute the trust created by said act of Congress, it shall be lawful for the corporate authorities or judge of the district in which any such city or town is situated, who may succeed said trustee in office, to assume said trust, and they or he shall be authorized and they are hereby empowered to execute the same in all respects in the same manner, subject to all the duties and requirements as provided in this act.

*An Act supplementary to an act entitled an act prescribing rules and regulations for the execution of the trust arising under the act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven; approved February twentieth, eighteen hundred and sixty-nine.*

Approved February 8, 1875, 52

### 1992. Trustees of townsite to record patent—Proof of payment of taxes not required.

SECTION 1. Whenever the corporate authorities or judge shall have received a certificate of entry, patent, or other evidence of title to the real estate embraced within the limits of any town or city, it shall be the duty of said corporate authorities or judge to cause the same to be recorded in the land records of the proper county, and to entitle said certificate of entry, patent, or other evidence of title, to be recorded by the county recorder, it shall not be necessary to present or make, nor shall the county recorder require any

oath or affirmation that all or any part of the taxes for county and state purposes, assessed, due, or payable upon said real estate, have been paid.

### 1993. Sale of unclaimed lots or lands—Disposition of proceeds.

SEC. 2. All lots, blocks, shares, or parcels of land within the boundaries of such town or city, which shall not have been claimed as provided in section 4 of said act, approved February twentieth, eighteen hundred and sixty-nine, shall, after the limitation provided in said section 4 has expired, be sold, and the proceeds of such sale disposed of as provided in section 8 of said act.

## FEES

To regulate fees and compensation for official and other services, sections 1994–2004.

To regulate fees and compensation for official and other services, sections 2005–2044.

Relating to certification of public records or documents, section 2045.

Fixing and regulating fees for recording certificates of labor, section 2046.

### *An Act to regulate fees and compensation for official and other services in the State of Nevada.*

Approved March 9, 1865, 333

1994. Officers' fees.  
1995. County clerks.  
1996. Recorders.  
1997. Sheriffs.  
1998. Coroners.

1999. Constables.  
2000. Witnesses.  
2001. Jurors.  
2002. County auditors.  
2003. Justices of the peace.  
2004. Notaries public.

**NOTE**—Notwithstanding enactment of Stats. 1883, 56 (sec. 2005, et seq.), this act continues in force as to certain counties. See section 2043.

### 1994. Officers' fees.

SECTION 1. The several officers and persons named in this act may demand and receive for their services rendered in discharging the duties imposed upon them by law, the fees and compensation hereinafter specified.

[Sec. 2 (clerk of supreme court) superseded, sec. 2006.]

Former act in relation to fees, Stats. 1861, 247, cited, State ex rel. Ford v. Hoover, 5 Nev. 144.

Officers can only demand such fees as the law has fixed and authorized for the performance of their official duties. Washoe Co. v. Humboldt Co., 14 Nev. 123.

This act contains but one general subject and matter properly connected therewith, and is not in conflict with Const., art 4, sec. 17 (sec. 275, ante). Russell v. Esmeralda Co. 32 Nev. 304 (107 P. 890, 891).

Nor does it conflict with Const., art 4, secs. 20, 21 (secs. 278, 279, ante). Idem.

### 1995. County clerks.

SEC. 3. The county clerks of the several counties in this state [*polling 800 votes or less*] shall be entitled to fees as follows: For entering each suit on the clerk's register of actions, and making the necessary entry therein during the trial, one dollar; for filing each paper, twenty-five cents; for issuing summons, one dollar; for entering every appearance seventy-five cents; for entering return of every writ or process, seventy-five cents; for issuing subpoena, for each witness, fifty cents; for entering each cause on the calendar, and making a copy thereof for each term of the district court, one dollar; for entering every motion, exception, rule, order, or default, fifty cents; for entering every discontinuance, dismissal, or nonsuit, fifty cents; for calling or swearing every jury, one dollar; for administering every oath or affirmation, twenty-five cents; for receiving and entering each

verdict of a jury, seventy-five cents; for entering every final judgment, for the first folio, one dollar, and for each subsequent folio, thirty cents; for filing judgment roll, fifty cents; for docketing judgment against each judgment debtor, fifty cents; for issuing execution, one dollar; for entering satisfaction of judgment, for each debtor, fifty cents; for entering every notice of appeal, fifty cents; for copying any proceeding, record, or paper, for each folio, thirty cents; for receiving and entering every remittitur from the supreme court, and accompanying papers, fifty cents; for every certificate, one dollar; for issuing every commission to take testimony, one dollar; for issuing every process under seal, other than subpoena, one dollar; for every certificate under seal, one dollar; for issuing letters testamentary, or of administration, one dollar; for writing and posting notices, when required, for each copy, fifty cents; for recording all instruments, for each folio, thirty cents; for searching the files of each year in his office (but not to charge suitors or attorneys), fifty cents; for taking each bond and justification thereof required by law, one dollar; for taking justification to bond, for each name, fifty cents; for taking acknowledgments of deeds or other instruments, including certificate and seal, for the first name, one dollar, and for each subsequent name, twenty-five cents; for issuing every decree or order of sale of mortgaged property, or writ of injunction, for the first folio, one dollar, and for each subsequent folio, thirty cents; for entering each suit in the plaintiff's and defendant's index, one dollar; for registering each paper when required by law, fifty cents; for making out naturalization papers, including all necessary oaths, affirmations, and certificates, for the first papers, five dollars; for making out naturalization papers, including all necessary oaths, affirmations, and certificates, for the final papers, ten dollars; for each day's attendance on the board of county commissioners, five dollars; *provided*, the same shall in no case exceed one hundred dollars per annum in the aggregate.

This section does not apply to Eureka County (see Stats. 1891, 38), nor to Washoe County, (Stats. 1909, 196).

See sec. 749, prohibiting fees in certain cases.

See sec. 1223, providing fee for clerk in corporate elections.

Allowed to retain fees for services in relation to location of public lands, sec. 1614.

A clerk, in preparing a transcript on appeal, is only entitled to receive pay for copying such papers, documents and statements as constitute the record in a criminal case as provided by law. *State v. Rover*, 13 Nev. 17.

The clerk is not entitled to any fees from

the county, for issuing time checks or certificates to each individual juror.

The clerk is only entitled to charge for such motions and orders as are properly entered in the records of the court. *Washoe Co. v. Humboldt Co.*, 14 Nev. 124.

## 1996. Recorders.

SEC. 4. The following fees to the several county recorders [*in counties polling 800 votes or less*] are hereby established: For receiving, filing, and entering documents required to be recorded, twenty-five cents; for filing and entering any paper not to be recorded, fifty cents; for making all necessary indexes to each paper filed or recorded, for each name to be indexed, fifty cents; for recording any instrument, paper, or document, for each folio, thirty cents; for every certificate under seal, one dollar; for every entry of discharge of mortgage on the margin of records, fifty cents; for abstract of title for each document embraced thereby, one dollar; for searching records and files, for each document necessarily examined, fifty cents; for recording any survey or map other than town plat, for each course, fifty cents; for recording town plat, for each lot or separate subdivision exhibited thereby, twenty-five cents; for each folio of lettering or figuring thereon, or in the certificate and description of the same, one dollar; for recording certificates of marriage, death, divorce or birth, one dollar; for copy of any record or document in his office, the same fees as for recording; for taking acknowledgment, including certificate and seal, for first signature, one dollar; for each additional signa-

ture, twenty-five cents; for recording or copying any paper in a foreign language, double the fees as when in English; no map or plat shall be recorded exceeding in size two folios of the usual sized records; for preparing the abstract of unsatisfied mortgages required for the board of equalization, for each, twenty-five cents.

For filing annual statements of mining corporations, sec. 1331.

See citation from *Davis v. Thompson*, 1 Nev. 17, under recorders, sec. 1632.

Cited, *State ex rel. Grimes v. N. T. G. & T. Co.*, 29 Nev. 60.

### 1997. Sheriffs.

SEC. 5. The fees allowed to sheriffs in the counties of this state [*polling 800 votes or less*] shall be as follows: For serving a summons or complaint, or any other process by which an action or proceeding is commenced, on every defendant, two dollars; for traveling in making such service, per mile, in going only, to be computed in all cases from the court house of the county, fifty cents for the first ten miles, and for each and every additional mile, forty cents; *provided*, that if any two or more papers are required to be served in the same suit at the same time, where parties live in the same direction, one mileage only shall be charged; for taking bond, or undertaking in any case in which he is authorized to take the same, one dollar and fifty cents; for copy of any writ, process, or other paper, when demanded or required by law, for each folio, thirty cents; for serving every notice, rule, or order, one dollar; for serving a subpoena, for each witness summoned, fifty cents; for traveling, per mile, in serving such subpoena or venire, in going only, fifty cents for the first ten miles, and for each and every additional mile, forty cents; but when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant; for serving an attachment on property, or levying an execution, or executing an order of arrest, or order for delivery of personal property, three dollars, together with traveling fees, as in cases of summons; for serving an attachment on any ship, boat, or vessel, in proceedings to enforce any lien thereof created by law, five dollars; for making and posting notices and advertising for sale on execution or under any judgment or order of sale, not to include the cost of publication in a newspaper, two dollars; for commissions for receiving and paying over money on execution or process, where lands or personal property has been levied on, advertised, and sold, on the first five hundred dollars, four per cent; not exceeding one thousand dollars, but over five hundred dollars, two per cent; on all over one thousand dollars and not exceeding fifteen hundred dollars, and on all sums above that amount, one per cent; for commissions for receiving and paying over money on execution without levy, or when the lands or goods levied on shall not be sold, on the first thousand dollars, one per cent; on all over that sum, one-half per cent; the fees herein allowed for the levy of an execution, for advertising, and for making and collecting money on an execution, shall be collected from the defendants by virtue of such execution, in the same manner as the same may be therein directed to be made; for drawing and executing every sheriff's deed, to be paid by the grantee, who shall, in addition, pay for the acknowledgment thereof, five dollars; for serving a writ of possession, or restitution, putting any person into possession entitled thereto, five dollars; for traveling in the service of any process not hereinbefore mentioned, for each mile necessarily traveled, for going only, fifty cents for the first ten miles, and for each and every additional mile, forty cents; for attending, when required, on any court, in person or by deputy, for each day, to be paid out of the county treasury, five dollars; for bringing up a prisoner on habeas corpus to testify or answer to any court, or for examination as to the cause of his arrest and detention, or to give bail, two dollars; he shall also be allowed further compensation for his trouble and expense in taking

possession of property under attachment or execution or other process, and of preserving the same, as the court from which the writ or order may issue shall certify to be just and reasonable; for holding each inquest or trial of right of property, when required, to include all services in the matter except mileage, ten dollars; for attending on the supreme court, either in person or [by] deputy, to be paid out of the state treasury as other claims, for each day, eight dollars; for every arrest in a criminal proceeding, three dollars; for serving each subpoena in criminal cases, fifty cents; for executing every sentence of death, fifty dollars; for summoning a grand jury of twenty-four persons, fifteen dollars; for summoning each trial jury of twelve persons, six dollars; for each additional juror, fifty cents; for service of any process in [a] criminal case, the same mileage as in civil cases; in serving subpoenas or venire in criminal cases, he shall receive mileage for the most distant only, where witnesses and jurors live in the same direction; for all services in justices' courts, the same fees as are allowed to constables. *As amended, Stats. 1875, 147.*

As to duties of sheriff in regard to charging for service of summons, collection for mileage and posting of notices, see *Feusier v. Virginia City*, 3 Nev. 58.

For fees of sheriff and other officers in case of a criminal case transferred from one county to another, see *Washoe Co. v. Humboldt Co.*, 14 Nev. 123, 130, 131.

A sheriff is not authorized to withhold money for his expenses incurred in preserving personal property levied upon, unless his charges have been certified to by the district judge as just and reasonable. *Nash v. Muldoon*, 16 Nev. 409.

The county from which a criminal case is transferred is liable for the fees of the sheriff in summoning a jury upon a special venire for that particular case. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

When a venire is issued to a sheriff for thirty jurors, and he finds only twenty-four; field, that he was entitled to his fees "for

miles actually traveled in attempting to find and serve jurors whose names appeared upon the venire, but who could not be found and served." *Idem.*

The sheriff is not entitled to any compensation for bringing the defendant into court during the trial. *Idem.*

The sheriff is entitled to five dollars for each day's attendance. He cannot charge extra for a night session. *Idem.*

The sheriff is not authorized by the statute to serve a subpoena upon witnesses residing in any other county, except it is within the same judicial district. *Idem.*

If a sheriff, for the sake of obtaining employment, agrees in advance to render official services for a party to a suit, and to receive nothing unless such party recovers in the action, he will be bound by his agreement and cannot recover his fees without showing that such party did recover in the suit. *Baker v. McLeod*, 14 Nev. 148.

## 1998. Coroners.

SEC. 6. The fees of coroners [*in counties polling 800 votes or less*] shall be as follows: For all services in summoning a jury of inquest, three dollars; for swearing a jury, fifty cents; for issuing warrant of arrest, seventy-five cents; for issuing subpoena to each witness, twenty cents; for each mile necessarily traveled in going to the presence of the dead body, twenty-five cents; for swearing each witness, twenty cents; for taking down testimony, per folio, twenty cents; for each day necessarily employed in holding an inquest, five dollars. All of said fees shall be paid out of the county treasury as other demands. For all services by him while acting as sheriff, the same fees as are allowed to sheriffs for similar services. *As amended, Stats. 1893, 24.*

## 1999. Constables.

SEC. 7. The following fees shall be allowed to constables [*in counties polling 800 votes or less*]: For serving summons or other process by which suit is commenced in civil cases, one dollar; for summoning a jury before a justice of the peace, two dollars; for taking a bond or undertaking, one dollar; for serving an attachment against the property of [a] defendant, two dollars; for serving subpoenas, for each witness, twenty-five cents; for summoning and swearing a jury to try the rights of property, and taking the verdict, two dollars; for receiving and taking care of property on execution, attachment, or order, his actual necessary expenses, to be allowed by the justice who issued the execution, upon the affidavit of the constable that such charges

are correct, and the expenses necessarily incurred; for [a] copy of any writ, process, or other paper, when demanded or required by law, per folio, thirty cents; for drawing and executing every constable's deed, to be paid by the grantee, who shall also pay the acknowledgment thereof, five dollars; for each certificate of sale of real estate under execution, one dollar; for collecting all sums on execution, to be charged against the defendant in execution, two per cent; in levying an execution or executing an order of arrest in civil cases, or order for the delivery of personal property, with traveling fees as for summons, two dollars; for making and posting notices, and advertising property for sale on execution, not to include the cost of publication in a newspaper, two dollars; for mileage in serving summons, attachment, execution, order, venire, subpoena, or other process in civil cases, for each mile necessarily traveled, in going only, fifty cents for the first ten miles, and for each and every additional mile, forty cents; *provided*, that when two or more persons are served in the same suit, mileage shall only be charged for the most distant, if they live in the same direction; for service and travel in criminal cases, the same fees as are allowed sheriffs for like services; for all other services, except for attending court, the same fees as are allowed sheriffs for similar services. *As amended, Stats. 1875, 149.*

The above section does not apply to Ormsby, Humboldt, Elko nor Eureka Counties. See Stats. 1885, 129; 1887, 76.

## 2000. Witnesses.

SEC. 8. Witnesses required to attend in any of the courts of this state [*in counties polling 450 votes or less*] shall be entitled to the following fees: For attending in any civil suit or proceeding, before any court of record, referee, commissioner, or justice of the peace, for each day, three dollars; for traveling to the place of trial, fifty cents per mile; *provided*, that no person shall be obliged to testify in a civil action unless his fees and mileage have been tendered him, or he shall not have demanded the same; *and provided further*, that no person shall be obliged to testify in a civil action unless his fees have been tendered him, if he shall demand the same, for mileage and one day's attendance; for each subsequent day's attendance the witness is entitled to demand, in advance, his fees from the party in whose favor he has been subpoenaed, and in case of refusal, is exonerated from further attendance; witness fees, in civil cases, shall be taxed as disbursement costs against the defeated party, upon proof, by affidavit, that the disbursements have actually been made; costs shall not be allowed for more than two witnesses to the same fact or series of facts, nor shall a party plaintiff or defendant be allowed any fees for attendance as a witness in his own behalf. This provision shall be held to apply to courts of justices of the peace, as well as to all other courts and judicial proceedings. For criminal cases, no witness fees shall be allowed.

See sec. 2043.

Fees for mileage or attendance of the opposite party's witnesses cannot be taxed, and judgment therefor entered against the losing party, when such witnesses have not been subpoenaed in the case according to law, or sworn or examined, although present in

court at the request of the successful party. (Hawley, C. J., dissenting.) *Meagher v. Van Zandt*, 18 Nev. 230-236 (2 P. 57).

Cited, *Philips v. Eureka Co.*, 19 Nev. 349 (11 P. 32).

## 2001. Jurors.

SEC. 9. Fees shall be allowed to jurors [*in counties polling 450 votes or less*] as follows: For each day, to be paid in civil cases by the party in whose favor the verdict is rendered, but to be recoverable as costs from the losing party, three dollars; excepting in justice's courts, when the fee shall be two dollars. If, in any trial in a civil action, before any court, the jury be from any cause discharged without finding a verdict, the fees of such jury shall be

paid by the plaintiff, but may be recovered back as costs if he afterward obtain judgment; until they are paid, no further proceedings shall be had in the action. No person shall receive any fees for serving as a juror on a coroner's inquest. No fees shall be allowed to grand or trial jurors in criminal cases.

See sec. 2043.

NOTE—See sec. 2476, as amended, Stats. 1909, 321.

The act of 1871, 56, relating to the fees of jurors and requiring the auditor to draw his warrant on the treasurer therefor upon the certificate of the clerk showing the amount due, is peremptory, and admits the exercise of no discretion on the part of the auditor. *Gillette v. Sharp*, 7 Nev. 245.

Jurors are entitled to compensation for the time they are in attendance on the court, whether impaneled for the trial of causes or not, except when they are impaneled in the

trial of a criminal case, and they reside within five miles of the court house. *Thornburg v. Hermann*, 1 Nev. 473.

A juror's claim for fees on the certificate of the clerk should be audited like any other demand against the county. *Idem*.

The county from which a criminal cause is transferred is properly chargeable for one day's attendance of each juror present on the first day of the trial of the case. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

## 2002. County auditors.

SEC. 10. The fees of county auditors [*in counties polling 800 votes or less*] shall be as follows: For filing treasurer's receipts and issuing licenses, to be paid by the party, fifty cents; the county auditor shall receive for all services rendered by him in the discharge of the duties imposed on him by law, other than those especially enumerated, for each folio, thirty cents; for filing and indorsing each paper, twenty-five cents, except the property schedule rendered him by the assessor, for which he shall receive no fees.

[Sec. 11 (judges and clerks of election) superseded, sec. 1620.]

## 2003. Justices of the peace.

SEC. 12. Justices of the peace [*in counties polling 800 votes or less*] shall be allowed the following fees for their services: For filing each paper, twenty-five cents; for issuing any writ or paper, by which suit is commenced, one dollar; for entering cause in docket, fifty cents; for subpoena to each witness, twenty-five cents; for administering oath or affirmation, twenty-five cents; certifying to the same, twenty-five cents; for issuing writ of attachment or arrest, or order for the delivery of property, two dollars; for entering any final judgment, per folio, for the first folio, one dollar; for each additional folio, fifty cents; for taking and approving any bond or undertaking, required by law to be taken or approved by him, one dollar; for issuing a venire, one dollar; for taking deposition, per folio, twenty-five cents; for issuing commissions to take testimony, one dollar; for copy of any judgment, order, docket, proceeding or paper in his office, per folio, twenty-five cents; for entering satisfaction of judgment, fifty cents; for issuing execution, one dollar; for taking acknowledgments of deeds or other instruments, including certificates, for the first name, one dollar; for each subsequent name, twenty-five cents; for issuing super-sedeas to an execution, one dollar; for making up and transmitting transcript and paper on appeal, two dollars; for issuing search warrant, one dollar; for celebrating marriage and returning certificate to the recorder, five dollars; for issuing writ of restitution, one dollar; for all services and proceedings in a criminal action, the same fees as are allowed in civil cases, but in no case shall there be a charge against the county exceeding in any one case the sum of ten dollars; *provided*, that in preliminary examinations in criminal cases, the justice of the peace, sitting as a committing magistrate, shall be allowed, in addition to other fees allowed by law, fifty cents for the first folio, and twenty-five cents for each additional folio; for taking bail after commitment in criminal cases, to be collected from the defendant, one dollar; for entering any cause without process, one dollar; for entering judgment by confession, as in the district court, three dol-

lars; for each motion, exception, rule, order, default, dismissal, discontinuance or nonsuit, and for filing each paper required to be filed, twenty-five cents. *As superseded, Stats. 1867, 101; 1895, 20.*

The act of 1867, 101, in so far as it relates to counties polling over 800 votes, is repealed by secs. 41 and 42 of the following act, but it is amended by act of 1895, 20, which latter act is given here.

The above section does not apply to Ormsby, Humboldt, Elko, nor Eureka Counties, see Stats. 1885, 129; 1887, 76.

Secs. 13 and 14 identical with secs. 14 and 15 of following act.

## 2004. Notaries public.

SEC. 15. The fees of notaries public [*in counties polling 800 votes or less*] shall be as follows: For drawing and copying every protest for the nonpayment of a promissory note, or for the nonpayment or nonacceptance of a bill of exchange, draft or check, two dollars; for drawing and serving every notice of nonpayment of a promissory note, of the nonpayment or nonacceptance of a bill of exchange, order, draft, or check, one dollar; for drawing an affidavit, deposition, or other paper, for which provision is not herein made, for each folio, thirty cents; for taking an acknowledgment, or proof of a deed, or other instrument, to include the seal and the writing of the certificate, for the first signature, one dollar, and for each additional signature, fifty cents; for administering an oath or affirmation, twenty-five cents; for every certificate, to include writing the same, and the seal, fifty cents.

[Secs. 16-29, inclusive, are superseded by secs. 17, et seq., of the following act.]

Where it is necessary to have a survey of the premises where the crime was committed, in order to properly present the case to the jury, the county commissioners are

authorized to allow a reasonable compensation for such survey. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

## *An Act to regulate fees and compensation for official and other services in the State of Nevada, and to repeal all other acts in relation thereto.*

Approved February 27, 1883, 56

2005. Officers' fees.	2026. Cost of publication.
2006. Clerk of the supreme court.	2027. Fees in advance.
2007. County clerks.	2028. Commissioners of deeds.
2008. Recorders.	2029. <i>Idem</i> —Misconduct.
2009. Sheriffs.	2030. Court fees.
2010. Coroners.	2031. Appeal, justice's court.
2011. Constables.	2032. Fees on appeal to supreme court.
2012. Witnesses.	2033. Duty of clerks—To give receipts and pay over money.
2013. Jurors.	2034. Clerk of supreme court to pay over money.
2014. County auditors.	2035. Expenses of jurors.
2015. Justices of the peace.	2036. Folio, how construed.
2016. Interpreters and translators.	2037. Sheriff, constable, coroner, mileage.
2017. Surveyors.	2038. No witness fees for attorneys.
2018. Notaries.	2039. No fees for oath of office.
2019. No other fees to be charged.	2040. Mileage, where computed from.
2020. Officers to keep books.	2041. When not charge fees on returns—Penalty.
2021. Monthly statement.	2042. Not applied to legislative officers.
2022. Duty of district judge.	2043. Application of act.
2023. Violation a misdemeanor.	2044. Repeal.
2024. Taking unlawful fees—Punishment.	
2025. To post table of fees.	

## 2005. Officers' fees.

SECTION 1. The several officers and persons named in this act may demand and receive for their services rendered in discharging the duties imposed upon them by law, the fees and compensation hereafter specified.

Cited, *State ex rel. Love v. Elko Co.*, 21 Nev. 21 (23 P. 935).

This act contains but one general subject in conflict with Const. art. 4, sec. 17, (sec. 274, ante).

Nor does it conflict with art. 4, secs. 20 and 21 (secs. 278, 279, ante).

This act operates alike on all persons similarly situated and is not in violation of the

14th amendment to the federal constitution (ante, 185). *Russell v. Esmeralda Co.*, 32 Nev. 304 (107 P. 890-892).

## 2006. Clerk of the supreme court.

SEC. 2. The fees of the clerk of the supreme court shall be as follows: For entering any motion, rule, or order, one dollar and twenty-five cents; for filing each transcript of a record from an inferior court, three dollars; for entering judgment, for the first folio, one dollar and fifty cents, for each subsequent folio, seventy-five cents; for each certificate given at request and under seal, one dollar and fifty cents; for copy of recorded opinion of court, or other papers, for each folio, twenty cents; for entering each cause on calendar and making copy for the bar, seventy-five cents; for every remittitur or mandate, for each folio, twenty cents; for searching records or files in his office, seventy-five cents for each term's proceedings, but no charge shall be made to suitors or their attorneys; for filing each paper, thirty cents; for certificate of admission as attorney or counselor, and sealing the same, ten dollars; for administering each oath or affirmation, thirty cents; for taking and writing any acknowledgment, seventy-five cents (including seal) for the first signature, and twenty-five cents for each additional signature; for recording opinions of the court, twenty cents per folio; for issuing any process of court, including seal, one dollar and fifty cents; for each certificate of declaration to become a citizen of the United States, and for making a record thereof, two dollars and fifty cents; for each certificate of citizenship, taking proofs in regard thereto and making record thereof, five dollars.

Additional fees for admission of attorney, see secs. 503 and 3953.

## 2007. County clerks.

SEC. 3. The county clerks of the several counties in this state [*polling more than 800 votes*] shall be entitled to fees as follows: For entering each suit on the clerk's register of actions, and making the necessary entry therein during trial, seventy-five cents; for filing each paper, fifteen cents; for issuing summons, seventy-five cents; for entering every appearance, fifty cents; for entering return of every writ or process, fifty cents; for issuing subpoena, for first witness, fifty cents, and for each additional witness, ten cents; for entering each cause on the calendar and making a copy thereof, for each term of the district court, seventy-five cents; for entering every motion, exception, rule, order, or default, thirty cents; for entering every discontinuance, dismissal or nonsuit, thirty cents; for calling and swearing every jury, fifty cents; for administering every oath or affirmation, fifteen cents; for receiving and entering each verdict of a jury, fifty cents; for entering every final judgment, for the first folio, seventy-five cents, and for each subsequent folio, twenty cents; for filing judgment roll, thirty cents; for docketing judgment, against each judgment debtor, thirty cents; for issuing execution, seventy-five cents; for entering satisfaction of judgment, for each debtor, thirty cents; for entering every notice of appeal, thirty cents; for copying any proceeding, record or paper, for each folio, twenty cents; for receiving and entering every remittitur from the supreme court, and accompanying papers, thirty cents; for every certificate, fifty cents; for issuing every commission to take testimony, seventy-five cents; for issuing every process under seal, other than subpoenas, seventy-five cents; for every certificate under seal, fifty cents; for issuing letters testamentary, seventy-five cents; for writing and posting notices when required, for each copy, thirty cents; for recording all instruments, for each folio, twenty cents; for searching the file of each year in his office

(but not to charge suitors or attorneys), thirty cents; for taking each bond and justification thereof required by law, fifty cents; for taking justification to bond, for each name, thirty cents; for taking acknowledgments of deeds or other instruments, including certificate and seal, for the first name, seventy-five cents, and for each subsequent name, twenty-five cents; for issuing every decree or order of sale of mortgaged property, or writ of injunction, for the first folio, seventy-five cents, and for each subsequent folio, twenty cents; for entering each suit in the plaintiff's and defendant's index, twenty-five cents; for making out naturalization papers, including all necessary oaths, affirmations and certificates, for the first papers, two dollars and fifty cents; for making out naturalization papers, including all necessary oaths, affirmations and certificates, for the final papers, five dollars; for each day's attendance on the board of county commissioners, four dollars; *provided*, the sum shall in no case exceed one hundred dollars per annum in the aggregate.

This section does not apply to Eureka County, see Stats. 1891, 38.

State v. Rover, 13 Nev. 17; Washoe Co. v. Humboldt Co., 14 Nev. 123.

See sec. 749, prohibiting fees in certain cases; sec. 1223, providing fee for clerk in corporate elections.

Allowed to retain fees for services in relation to location of public lands, sec. 1614.

## 2008. Recordors.

SEC. 4. The following fees to the several county recordors [*in counties polling over 800 votes*] are hereby established: For receiving, filing, and entering documents required to be recorded, fifteen cents; for filing and entering any paper not to be recorded, thirty cents; for making all necessary indexes to each paper filed or recorded, for each name to be indexed, thirty cents; for recording any instrument, paper, or document, for each folio, twenty cents; for every certificate under seal, seventy-five cents; for every entry of discharge or assignment of mortgage on the margin of the records, twenty-five cents; for abstract of title, for each document embraced thereby, seventy-five cents; for searching records and files, for each document necessarily examined, twenty-five cents; for recording any survey or map other than town plat, for each corner, thirty cents; for recording town plat, for each lot or separate subdivision exhibited thereby, twenty cents; for each folio of lettering or figuring thereon, or in the certificate and description of the same, fifty cents; for recording certificates of marriage, death, divorce, or birth, fifty cents; for copying of any document or record in his office, for each folio, twenty cents; for taking acknowledgment, including certificate and seal, for the first signature, seventy-five cents; for each additional signature, twenty-five cents; for recording or copying any paper in a foreign language, double the fees as when in English; no map or plat shall be recorded exceeding in size two folios of the usual sized records; for preparing the abstract of unsatisfied mortgages, when requested by the board of equalization, for each, twenty-five cents.

Davis v. Thompson, 1 Nev. 17.

For filing annual statements of mining companies, sec. 1331.

Cited, State ex rel. N. T. G. & Co. v. Grimes, 29 Nev. 60.

## 2009. Sheriffs.

SEC. 5. The fees allowed to sheriffs in the several counties of this state [*polling over 800 votes*] shall be as follows: For serving a summons and complaint or any other process by which an action or proceeding is commenced, on every defendant, one dollar and fifty cents; for traveling in making such services, per mile, in going only, to be computed in all cases from the court house of the county, forty cents per mile; *provided*, that if any two or more papers are required to be served in the same suit, at the same time, where parties live in the same direction from the court house,

one mileage only shall be charged; for taking bond or undertaking in any case in which he is authorized to take the same, one dollar; for copying any writ, process, or other paper, when demanded or required by law, for each folio, twenty-five cents; for serving every notice, rule or order, fifty cents; for serving a subpoena, for each witness summoned, twenty-five cents; for traveling, per mile, in serving such subpoena or venire, in going only, forty cents per mile; but when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant; for serving an attachment on property or levying an execution, or executing an order of arrest, or order for delivery of personal property, two dollars, with traveling fees as in cases of summons; for serving an attachment on any ship, boat, or vessel in proceedings to enforce any lien thereon, created by law, four dollars; for making and posting notices, and advertising for sale, on execution or order, any judgment or order of sale, not to include the cost of publication in a newspaper, one dollar and fifty cents; for commissions for receiving and paying over money on execution or process, where lands or personal property have been levied on, advertised and sold, on the first five hundred dollars, three per cent; not exceeding one thousand dollars, but over five hundred, one and one-half per cent; and on all sums over fifteen hundred dollars, three-fourths of one per cent; for commissions for receiving and paying over money on execution without levy, or when the lands or goods levied on shall not be sold, one-half of one per cent. The fees herein allowed for the levy of an execution, for advertising and for making and collecting money on execution, shall be collected from the defendant by virtue of such execution, in the same manner as the same may therein be directed to be made. For drawing and executing every sheriff's deed, to be paid by the grantee, who shall, in addition, pay for the acknowledgment thereof, three dollars; for serving a writ of possession or restitution, putting any person in possession entitled thereto, three dollars; for traveling, in the service of any process not hereinbefore mentioned, for each mile necessarily traveled, in going only, forty cents per mile; for attending, when required, on any court of record, in person or by deputy, for each day, to be paid out of the treasury, four dollars; for bringing up a prisoner, on habeas corpus, to testify or answer to any court, or for examination as to the cause of his arrest or detention, or to give bail, one dollar and fifty cents. He shall also be allowed such further compensation for his trouble and expense in taking possession of property under attachment or execution, or other process, and of preserving the same, as the court from which the writ or order may issue shall certify to be just and reasonable. For holding each inquest or trial of right of property, when required, to include all services except mileage, seven dollars and fifty cents; for attending on the supreme court, either in person or by deputy, to be paid out of the state treasury as other claims, for each [day], six dollars; for every arrest in a criminal proceeding, two dollars; for serving each subpoena in criminal cases, forty cents; for executing every sentence of death, fifty dollars; for summoning a grand jury of twenty-four persons, ten dollars; for summoning each trial juror, thirty cents; for service of any process in criminal cases, the same mileage as in civil cases. In serving subpoenas or venires in criminal cases he shall receive mileage for the most distant only, when witnesses and jurors live in the same direction. For all services in justices' courts, the same fees as are allowed to constables. *As amended, Stats. 1885, 94.*

*Washoe Co. v. Humboldt Co.*, 14 Nev. 123; *Baker v. McLeod*, 14 Nev. 148; *Feusier v. Virginia City*, 3 Nev. 58; *Swift v. Doron*, 6 Nev. 125.

## 2010. Coroners.

SEC. 6. The fees of coroners [*in counties polling over 800 votes*] shall be as follows: For all services in summoning a jury of inquest, three dollars;

for swearing a jury, fifty cents; for issuing warrant of arrest, seventy-five cents; for issuing subpoena to each witness, twenty cents; for each mile necessarily traveled in going to the presence of the dead body, twenty-five cents; for swearing each witness, twenty cents; for taking down testimony, per folio, twenty cents; for each day necessarily employed in holding an inquest, five dollars. All of said fees shall be paid out of said treasury as other demands. For all services rendered by him while acting as sheriff, the same fees as are allowed to sheriffs for similar services.

## 2011. Constables.

SEC. 7. The following fees shall be allowed to constables [*in counties polling over 800 votes*]: For serving summons or other process by which suit is commenced, in civil cases, seventy-five cents; for summoning a jury before a justice of the peace, one dollar and fifty cents; for taking bond or undertaking, seventy-five cents; for serving an attachment against the property of a defendant, one dollar and fifty cents; for serving subpoenas, for each witness, twenty cents; for summoning and swearing a jury to try the rights of property, and taking the verdict, one dollar and fifty cents; for receiving and taking care of property on attachment, execution or order, his actual necessary expenses, to be allowed by the justice who issued the execution, upon the affidavit of the constable that such charges are correct, and the expense necessarily incurred; for a copy of any writ, process, or other paper when demanded or required by law, per folio, twenty cents; for drawing and executing every constable's deed, to be paid by the grantee, who shall also pay for the acknowledgment thereof, three dollars; for each certificate of sale of real estate, under execution, seventy-five cents; for collecting all sums on execution to be charged against the defendant in execution, one and one-half per cent; for levying an execution or executing an order of arrest in civil cases, or order for the delivery of personal property, with traveling fees, as for summons, one dollar and fifty cents; for making and posting notices, and advertising property for sale on execution, not to include the cost of publication in a newspaper, one dollar and fifty cents; for mileage in serving summons, attachment, execution, order, venire, subpoena, or other process in civil cases, for each mile necessarily traveled, in going only, forty cents; *provided*, that when two or more persons are served in the same suit, mileage shall only be charged for the most distant, if they live in the same direction; for service and travel in criminal cases, the same fees as are allowed sheriffs for similar services.

The above section does not apply to Ormsby, Humboldt, Elko, nor Eureka Counties; see Stats. 1885, 129; 1887, 76.

## 2012. Witnesses.

SEC. 8. Witnesses required to attend in any of the courts of this state [*in counties polling over 450 votes*] shall be entitled to the following fees: For attending in any civil suit or proceeding before any court of record, referee, commissioner or justice of the peace, two dollars; for traveling to the place of trial, thirty cents per mile for each mile necessarily and actually traveled; *provided*, that no person shall be obliged to testify in a civil action unless his fees and mileage have been tendered him, or he shall not have demanded the same; *and, provided further*, that no person shall be obliged to testify in a civil action unless his fees have been tendered him if he shall demand the same, for mileage and one day's attendance; for each subsequent day's attendance the witness is entitled to demand, in advance, his fees from the party in whose favor he has been subpoenaed, and in case of refusal, is exonerated from further attendance. Witness fees in civil cases shall be taxed as disbursement costs, against the defeated party upon proof, by affidavit, that the disbursements have actually been made. Costs shall not be allowed

for more than two witnesses to the same fact or series of facts, nor shall a party plaintiff or defendant be allowed any fees for attendance as a witness in his own behalf. This provision shall be held to apply to courts of justices of the peace, as well as to all other courts and judicial proceedings. For criminal cases no witnesses fees shall be allowed.

Cited, *Phillips v. Eureka Co.*, 19 Nev. 349 (11 P. 32).

### 2013. Jurors.

SEC. 9. Each person summoned to attend as a grand or trial juror in counties polling over four hundred and twenty-five votes, unless he be excused by the court at his own request from serving on the day he is summoned to attend, shall receive three dollars per day for each day he may be in attendance and fifteen cents per mile in traveling to and returning from court. In civil cases the per diem of each juror engaged in the trial of the cause, shall be paid each day in advance by the party who shall have demanded the jury, but in case the party paying such fees be the prevailing party, the fees so paid shall be recoverable as costs from the losing party. If the jury from any cause be discharged in a civil action without finding a verdict and the party who demands the jury shall afterwards obtain judgment, the fees so paid shall be recoverable as costs from the losing party. Jurors in justice courts shall receive but two dollars per day in civil cases; *provided*, that no fees shall be allowed trial jurors in criminal cases in justice courts. The fees paid to a juror by the parties in a civil case shall be deducted from the amount due him, and the balance only shall become a charge against the county. *As amended, Stats. 1885, 25; 1887, 62; 1909, 321.*

Trial jurors in the regular panel are entitled to receive from the county mileage and in addition per diem when accepted and sworn in criminal cases. These fees, together

with those received in civil cases, constitute their entire compensation for attendance, travel and services rendered. *Phillips v. Eureka Co.*, 19 Nev. 348-351, 355 (11 P. 32).

### 2014. County auditors.

SEC. 10. The fees of county auditors [*in counties polling over 800 votes*] shall be as follows: For filing treasurer's receipts and issuing licenses, to be paid by the party, twenty-five cents; the county auditor shall receive for all services rendered by him in the discharge of the duties imposed on him by law, other than those especially enumerated, for each folio, twenty cents; for filing and indorsing each paper, twenty cents, except the property schedules, for which he shall receive no fees.

[Sec. 11 (judges and clerks of election) superseded, sec. 1802.]

[Sec. 12 (carrying poll-books to clerk's office) superseded, sec. 1802.]

Cited, *ex rel. Williams v. Fogus*, 19 Nev. 248 (9 P. 123).

Cited, *Phillips v. Eureka Co.*, 19 Nev. 353 (11 P. 32).

### 2015. Justices of the peace.

SEC. 13. Justices of the peace [*in counties polling over 800 votes*] shall be allowed the following fees for their services: For filing each paper, fifteen cents; for issuing any writ or paper by which suit is commenced, seventy-five cents; for entering cause in docket, thirty cents; for subpoena, to each witness, fifteen cents; for administering oath or affirmation, fifteen cents; certifying to the same, fifteen cents; for issuing writ of attachment, or order of arrest, or order for delivering of property, one dollar and fifty cents; for entering any final judgment, per folio, for the first folio, seventy-five cents, for each additional folio, thirty cents; for taking and approving any bond or undertaking required by law to be taken or approved by him, seventy-five cents; for issuing a venire, seventy-five cents; for taking depositions, per folio, twenty cents; for issuing commissions to take testimony, seventy-five cents; for copy of any judgment, order, docket, proceeding, or paper in his office, per folio, twenty cents; for entering satisfaction of judgment, thirty

cents; for issuing execution, seventy-five cents; for taking acknowledgments of deeds or other instruments, including certificates, for the first name, seventy-five cents, for each subsequent name, twenty-five cents; for issuing supersedeas to an execution, seventy-five cents; for making up and transmitting transcript and papers on appeal, one dollar and fifty cents; for issuing search warrant, seventy-five cents; for celebrating marriage and returning certificate to recorder, five dollars; for issuing writ of restitution, seventy-five cents; for all services and proceedings in a criminal action, the same fees as are allowed in civil cases, but in no case shall there be a charge against the county exceeding in any one case the sum of five dollars; for taking bail after commitment in criminal cases, to be collected from defendant, seventy-five cents; for entering any cause without process, one dollar; for entering judgment by confession as in district court, three dollars; for each motion, exception, rule, order, default, dismissal, discontinuance, or nonsuit, and for filing each paper required to be filed, fifteen cents.

The above section does not apply to Ormsby, Humboldt, Elko, nor Eureka Counties, see Stats. 1885, 129; 1887, 76.

## 2016. Interpreters and translators.

SEC. 14. Interpreters and translators shall receive such fees as the court by whom they are employed shall certify to be just.

Cited, *Phillips v. Eureka Co.*, 19 Nev. 353 (11 P. 32).

## 2017. Surveyors.

SEC. 15. County surveyors shall be entitled to demand and receive the following fees: For each mile actually run with a compass and chain, five dollars; for each mile actually run with a compass alone, two dollars; for each lot laid out platted in a town or city or townsite, two dollars; for each copy of a plat or townsite, one dollar; for recording a survey, per folio, thirty cents; for calculating the quantity of each division made in a tract of land (town lots excepted), and for erecting a monument at the corner of any survey, when required, two dollars; for traveling to the place of survey, for each mile, in going only, seventy-five cents, the distance to be computed from where his office is kept to the place of survey; and if such surveyors shall be required and duly notified, verbally or otherwise, to make other surveys while in the field, he shall only be entitled to mileage from the place last surveyed by him; but if the distance shall be greater than the place last surveyed where his services are required, he shall only be entitled to mileage from the county-seat of the county where he lives, and in no case shall constructive mileage be allowed; for ascertaining the location of every town lot in an old survey and measuring and marking the same, three dollars.

Where it is necessary to have a survey of the premises where the crime was committed, in order to properly present the case to the jury, the county commissioners are authorized to allow a reasonable compensation for such survey. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

## 2018. Notaries.

SEC. 16. The fees of notaries public [*in counties polling over 800 votes*] shall be as follows: For drawing and copying every protest for nonpayment of a promissory note, or for the nonpayment or nonacceptance of a bill of exchange, draft or check, two dollars; for drawing and serving every notice of nonpayment of a promissory note, the nonpayment or nonacceptance of a bill of exchange, order, draft or check, one dollar; for drawing an affidavit, deposition or other paper, for which provision is not herein made, for each folio, twenty cents; for taking an acknowledgment, or proof of deed, or other instrument, to include the seal and writing of the certificate, for the first signature, one dollar, and for each additional signature, fifty cents; for adminis-

tering an oath or affirmation, twenty-five cents; for every certificate, to include writing the same and the seal, fifty cents. *As amended, Stats. 1889, 40.*

#### 2019. No other fees to be charged.

SEC. 17. No other fees shall be charged than those specially set forth herein, nor shall fees be charged for any other services than those mentioned in this act.

#### 2020. Officers to keep books.

SEC. 18. It shall be the duty of each and every one of the officers hereinbefore mentioned to keep severally a book, to be called the fee book, in their respective offices, in which they shall enter all the fees charged by them, and said book shall be open to the inspection of any one desiring to inspect the same, in which shall be stated the fees charged for in detail with the title of the matter, proceeding or action on which they are charged.

Cited, *Phillips v. Eureka Co.*, 19 Nev. 352 (11 P. 32); *Grimes v. N. T. G. & T. Co.*, 29 Nev. 59.

#### 2021. Monthly statement.

SEC. 19. It shall be the duty of the county clerks, county recorders, county surveyors, sheriffs, public administrators, justices of the peace, and constables on the first Monday in July, in the year of our Lord one thousand eight hundred and eighty-three, and every three months thereafter, to make out and file with the county commissioners of their several counties a full and correct statement, under oath, of all fees, percentage or compensation, of whatever nature or kind, received in their said several official capacities during the preceding three months, in which statement they shall set forth the cause in which and the services for which such compensations were received; *provided*, that nothing in this act shall be so construed as to require personal attendance in filing such statements; and such statements may be transmitted by mail, express or otherwise directed to the clerk of said board of county commissioners.

#### 2022. Duty of district judge.

SEC. 20. It shall be the duty of the district judge to give this act specially in charge to the grand jury.

#### 2023. Violation a misdemeanor.

SEC. 21. Any officer who shall violate any of the provisions of the seventeenth, eighteenth, and nineteenth sections of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

Cited, *Phillips v. Eureka Co.*, 19 Nev. 352 (11 P. 32).

#### 2024. Taking unlawful fees—Punishment.

SEC. 22. If any officer shall take more or greater fees than are herein allowed, he shall be liable to indictment, and, on conviction, shall be removed from office, and fined in any sum not exceeding one thousand dollars.

#### 2025. To post table of fees.

SEC. 23. Every officer whose fees are ascertained and fixed by this act shall publish and set up in his office fair tables of his fees, according to this act, within one month from its passage, in some conspicuous place for the inspection of all persons who have business in his office, upon pain of forfeiting for each day of his omission so to do a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace of the same county, with costs.

**2026. Cost of publication.**

SEC. 24. When by law any publication is required to be made by an officer of any suit, process, notice, order or other paper, the cost of such publication shall, if demanded, be tendered by the party to whom such order, process, notice or other papers was granted before such officer shall be compelled to make publication thereof.

**2027. Fees in advance.**

SEC. 25. All fees prescribed in this act shall be payable in advance, if demanded; and if any officer shall not have received any or all of his fees, which may be due him for services rendered by him in any suit or proceedings, he may have execution therefor in his own name against the party or parties from whom they are due, to be issued from the court where the action is pending, upon the order of the judge or court upon affidavit filed.

**2028. Commissioners of deeds.**

SEC. 26. Commissioners of deeds appointed by the governors of any of the states of the United States of America, or of any of the territories thereof, to reside in the State of Nevada, may receive for services rendered in this state the compensation hereinafter expressed, and none other, that is to say: For drawing an affidavit, deposition or other paper, for each folio, thirty cents; for administering an oath or affirmation, twenty-five cents; for putting his seal to such instruments, fifty cents; for taking acknowledgment, or proof of deed or other instrument, to include the seal and the writing of the certificate, for the first signature, one dollar, and for each additional signature, fifty cents.

**2029. Misconduct.**

SEC. 27. Each commissioner of deeds residing in this state, shall be subject to all the pains and penalties for official delinquency or extortions, as is provided in this act for official misconduct.

**2030. District court fees.**

SEC. 28. At the time of the commencement of every civil action or other proceeding in the several district courts of this state, the plaintiff shall pay the clerk of the court in which said action shall be commenced the sum of three dollars, in gold or silver coin, except as herein otherwise provided. At the commencement of any proceeding in any district court for the purpose of procuring an appointment of administration upon the estate of any deceased person, the party instituting such proceedings shall pay the clerk of said court the sum of one dollar and fifty cents in gold or silver coin.

Provisions of this and the four succeeding sections is in compliance with the provisions of Const., sec. 331, ante.

The fact that the docket fee was paid by the clerk instead of the plaintiff cannot be taken advantage of by defendant. *Rose v. Richmond M. Co.*, 17 Nev. 25.

**2031. Appeal, justice's court.**

SEC. 29. Whenever any appeal shall be taken in a civil action or proceeding from the judgment or decision of the court of a justice of the peace, or other tribunal inferior to the district court, the party appealing shall, before the return to said appeal shall be allowed to be filed in the appellate court, pay to the clerk of such appellate court the sum of one dollar, in gold or silver coin; which said several fees above provided for shall be known as "court fees," and no such action shall be deemed commenced, proceedings instituted, or appeal perfected until the said fees shall be paid as aforesaid.

**2032. Fees on appeal to supreme court.**

SEC. 30. Whenever any appeal from the final judgment or any order of a district court shall be taken to the supreme court, the party appealing shall,

at or before the filing of the transcript on such appeal in the supreme court, pay the clerk of the supreme court the sum of five dollars in gold or silver coin as and for a court fee; and the clerk of the supreme court shall not file any such transcript in his office until such fee is paid.

### 2033. Duty of clerks to give receipts and pay over money.

SEC. 31. It shall be the duty of said clerks, on the demand of any party asking it, to give a receipt to the party paying such fee for the same, specifying the title of the cause in which the same shall be paid and the date and amount of such payment; and it shall be the further duty of the several clerks of the district courts of this state, on the first Monday of each and every month, to pay over to the county treasurer of the county all moneys received by them for such court fees, together with a brief note of the cases in which the same were received, which money shall be payable in the district judge salary fund of the district embraced in the county where the same shall be received.

### 2034. Clerk of supreme court to pay over money.

SEC. 32. The clerk of the supreme court shall, on the first Monday in each month, pay to the state treasurer all moneys received by him for court fees, rendering to said treasurer a brief note of the cases in which the same were received. The money so received by the treasurer shall be placed in the supreme judges' salary fund, and the same shall be used for no other purpose.

### 2035. Expenses of jurors.

SEC. 33. In all cases when a jury is kept together by order of the court during a trial, or by failure to agree upon a verdict, after the cause has been submitted to them by the court, the expenses of their board and lodging shall be taxed as other disbursements and expenses in favor of the prevailing party; no verdict shall be entered or judgment rendered thereon until the same is paid or tendered. The clerk shall receive and properly disburse all money paid for the expenses of jurors, as in this section provided to be paid.

### 2036. Folio, how construed.

SEC. 34. The term folio, when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter of a folio, shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

### 2037. Sheriff, constable, coroner; mileage.

SEC. 35. When any sheriff, constable or coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the most distant service.

### 2038. No witness fees for attorney.

SEC. 36. No attorney or counselor at law, in any case, shall be allowed any fees for attending as a witness in such case.

### 2039. No fees for oath of office.

SEC. 37. No fees shall be charged by any officer for administering and certifying the oath of office.

### 2040. Mileage, where computed from.

SEC. 38. Mileage shall be computed from the court house of the county in all cases where mileage is chargeable by the sheriff, and for other officers

the same shall be for the actual distance traveled, and every fraction of a mile shall be computed as a mile.

#### 2041. When not to charge fees on returns—Penalty.

SEC. 39. No sheriff or other officers shall be allowed to charge or receive any fee or compensation whatever for the return written upon any summons, subpoena, writ of attachment, execution, order of sale, or other paper; and any officer violating terms of this section shall be indicted, and upon conviction shall be fined in any sum not less than three hundred dollars, and shall upon conviction thereof be removed from office.

#### 2042. Not to apply to legislative officers.

SEC. 40. This act shall not extend to nor affect any law relating to the salaries or compensation of officers of the senate or assembly of the State of Nevada, nor to the salary of any state or county officer, or deputy thereof.

#### 2043. Application of act.

SEC. 41. The provisions of section 8 and section 9 of this act shall not apply to or affect any county in this state wherein the total vote at the last election did not exceed four hundred and fifty, and the provisions of this act shall not apply to or affect the fees of the officers of any county in this state wherein the total vote of the last election did not exceed eight hundred, and the same shall apply to all future elections, and it is hereby provided that in such counties "An act to regulate fees and compensation for official and other services in the State of Nevada," approved March 9, 1865 [see sec. 1994, et seq.], and the act amendatory thereto, shall remain in full force and effect. *As amended, Stats. 1893, 103.*

#### 2044. Repeal.

SEC. 42. This act repeals all other acts and parts of acts now in force, relating to fees of officers, which fees are collectible by said officers from the persons for whom said services are rendered.

Special fee acts for Ormsby County, Stats. 1887, 126; 1897, 19.

*An Act relating to the certification of public records or documents and the fees chargeable therefor.*

Approved March 8, 1909, 78

#### 2045. Fees for prepared copies.

SECTION 1. Whenever any person shall present to the custodian or other person authorized to make and certify copies of any public record or document in any and all counties of the state not divided in the year 1909 a printed or typewritten copy of any such record or document, or any part thereof, it shall be the duty of such custodian or person to forthwith compare such copy with the original thereof and make the same a true and correct copy thereof and officially certify the same as such and the fees and compensation legally chargeable or receivable therefor shall be only one-third of what said fees or compensation would have been if said custodian or person had made and certified said copy.

*An Act fixing and regulating the fees to be charged by county recorders and district mining recorders for recording certificates of labor on mining claims.*

Approved March 18, 1911, 100

#### 2046. Recording fees fixed.

SECTION 1. From and after the passage and approval of this act the county recorders and district mining recorders of this state shall charge the

following fees for recording certificates of proof of labor on mining claims: Fifty cents for recording any such certificates that embrace therein one claim, and an additional fee of twenty-five cents for each and every additional mining claim embraced in said certificate; *provided*, that if any such certificate shall contain more than one hundred words an additional fee of thirty cents shall be charged for each one hundred words or fractional part thereof in excess of said first one hundred words.

## FISH AND GAME

To provide for preservation of fish, sections 2047-2051.

To prevent unlawful destruction of fish and game, sections 2052-2055.

Giving authority to boards of county commissioners to extend close season for fishing, sections 2056-2058.

To provide for protection and preservation of trout and other fish, sections 2059-2075.

Providing for establishment of private fish hatcheries, sections 2076-2084.

Providing for protection and preservation of game, sections 2085-2100.

To regulate and license hunting of game birds and animals and taking or catching of fish, sections 2101-2112.

To prevent shipment of wild game, section 2113.

*An Act to provide for the preservation of fish in the waters of this state, and matters properly relating thereto.*

Approved March 14, 1903, 114

2047. Unlawful to pollute streams.

2048. Certain cases misdemeanor.

2049. Fishways and ladders.

2050. Punishment for violation.

2051. Unlawful to transplant or transport in certain cases.

### 2047. Unlawful to pollute streams.

SECTION 1. Every person who places or allows to pass or who places where it can pass or fall into or upon any of the waters of this state at any time, any lime, gas, tar, cocculus indicus, slag, acids, or other chemical, sawdust, shavings, slabs, edgings, mill or factory refuse, or any substance deleterious to fish, shall be deemed guilty of a misdemeanor and is punishable by a fine not less than two hundred and fifty nor more than five hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, for not less than one hundred and twenty-five or two hundred and fifty days; *provided*, that the provisions of this section shall not apply to mills or works for the reduction of ores, nor against the owners or operators of such mills or works so far as concerns the operator of such mills or works.

### 2048. Certain cases misdemeanor.

SEC. 2. All persons, firms, companies, associations or corporations, who have erected or who may hereafter erect any dams, water weirs or other obstructions to the free passage of fish in the rivers, streams, lakes or other waters of the State of Nevada, shall construct and keep in repair fishways or fish ladders at all such dams, water weirs, or other obstruction; so that at all seasons of the year fish may ascend above such dams, water weirs or other obstructions, to deposit their spawn. Any person or persons, firm, company, association or corporation failing to comply with the provisions of this section after having been notified and required so to do by the proper authority, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty nor more than five

hundred dollars, or by imprisonment in the county jail for not less than twenty-five days nor more than one hundred and fifty days.

[Secs. 3-9, inclusive, superseded by act 1911, 61, secs. 2059-2075.]

### 2049. Fishways and ladders.

SEC. 10. Any person or persons who shall at any time wilfully or knowingly destroy, injure or obstruct any fishway or fish ladder, or any person or persons who shall at any time take or catch any fish in any manner within one hundred feet of any dam containing a fishway or fish ladder, which is required by law, shall be deemed guilty of [a] misdemeanor, and upon conviction thereof shall be punished as provided in section 11 of this act. Nothing in this section shall be so construed as to prohibit the taking of fish for spawning or transplanting purposes, by the state board of fish commissioners or other authorized persons.

### 2050. Punishment for violation.

SEC. 11. Any person or persons violating the provisions of sections 3, 4, 5, 6, 7, 8, 9 or 10 of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty nor more than one hundred dollars or by imprisonment in the county jail for not less than ten nor more than fifty days or by both such fine and imprisonment.

### 2051. Unlawful to transplant or transport in certain cases.

SEC. 12. It shall be unlawful for any person or persons, company, association or corporation, to at any time transport or offer for transportation to any place outside of this state any lake, river or brook trout or land-locked salmon, which are intended to be offered for sale; and any person who shall so transport or offer for transportation any lake, river or brook trout or land-locked salmon, white fish or wide-mouthed bass which are thereafter offered for sale or sold at any place outside of this state, or are offered for sale after being transported outside of this state, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty-five nor more than two hundred and fifty days or by both such fine and imprisonment.

State Board of Fish Commissioners, secs. 4482, 4483.

Under former law (1893, 128, amended Stats. 1895, 83) providing that trout shall not be caught "between the first day of October of each year and the first day of June of each year" it was held that the intention of the legislature was to forbid the catching of trout from October of one year to June of the next.

Also, where an act forbids the catching of trout from the rivers and also from the lakes, even if the provision as to the lakes

is so self-contradictory that it cannot be enforced, this will not invalidate the provision against catching from the rivers. Ex Parte Hewlett, 22 Nev. 333-335 (40 P. 96).

A former law (Stats. 1909, 121) was held unconstitutional because it directed that a portion of the fines collected thereunder for violation thereof should be paid to the informer. Ex Parte McMahon, 26 Nev. 243-245 (66 P. 294).

See sec. 355, ante.

*An Act to prevent the unlawful destruction of fish and game; to provide for the appointment of fish and game wardens in the several counties of this state, and to define their duties and compensation.*

Approved March 12, 1901, 57

2052. Fish and game wardens to be appointed.

2053. Powers of warden.

2054. Duties—Removal.

2055. Salary—How fixed and paid.

### 2052. Fish and game warden to be appointed.

SECTION 1. It is hereby made the duty of the several boards of county commissioners in this state, at their first regular meeting in April, nineteen

hundred and one, and annually thereafter, upon the petition of twenty or more resident taxpayers, to appoint a fish and game warden for their respective counties, who shall reside in the county for which he is appointed. Each warden so appointed, before entering upon the duties of his office, shall take his oath of office, and give an undertaking to the State of Nevada for the use of the respective counties thereof, with two or more sureties, to be approved by the board of county commissioners conditionally [conditioned] for the faithful performance of his duties, and in such sum as the county commissioners of the several counties may deem sufficient for the faithful performance of the duties of his office and the enforcement of the requirements of this act.

### 2053. Powers of warden.

SEC. 2. Said warden is hereby empowered [and it shall be his duty] to enforce the state laws and all county and municipal ordinances relative to the protection of fish and game; and he shall be vested with the power to make arrests for the violation of such laws and ordinances in any county in this state; to appoint a deputy or deputies who shall have power to transact all official business appertaining to said officer, to the same extent as their principal; *provided*, that said warden shall be responsible for the compensation of such deputy or deputies, and shall be responsible on his official bond for all malfeasance or nonfeasance of the same. Bonds for the faithful performance of the duties of his official deputy or deputies may be required of said deputy or deputies by said principal.

### 2054. Duties—Removal.

SEC. 3. Said fish and game warden shall report quarterly to the board of county commissioners of his county, giving a detailed statement of all arrests made, convictions had, fines collected, and generally in regard to the management of his office. Such officers may be removed by the board of county commissioners, for intemperance, neglect of duty or other good and sufficient reasons.

### 2055. Salary, how fixed and paid.

SEC. 4. The salary of the fish and game wardens shall be fixed by the county commissioners of the various counties of this state, out of the fish and game preservation fund; *provided*, that in case of a deficiency in the fish and game preservation fund, such deficiency shall be paid out of the general fund of the various county treasuries. The salary of said fish and game wardens shall not be more than one hundred dollars, nor less than twenty dollars per month. Said warden shall be allowed a sum not to exceed twenty-five dollars per month for expenses incurred by him in the performance of his duties. *As amended, Stats. 1903, 179; 1909, 327.*

*An Act giving authority to the boards of county commissioners of the several counties of this state to extend the close season for fishing in streams and waters of a certain class, and providing for the enforcement of the same.*

Approved March 16, 1905, 192

### 2056. To protect certain waters.

SECTION 1. The boards of county commissioners of the several counties of this state, each within its own county, are hereby authorized to extend the closed season for fishing in streams and waters within their county which now are, or hereafter shall have been, stocked with food fishes by others than the state or its fish commissioner, or authorized agent, to such periods as may in their opinion be required for the protection of the fish in said stream and waters, to the end that the supply of fish for food may be permanently increased.

**2057. Order published—Provisos.**

SEC. 2. This act shall be made effective by an order of the board of county commissioners published in a newspaper within the county, which order shall name the stream or streams and waters within the county in which the catching of fish is to be restricted, and shall state the period over which the close season is to extend; *provided*, that no such order shall be effective without such publication for the period of at least one month before the date upon which the order is to take effect; *and further provided*, that no such publication shall be made at an expense to the county of more than three dollars.

**2058. Violation misdemeanor—Penalty.**

SEC. 3. Any person who shall violate the provisions of said order of the board of county commissioners shall be guilty of a misdemeanor, and shall be fined not to exceed thirty (\$30) dollars, or imprisoned in the county jail not to exceed fifteen (15) days, or by both such fine and imprisonment in the discretion of the court, for each offense.

*An Act to provide for the protection and the preservation of trout and other fish in the waters of the State of Nevada and other matters pertaining thereto, and to state in part what shall be evidence of its violation, and to prescribe penalties for its violation, and to provide for its enforcement, and to repeal all acts and parts of acts in conflict herewith.*

Approved March 15, 1911, 61

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| 2059. Close season.                                    | 2068. Night fishing defined and prohibited.               |
| 2060. Unlawful to sell or possess during close season. | 2069. Officers empowered to enforce act.                  |
| 2061. Certain methods of taking prohibited.            | 2070. Officers may call for assistance.                   |
| 2062. Regulations concerning hotels and dealers.       | 2071. Penalties—Evidence.                                 |
| 2063. Regulations concerning size.                     | 2072. Does not apply to private fish ponds or streams.    |
| 2064. Concerning transportation of fish.               | 2073. Fish and eggs may be taken for scientific purposes. |
| 2065. Limit of catch.                                  | 2074. Repeal.   |
| 2066. Unlawful to fish within 100 ft. of dam.          | 2075. Unconstitutionality of portion not to affect rest.  |
| 2067. Same applying to irrigation works.               |   |

**2059. Closed season.**

SECTION 1. It shall be unlawful for any person or persons, firm, company, or corporation, to take, catch, or kill, or to attempt to take, catch, or kill, any river trout, lake trout, or brook trout, white-fish, land-locked salmon, royal chinook salmon, or large-mouthed or small-mouthed black bass, in or from any of the streams, lakes, rivers, or other waters of the State of Nevada, between the sixteenth day of October of each year and the thirtieth day of April of the succeeding year, both dates being included.

**2060. Unlawful to sell or possess during closed season.**

SEC. 2. It shall be unlawful for any person or persons, firm, company, or corporation in the State of Nevada to buy, sell, or offer or expose for sale or to have in his, their, or its possession, any river trout, lake trout, or brook trout, salmon, white-fish, or large-mouthed or small-mouthed black bass taken or caught from any of the waters of this state within the closed season specified in this act.

**2061. Certain methods of taking prohibited.**

SEC. 3. It shall be unlawful for any person or persons, firm, company or corporation to take, catch, or kill, or to attempt to take, catch, or kill, in or from any stream, lake, or river, or any other waters of the State of Nevada, any trout, salmon, white-fish, bass, perch, or any other fish of any species whatever with any seine, net, spear, set-line, set-hooks, grab-hook, trot-line or snag-line, or in the manner known as snagging, or with any weir-fence,

trap, giant powder, or other explosive, or explosive compound, or with or by means of any bait constituted or prepared in whole or in part of or from the spawn, eggs or ova of trout, salmon, or of any other species of fish whatever; or with or by any means whatever except with hook and line attached to a rod held in the hands and in the manner known as angling; that is, with baited hook, fly-hook, spoon-hook, or other anglers' lure.

#### 2062. Regulations concerning hotels and dealers.

SEC. 4. It shall be unlawful for any person or persons, firm, company, or corporation, cold-storage company, tavern, or hotel keeper, restaurant, or eating-house keeper, butcher, or market man, in this state to buy, sell, or offer or expose for sale, or to have in his, their, or its possession, any trout, salmon, white-fish, or fish of any species whatever taken from any of the waters of the State of Nevada by or with any of the means specified as unlawful in this act or in any preceding act.

#### 2063. Regulations concerning size.

SEC. 5. It shall be unlawful for any person or persons, firm, company or corporation, to kill, or to retain in his, their, or its possession any lake trout, river trout, land-locked salmon, or royal chinook salmon, taken from the waters of this state less than seven inches in length; or any large-mouthed or small-mouthed black bass, or Sacramento perch, less than eight inches in length, or any red-spotted eastern brook trout (*Salvelinus fontinalis*) less than six inches in length.

#### 2064. Concerning transportation of fish.

SEC. 6. It shall be unlawful for any person or persons, railroad, railway company or corporation, express company, stage line, transportation company, or any common carrier in the State of Nevada to accept or receive for shipment or for transportation from any one person or in the name of any one firm, company, or association, in any one calendar day, more than ten pounds of trout, land-locked salmon, or royal chinook salmon, or of large-mouthed or small-mouthed black bass, taken or caught in or from any of the waters of the State of Nevada; *provided*, that nothing in this section shall be so construed as to prevent the shipment, or receipt or acceptance, of ten trout on one calendar day from any single consignor, and it shall be unlawful for any person or persons, firm, company, association, or corporation, transportation company, or common carrier to offer or present or to receive or accept for shipment, carriage, or transportation any box, bundle, package, basket, or other container whatsoever in which are enclosed any of the fishes herein specified, unless the box, bundle, basket, package, or other container aforesaid shall be so wrapped, tied, or constructed that it shall be easily opened for inspection or examination, and unless it shall bear a conspicuous label, easily read, which shall state the contents thereof, together with the name and address of the consignor thereof and the name and address of the consignee; and false statement on the aforesaid label either as to the contents enclosed or as to the true name or address of the consignor thereof or of the consignee shall be construed as a violation of this act.

#### 2065. Limit of catch.

SEC. 7. It shall be unlawful for any person or persons, firm, company, or corporation to take, catch, or kill from any of the waters of the State of Nevada or to have in his, their, or its possession on any one calendar day, more than ten pounds of trout, or of land-locked salmon, or royal chinook salmon, or large-mouthed or small-mouthed black bass, or Sacramento perch, or white-fish caught in the waters of this state; *provided*, that nothing in this act shall be so interpreted as to prevent or to prohibit the taking of ten trout or salmon, or other fish specified in this act.

**2066. Unlawful to fish within 100 feet of dam.**

SEC. 8. It shall be unlawful for any person or persons in the State of Nevada at any time or season to take, catch, or kill, or to attempt so to take, catch, or kill, any lake trout, river trout, brook trout, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass, Sacramento perch, or any other species of fish whatever, within a distance of one hundred feet above or below any dam in this state containing a fishway or fish-ladder.

**2067. Same applying to irrigation works.**

SEC. 9. It shall be unlawful for any person or persons, firm, company or corporation in the State of Nevada to take, catch, or kill, or to attempt to take, catch, or kill, any lake trout, river trout, brook trout, land-locked salmon, royal chinook salmon, white-fish, large-mouthed or small-mouthed black bass, Sacramento perch, or any other fish of any species whatever, at any time or season, whatever, within a distance of one mile below any dam of the United States reclamation service containing a fishway or fish-ladder, and lying within the State of Nevada.

**2068. Night fishing defined and prohibited.**

SEC. 10. It shall be unlawful for any person or persons, firm, company or corporation, in the State of Nevada, to take, catch, or kill, or attempt to take, catch, or kill, any lake trout, river trout or brook trout, land-locked salmon, royal chinook salmon, large-mouthed or small-mouthed black bass, Sacramento perch, or any other fish of any species whatever from any of the waters of the State of Nevada, on any calendar day after two hours after sunset, and on any calendar day before one hour before sunrise.

**2069. Officers empowered to enforce act.**

SEC. 11. The fish commissioners of the State of Nevada, the members of the Nevada state police, and every fish or game warden throughout the state, and every sheriff and constable in his respective county is and are hereby authorized and required to enforce this act and to seize any game or fish taken or held in possession in violation of this act, and he or they shall have full power and authority and it shall be the duty of every such officer with or without a warrant, to open, enter, or examine all camps, wagons, cars, automobiles, stages, tents, packs, warehouses, stores, outhouses, stables, barns, and other places, boxes, barrels, baskets, and packages, where he has reason to believe any fish taken or held in violation of any of the provisions of this act is or are to be found, and to seize the same; *provided*, that a dwelling house actually occupied can be entered for examination only in pursuance of a warrant.

**2070. Officers may call for assistance.**

SEC. 12. In case Indians or any other persons in the State of Nevada shall engage in the killing of trout or other fishes in violation of any of the provisions of this act, and shall be in such numbers as to be beyond the reasonable power of any fish or game warden of the state fish commission to control, or in case of forcible resistance to the enforcement thereof, it shall be the duty of the sheriff, or sheriffs of the county or counties where such violation exists, upon the demand of such commissioners or any warden to aid him in the enforcement of this act, and to call to his assistance at once a sufficient number of persons to enforce the same promptly and effectually; or if by him deemed necessary, said commissioners or said warden may call such assistance without the intervention of the sheriff. The failure without good cause of any person or persons to respond and to render such assistance shall be deemed a violation of this act.

### 2071. Penalties—Evidence.

SEC. 13. Any person or persons, firm, company, or corporation, association, or common carrier in this state who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor; and upon conviction thereof shall be fined in any sum not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail in the county where the conviction is had for any term not exceeding six months, or by both such fine and imprisonment. It shall be no defense in a prosecution for violation of any of the provisions of this act that the trout or other fish in question were taken or killed outside the State of Nevada; nor shall it be any defense in any prosecution for violation of any of the provisions of this act that the trout or fish were taken or killed by one other than he in whose possession said trout or other fish were found. The act of passing a line into or on any of the waters of the State of Nevada as though in the act of fishing, shall be in itself sufficient evidence of an attempt to take or to catch fish within the meaning of this act. The presence in or on the body in flank, back, or belly of any of the fishes herein specified of deep incised wounds or cuts such as are made by spears, grab-hooks, trout-hooks, or snag-hooks, shall be construed as in itself sufficient evidence that the said fish were taken in violation of the provisions of this act.

### 2072. Does not apply to private fish ponds or streams.

SEC. 14. Nothing in this act shall be so construed as to prohibit the taking of trout or other fish, by the rightful owners thereof or by their agents in any manner, at any season whatever, from the waters of private ponds by them constructed or maintained for the purpose of raising trout or other fishes; nor to prohibit the sale of trout or other fishes or of their fry or ova from private hatcheries lying wholly or in part within the State of Nevada.

### 2073. Fish and eggs may be taken for scientific purposes.

SEC. 15. Nothing in this act shall be so construed as to hinder or to prevent or prohibit the taking of trout or of other fishes, or of their fry, eggs or ova, at any time, in any manner or by any means or in any suitable place or location by the Nevada fish commission or by their agents or by anyone whom they may authorize, for the purposes of breeding or propagation, or of scientific study or investigation.

### 2074. Repeal.

SEC. 16. All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

### 2075. Unconstitutionality of portion not to affect rest.

SEC. 17. If in connection with any prosecution for violation of any of the provisions of this act, or in any other way, any section of this act shall be hereafter adjudged unconstitutional, or inoperative, or invalid and of no force and effect, then the unconstitutionality, invalidity, or inefficiency of said section shall not extend to any other section or sections of this act which are not so adjudged unconstitutional, inoperative, invalid, or inefficient, nor to the constitutionality, validity, or the force and effect of the entire act.

*An Act providing for the establishment of private hatcheries for artificial propagation, culture and maintenance of food fishes, for their regulation and licensing, and for the sale, shipment, transportation and disposition of fish raised and propagated therein or thereby, and prescribing a penalty for the violation of the provisions thereof.*

Approved March 20, 1911, 279

2076. May be established.

2078. Restrictions regarding sales.

2077. Products may be sold.

2079. County license for hatchery.

2080. License for dealers.

2081. Invoice with every sale—Form of.

2082. Invoice attached to shipment.

2083. False invoice illegal—Proprietors to report.

2084. Penalty.

2076. May be established.

SECTION 1. Any person may establish a private fish hatchery for the artificial propagation, culture and maintenance of food fishes; and any person lawfully conducting any such private fish hatchery, and engaged in the artificial propagation, culture and maintenance of fishes, may take them in his own enclosed waters wherein the same are so cultivated and maintained, at any time and for the purposes herein mentioned and none other.

2077. Products may be sold.

SEC. 2. The products of such fish hatchery, fish spawn, fry and fish may be sold at any time of the year by such hatchery, or their then vendees, after having first complied with the terms of this act, and the regulations of the state fish commission in relation thereto.

Secs. 4482-4483.

2078. Restrictions regarding sales.

SEC. 3. No fish spawn, fry or fish from any private hatchery shall be sold under the terms of this act, unless location and plan of such hatchery be approved by the state fish commission, and the same duly licensed as a private hatchery.

2079. County license for hatchery.

SEC. 4. Each private fish hatchery, before it shall be entitled to the benefits of this act, shall pay to the county treasurer of the county wherein such hatchery is located, an annual license fee of ten dollars (\$10), and such fee shall be credited to the game and fish preservation fund of such county.

2080. License for dealers.

SEC. 5. Every person, firm or corporation engaged in the business of buying and selling, packing and preserving, or otherwise dealing in trout or other food fishes, obtained from private hatcheries of this state, shall procure a license for such business from the fish and game warden of the county wherein such selling, packing, and preserving is done, and shall pay an annual license fee of \$2.50.

2081. Invoice with every sale—Form of.

SEC. 6. When the proprietor of any licensed fish hatchery shall sell or dispose of any fish as herein provided, he shall at the same time deliver to the purchaser or donee or attach thereto an invoice signed by the proprietor, or his agent, stating the number of his license, and the name of such hatchery, the date of disposition, the kind, and as near as practicable the weight and number of such fish, the name and address of the purchaser, consignee or donee. Such invoice shall authorize transportation and use for six days after this date, and shall be substantially in the following form:

STATE OF NEVADA, DEPARTMENT OF FISH COMMISSION  
Private Hatchery Invoice

Name of hatchery, .....  
Number of license, ..... Date, ....., 191.....  
Kind and number of fish, .....  
Weight of same, ..... pounds.  
Name of consignee, .....  
Address of consignee, .....

This authorizes transportation within this state, possession and sale for six days after date, if attached to article.

By ....., Proprietor.  
....., Agent.

Such proprietor or his agent shall at the same time mail, postpaid, or otherwise deliver, a duplicate of such invoice to the county fish and game warden of the county in which such hatchery is located; *provided*, that no invoice shall be required in case of fish lawfully taken or killed in such private hatchery during the open season therefor, and within the quantity provided by law while in the possession of the person killing the same, during the open season and for five days thereafter.

#### 2082. Invoice attached to shipment.

SEC. 7. When any such fish for which an invoice is required is to be shipped by rail, express or other carrier, public or private, the invoice shall be securely attached thereto, or to the package containing the same, in plain sight and the same may then be lawfully carried and delivered within this state to the consignee named in such invoice. If such fish is held, exposed or offered for sale, or sold by the consignee, or kept in any storage, hotel, restaurant, cafe or boarding-house, such invoice shall be kept attached thereto as aforesaid until the same shall have been prepared for consumption. In case of a sale or disposal of a part of such fish, the vendor shall at the same time make a copy of such invoice and indorse thereon the date of sale, the number and kind of fishes disposed of, and the name of the purchaser, and sign and deliver the same to the purchaser or donee, who shall keep it attached as aforesaid until the fish is prepared for consumption, and the same shall have the same force and effect as the original invoice.

#### 2083. False invoice illegal—Proprietors to report.

SEC. 8. Any wilful misstatement in, or any omission of a substantial requirement from any invoice or copy thereof, shall render the same void and be deemed a violation of this act, and the possession of such fish shall be unlawful, and the possession of any fish without such invoice or a copy thereof, attached thereto, when so as above required, shall be unlawful. The proprietor of every private hatchery, licensed under the preceding sections, shall whenever required by the state fish commission, make and send to the commission a report showing as near as practicable the kind and number of the fish added and disposed of during the year preceding, and on hand at the date of the invoice.

#### 2084. Penalty.

SEC. 9. Any person or persons, or the agent of any corporation or company, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars (\$100), nor more than two hundred dollars (\$200), or by imprisonment in the county jail not exceeding one hundred days, or by both such fine and imprisonment.

*An Act providing for the protection and preservation of game, and repealing all acts and parts of acts in conflict therewith.*

Approved March 24, 1909, 213

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| 2085. Insectivorous, plume or song birds.   | 2093. Deer and antelope.                            |
| 2086. Pheasant, bob-white quail, partridge, or imported game birds.                 | 2094. Idem—Number limited.                          |
| 2087. Sagecock or sagehen.  | 2095. Possession of game unlawful.                  |
| 2088. Grouse or mountain quail.   | 2096. Catch limited—Night fishing prohibited.       |
| 2089. Wild duck, sandhill crane, plover, curlew, snipe, woodcock, swan, wild geese. | 2097. Penalties for violation.                      |
| 2090. Valley quail.   | 2098. County commissioners to pass ordinance, when. |
| 2091. Nests and eggs protected.   | 2099. Repeal—Transportation companies liable.       |
| 2092. Limit to number taken.  | 2100. Beaver.                                       |

**2085. Insectivorous, plume or song birds.**

SECTION 1. It shall be unlawful for any person, or persons, firm, company, corporation, or association, to kill, catch, destroy, wound, snare, trap, injure, or pursue with attempt to kill, capture, or destroy, any bluebird, thrush, mocking bird, oriole, humming bird, robin, meadow lark, or any other insectivorous, plume or song birds within this state.

**2086. Pheasant, bob-white quail, partridge, or imported game birds.**

SEC. 2. It shall be unlawful for any person or persons, firm, company, corporation or association, to take, kill, wound, trap, net, weir, destroy, injure, or pursue with attempt to take, kill, injure or destroy any pheasant, bob-white quail, partridge, or any other variety of imported game birds within this state.

**2087. Sagecock or sagehen.**

SEC. 3. It shall be unlawful for any person or persons; firm, company, corporation, or association, after the 1st day of October and before the 15th day of July of each and every year, to kill, catch, trap, cage, weir, destroy, injure or pursue with attempt to kill, catch, capture, injure or destroy any sagecock or sagehen within this state.

**2088. Grouse or mountain quail.**

SEC. 4. It shall be unlawful for any person or persons, firm, company, corporation or association, to kill, catch, destroy, injure, snare, weir, wound, or pursue with attempt to take, kill, injure or destroy, any grouse or mountain quail after the first day of January and before the first day of October of each year, within this state.

**2089. Wild duck, sandhill crane, plover, curlew, snipe, woodcock, swan or wild goose.**

SEC. 5. It shall be unlawful for any person or persons, firm, company, corporation or association, at any time after March 15th, and before September 15th, of each and every year, to kill, catch, net, cage, pound, weir, trap, or pursue with intent to catch, capture, injure or destroy, any wild duck, sandhill crane, plover, curlew, snipe, woodcock, swan or wild goose within this state.

**2090. Valley quail.**

SEC. 6. It shall be unlawful for any person or persons, firm, company, corporation or association, at any time after the 15th day of January, and before the 15th day of October of each and every year, to kill, catch, trap, cage, net, weir, pound, destroy, or pursue with attempt to catch, capture, injure or destroy, any valley quail within this state.

**2091. Nests and eggs protected.**

SEC. 7. It shall be unlawful at any and all times of the year for any person or persons, firm, company, corporation, or association, to disturb or destroy the nest of, or to take or remove from any nest of any wild fowl or game bird mentioned in this act, any egg or eggs of such wild fowl or game bird, or to have in their possession, or to sell or to offer for sale or exchange, except for scientific purposes, or for the purpose of propagation, any such eggs or nests, within this state.

**2092. Limit to number taken.**

SEC. 8. Nothing in this act shall be construed to prohibit any person from selling game killed by himself, but it shall be unlawful for any person or persons, firm, company, corporation or association, to purchase such game for the purpose of barter or sale, and it shall also be unlawful for any person

to kill or have in his possession a greater number than twenty ducks, fifteen mountain quail, ten sage birds, six grouse, fifteen valley quail, five plover, ten geese, three swan or fifteen snipe in any one day, within this state.

#### 2093. Deer and antelope.

SEC. 9. The open season for deer and antelope in this state shall be from September 15th, and until October 15th, of each and every year, and during that time it shall be unlawful for any person or persons, firm, company, corporation or association, within this state, to kill, catch, trap, wound or pursue, with an attempt to catch, capture, injure or destroy, any number of deer or antelope exceeding two for any one open season or year. It shall be unlawful to kill, catch, trap, wound or pursue, with attempt to catch, injure, kill or destroy, any antelope or any spotted fawn at any time.

#### 2094. Idem—Number limited.

SEC. 10. It shall be unlawful in this state for any person or persons to have in their possession any deer or antelope from and after November 1st of each year and until September 15th of the year next succeeding, and it shall be unlawful for any person or persons to sell or offer for sale or to trade or barter or offer to trade or barter any number of deer or antelope in excess of two during the time intervening between the 15th day of September and the 1st day of November of any year.

#### 2095. Possession of game unlawful.

SEC. 11. It shall be unlawful for any person or persons, firm, company, corporation, or association, to have in his or their possession, or to sell, buy, transport, or give away, or offer or expose for sale, or purchase from any person, whomsoever, either Indian or other person, any of the birds, animals, or wild game mentioned in this act during the season within the killing, injuring, pursuing, trapping, pounding, weiring, caging, selling, buying, transporting, giving away, offering or exposing for sale, or having in his or their possession is herein prohibited; *provided, however*, that nothing in this act shall be so construed as to prohibit any resident person or persons, firm, company, corporation or association, from taking (upon a written permit from the state board of fish and game commissioners) any bird, animal, or fowl or the nest or eggs of any bird or fowl for the purpose of propagation or domestication or for scientific purposes.

#### 2096. Catch limited—Night fishing prohibited.

SEC. 12. Catch of trout or black bass not to exceed twenty (20) fish in any one day by any one person. Night fishing or night hunting prohibited. Fishing season March 30th to September 15th.

This section not covered by title, and probably repealed by acts 1911, 61, secs. 2059-2075, except as to "night hunting."

#### 2097. Penalties for violation.

SEC. 13. Any person or persons, firm, company, corporation, or association, or common carrier, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five (25) dollars, nor more than five hundred (500) dollars, or imprisoned in the county jail in the county where the conviction is had for any term not exceeding six months, or by both such fine and imprisonment. It shall be no defense in the prosecution for the violation of any of the provisions of this act, that the animals or birds were taken or killed outside of the State of Nevada; nor shall it be any defense in the prosecution for the violation of any of the provisions of this act that the animals or birds were taken or killed by one other than he in whose possession said animals or birds were found; nor shall it be any defense in the

prosecution for the violation of any of the provisions of this act that the person did not know that hunting was not allowed upon the premises on which he was trespassing.

**2098. County commissioners to pass ordinance, when.**

SEC. 14. It shall be the duty of the board of county commissioners of any county within this state, when petitioned by fifty taxpayers within their county, for the protection of any variety of birds, fowls or animals, to draw and pass an ordinance protecting said birds, fowls or animals for the length of time as prayed for in the petition and to fix a penalty for the violation of said ordinance; said penalty to be in conformity with section 13 of this act. When said ordinance is properly drawn and signed by the chairman of the board of county commissioners it shall be published in some newspaper published in the county for the period of four issues, and thereafter it shall be in full force and effect.

**2099. Repeal—Transportation companies liable.**

SEC. 15. All acts and parts of acts in conflict with this act are hereby repealed. Every railroad company, express company, transportation company, or other common carrier, their officers, agents, and servants, and every other person who shall transport, carry, or take out of the state, or who shall receive for the purpose of transporting, or carrying from this state, any deer, buck, doe or fawn, or any mountain sheep or antelope, or any quail, sage chicken, prairie chicken, grouse, wild ducks, or goose, or any other bird or animal mentioned in this act, shall be guilty of a misdemeanor.

**2100. Beaver.**

SEC. 16. It shall be unlawful for any person or persons, firm, company, corporation or association, to catch, kill, destroy, trap, net, weir or cage any beaver within this state before the first day of April, A. D. 1920.

*An Act to regulate and license the hunting of game birds and animals, and the taking or catching of fish, and to provide revenue therefrom for game and fish preservation and protection, and to prescribe a penalty for the violation thereof, and to make an appropriation for the purpose of carrying out the objects of this act.*

Approved February 26, 1909, 38

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| 2101. May procure license.                | 2107. Lost license, how restored.            |
| 2102. Officers to issue license.          | 2108. Must show license—Penalty for failure. |
| 2103. Price of licenses.                  | 2109. Punishment.                            |
| 2104. County clerks to keep record.       | 2110. County money appropriated.             |
| 2105. License good for one year.          | 2111. Exceptions.                            |
| 2106. Disposition of money from licenses. | 2112. Where license shall be procured.       |

**2101. Must procure license.**

SECTION 1. Every person in the State of Nevada, who hunts, pursues or kills any of the wild birds or animals, or who takes or catches any of the fishes that are protected by the laws of this state, without first procuring a license therefor, as provided in this act, is guilty of a misdemeanor.

**2102. Officers to issue license.**

SEC. 2. Licenses granting the privilege to hunt, pursue or kill wild birds or animals, or to take or catch fish during the open season as fixed by law, shall be issued and delivered, upon application, by the county clerk of any of the counties of this state, or by the fish and game warden of any of the counties of this state, which license shall have stamped thereon the words "Hunting License No \_\_\_\_\_, State of Nevada. Expires February 28, 19\_\_\_\_," with the registration number and appropriate year stamped therein. Said licenses shall be prepared and furnished to the county clerk by the board of

county commissioners, which board shall take receipt therefor by number and quantity from the county clerk, and the county clerk shall be responsible therefor and shall account for the same to the auditor of said county every three months after receipt thereof.

### 2103. Price of licenses.

SEC. 3. The license herein provided for shall be issued as follows:

First—To any citizen of the United States who is a bona fide resident of the State of Nevada, upon the payment of one dollar.

Second—To any citizen of the United States, not a bona fide resident of the State of Nevada, upon the payment of ten dollars.

Third—To any person not a citizen of the United States, upon the payment of twenty-five dollars.

### 2104. County clerk to keep record.

SEC. 4. Every person applying for and procuring a license as herein provided, shall give to the county clerk his name and resident address, which information shall be by the clerk or board entered in a book kept for that purpose, and provided by said board of county commissioners, together with a statement of the date of issuance, the number of license issued to such person and description of such person, by age, height, race, and color of the eyes and hair.

### 2105. License good for one year.

SEC. 5. All licenses issued as herein provided shall be valid, and shall authorize the person to whom issued, to hunt, pursue and kill game birds and animals and to take or catch fish during the open season fixed therefor by law, on and from the first day of March, 1909, until the date of expiration stamped thereon, but no license shall continue in force for a period longer than one year.

### 2106. Disposition of money from licenses.

SEC. 6. All moneys collected for licenses as provided herein, shall be paid into the county treasury to the credit of the game and fish preservation fund, which fund is hereby created, and the moneys in said fund shall be applied to the payment of the expenses incurred in the prosecution of offenders, and for the revenue to pay fish and game wardens and deputies when necessary to hire deputy fish and game warden or wardens.

### 2107. Lost license, how restored.

SEC. 7. Not more than one license shall be issued to any one person for the same fiscal year, except upon an affidavit by the applicant that the one issued has been lost or destroyed, and no license issued as herein provided shall be transferable, or used by any other person than the one to whom it was issued.

### 2108. Must exhibit license; penalty for failure.

SEC. 8. Every person having a license as provided herein, who while hunting or fishing refuses to exhibit such license upon the demand of any officer authorized to enforce the fish and game laws of the state, or any other peace officer of the state, shall be guilty of a misdemeanor, and every person lawfully having said license, who transfers or disposes of the same to another person to be used as a hunting or fishing license, shall forfeit the same.

### 2109. Punishment.

SEC. 9. Every person violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment in the county jail for a term of not less than five, nor more than fifty days, or by both such fine and imprisonment.

**2110. County money appropriated.**

SEC. 10. There is hereby appropriated out of any moneys in the county treasury, not otherwise appropriated, the sum of seventy-five dollars for the purpose of carrying out the provisions of this act, to be used by the board of county commissioners for the printing and binding of suitable books and blanks required herein, and for the purchase of metal licenses. The county auditor is hereby directed to draw his warrant for said amount in favor of said board of county commissioners at such times and in such amounts as may be needed from time to time, and the treasurer is hereby directed to pay the same.

**2111. Exceptions.**

SEC. 11. The provisions of this act shall not apply to any person who, on his own land, during the open season, hunts, pursues or kills any of the wild birds or animals, or takes or catches any of the fish protected by the laws of this state, nor to women or to boys under fourteen years of age.

**2112. Where license shall be procured.**

SEC. 12. The license herein provided for shall be procured from the county of which the applicant is a resident, and may be used in any county in the State of Nevada. Nonresidents of the state may procure a license in any county.

*An Act to prevent the shipment of wild game from this state.*

Approved February 16, 1899, 21

**2113. Penalty.**

SECTION 1. Every railroad company, express company, transportation company, or other common carrier, their officers, agents and servants, and every other person who shall transport, carry or take out of this state, or who shall receive for the purpose of transporting from the state, any deer, buck, doe or fawn or any mountain sheep or antelope, or any quail, sage chicken, prairie chicken, grouse, dove, wild duck or goose, except for purposes of propagation, shall be guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section, shall be fined in a sum not less than twenty (\$20) dollars nor more than five hundred (\$500) dollars or be imprisoned in the county jail not less than ten nor more than ninety days or by both such fine and imprisonment.

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## FORESTRY

To provide for protection of timbered lands, sections 2114-2117.

To preserve young forest trees, sections 2118-2120.

*An Act to provide for the protection of timbered lands.*

Approved March 3, 1871, 113

**2114. Unlawful to cut or remove timber.**

SECTION 1. It shall be unlawful for any person or corporation to cut down or remove, or cause to be cut down or removed, any wood, timber, or trees on or from any land in this state, to which land this state, or any person or corporation has or may have an inchoate title, or any title less than fee simple, and the provisions of this section shall apply to the owner of such inchoate title, or title less than fee simple, the same as to other persons and corporations.

### 2115. Cutting timber, misdemeanor.

SEC. 2. If any owner of an inchoate title to land in this state, or title to such land less than fee simple, or any other person or corporation, shall violate the provisions of the first section of this act, such person or corporation shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars.

### 2116. Cutting timber on state land, penalty.

SEC. 3. If any person shall cut down or remove any tree, wood, or timber from any land in this state, to which this state has a fee simple title, or an inchoate title, by reason of grant from the United States, such person shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine as provided in section 2 of this act.

### 2117. Issue of fact as to title to real estate—Timber for domestic purposes.

SEC. 4. If an issue of fact be joined, as to the title to real estate, in any action under the provisions of this act, such action shall thereupon be certified by the justice of the peace in whose court it may be pending to the district court of the same county, and therein tried and finally determined as if the same had been originally commenced therein; *provided*, that nothing in this act shall be so construed as to affect or impair the provisions of an act entitled "An act prescribing the mode of maintaining and defending possessory actions on public lands in this state," approved March ninth, one thousand eight hundred and sixty-five [see sec. 5849, et seq.]; *and provided further*, that nothing in this act contained shall be so construed as to prevent the cutting and using by actual settlers upon such lands as are herein specified of such wood as may be necessary for domestic uses, or of such timber as may be necessary for making permanent improvements upon such lands.

### *An Act to preserve young forest trees.*

Approved March 16, 1903, 176

### 2118. Misdemeanor to sell certain kinds of wood.

SECTION 1. It shall be a misdemeanor to sell or offer for sale any live or growing wood obtained from any common, white, yellow, or sugar-pine tree, or any fir, tamarack, spruce, or flat-leaved cedar tree less than one foot in diameter two feet from the ground.

### 2119. Object, to protect water supply.

SEC. 2. The object of this act is to protect the second or later growth of wood and timber on lands in this state, and it shall be [so] construed, in order that the natural water supply of the state may be preserved and its young forests saved from wanton destruction.

### 2120. Penalty.

SEC. 3. Any person convicted of the violation of any provision of this act shall be punished by a fine of not to exceed five hundred dollars (\$500), or imprisonment in the county jail for a period of not to exceed six months, or by both such fine and imprisonment.

# FRANCHISES

To provide for the sale of street railway franchises in towns, sections 2121-2128.

Concerning the granting of franchises by boards of county commissioners, sections 2129-2141.

See, also, Corporations, secs. 1261-1264.

*An Act to provide for the sale of street railway franchises in the towns of this state, and matters properly relating thereto.*

Approved March 19, 1901, 79

2121. Street railway franchises.

2122. Proposals to be advertised.

2123. Proceeds of sale of.

2124. Proviso.

2125. Streets to be kept in good repair.

2126. To furnish bond.

2127. Cost of advertising—How paid.

2128. Duration of franchise.

## 2121. Street railway franchises.

SECTION 1. The county commissioners, town trustees, aldermen, supervisors or other authorities directly entrusted with the management of affairs of any town or city in this state, shall be and hereby are authorized to sell to the highest responsible bidder any street railway franchise through and over any street or streets of such town, according to the provisions of section 2 of this act.

## 2122. Proposals to be advertised.

SEC. 2. Whenever any person, persons, association, company or corporation shall apply to the proper authorities of any town in this state, for a franchise to construct and operate a street railway within the limits of such town, then the said authorities, whether a board of aldermen, town trustees, county commissioners or supervisors, shall advertise in full the proposed franchise, offering the same for sale to the highest responsible bidder. The advertisement of said franchise shall be published for a period of not less than ninety days, and no privilege shall be conveyed or granted by the said town authorities to any successful bidder, unless the same privilege shall have appeared in full in the advertisement for bids, as an essential part thereof. Beside the essential and all features of the proposed franchise, said advertisement shall contain a statement naming the day upon which all bids for said franchise will be opened, and shall state in detail and specifically the street or streets over and through which the proposed street railway is to run, so that the entire course and extent thereof shall be clearly shown; and no franchise shall be given or issued which has not been so specifically and fully described and advertised.

## 2123. Proceeds of sale of.

SEC. 3. The entire proceeds of the sale of such franchise as may be sold, in accordance with the provisions of this act, shall be devoted to and expended for the purpose of improving and paving the streets of said town.

## 2124. Proviso.

SEC. 4. No franchise granted according to the provisions of this act shall be construed so as to in any way interfere with the ordinary and necessary procedure of the town authorities in establishing or conducting any of the essential features of town improvement or the maintenance of sewers, water and gas pipes, cross walks, paving or other public convenience.

## 2125. Streets to be kept in good repair.

SEC. 5. Every purchaser of a franchise, according to the provisions of this act, and every person, persons, company, association or corporation, oper-

ating the street railway under said franchise, shall maintain and keep in repair, equally as good as the adjoining portions of the street, immediately surrounding or including said track, that portion of the street included between the rails of said track and also for a distance of two feet outside of said track, on each side thereof.

#### 2126. To furnish bond.

SEC. 6. Every person, persons, company, association or corporation, purchasing a franchise under the provisions of this act, shall furnish a good and sufficient bond to faithfully carry out the provisions under which the franchise is purchased.

#### 2127. Cost of advertising, how paid.

SEC. 7. The cost of advertising according to the provisions of this act shall be paid by the successful bidder, but the first applicant for the franchise must deposit with the proper town officials a sum sufficient to pay the cost of advertising as herein provided, and any other necessary incidental expense, which sum so deposited shall be returned to the first applicant in case some other bidder is successful and gets the franchise.

#### 2128. Duration of franchise.

SEC. 8. No franchise shall be given under the provisions of this act for a period longer than twenty years.

*An Act concerning the granting of franchises by boards of county commissioners, prescribing the terms under which said franchises shall be granted, and repealing certain acts pertaining thereto, and allowing corporations, associations and persons having franchises obtained under other laws of this state to obtain the benefits of this act, and providing for other matters properly connected therewith.*

Approved March 23, 1909, 207

2129. Certain franchises, when granted.

2130. Mode of application for—Duration.

2131. Petition—Advertisement.

2132. Objections, how heard.

2133. Petition, when granted.

2134. Guarantee required.

2135. Portion of profits to school fund.

2136. Grantee to submit statement.

2137. Details of construction.

2138. Eminent domain.

2139. Other acts also govern.

2140. Certain acts repealed—Proviso.

2141. Certain act not repealed.

#### 2129. Certain franchises, when granted.

SECTION 1. The board of county commissioners of any county in this state is hereby authorized and empowered to grant to any person, company, corporation, or association the franchise, right, and privilege to construct, install, operate, and maintain street railways, electric light, heat, and power lines, gas and water mains, telephone and telegraph lines, and all necessary or proper appliances used in connection therewith or appurtenant thereto, in the streets, alleys, avenues, and other places in any unincorporated town or city in such county, and along the public roads and highways of such county, when the applicant therefor shall comply with the terms and provisions of this act.

#### 2130. Mode of application for—Duration.

SEC. 2. Any person, company, corporation or association desiring such franchise, right or privilege for any purpose specified in section 1 of this act shall file with the board of county commissioners of the county wherein such franchise, right or privilege is to be exercised, an application in writing which shall contain and set forth: First, the name of the applicant and the time for which said franchise, right or privilege is desired, not exceeding twenty-five years. Second, the places where such franchise, right or

privilege is to be exercised, and, if in any unincorporated town or city, the streets, avenues, alleys and other places through, over, under or along which such franchise, right or privilege is sought. Third, if such application shall be for a street railway, it shall contain a designation of the route of the proposed line in any such county, and shall specify the width of ground desired to be included in its right of way. Fourth, a map or plat correctly showing and delineating, so far as practicable, the proposed route, or right of way of any such street railway, light, heat or power, telegraph or telephone lines, and the places where such gas or water mains shall be laid or installed.

#### 2131. Petition—Advertisement.

SEC. 3. An applicant shall also file with such application and as a part thereof, if such franchise, right or privilege is to be exercised within any unincorporated town or city in such county, a petition in writing, signed by a majority of the resident taxpayers of such unincorporated town or city. Said taxpayers must be residents and owners of real estate situated in said county, and paying taxes upon said real estate; *provided*, that if such street railway, electric light, heat, and power lines, gas, and water mains, telegraph and telephone lines shall not pass through any unincorporated town, or city, no petition need be filed with the said application for the franchise. Upon receipt of such application for such franchise, right or privilege, accompanied by a deposit sufficient in amount to cover the cost of publication, to be fixed by said board of county commissioners, it shall be the duty of such board to cause such application to be published once a week for four consecutive weeks in some newspaper of general circulation, published in such county nearest the place where such application shall take effect, if such there be, and if not, then such application shall be posted for a like period by the county clerk of such county in three public places therein, together with a notice specifying a day not later than ten days after the completion of such publication, or, at the next regular meeting of such board after the completion of such period of publication, when objections to the granting of such franchise, right or privilege as applied for, shall be heard.

#### 2132. Objections, how heard.

SEC. 4. On the day specified in such notice for the hearing thereof, or at the next regular meeting of such board thereafter, all objections to the granting of such franchise shall be presented to said board of county commissioners. The board shall proceed at once with the consideration of the application, but may adjourn the hearing from time to time, not exceeding in all thirty (30) days, until a final decision is reached.

#### 2133. Petition, when granted.

SEC. 5. If upon full consideration of all the facts the board of county commissioners determine that a majority of the resident taxpayers, as hereinbefore provided, have signed said petition and desire said franchise allowed, they shall fix the terms and prescribe the conditions under which said franchise is to be granted, the character or kinds of service to be rendered, the maximum rates to be charged for the service, and such other matters properly connected therewith; and shall thereupon grant such franchise subject to said terms and conditions.

#### 2134. Guarantee required.

SEC. 6. The county commissioners at the time of granting any such authority, franchise and right of way, shall require the applicant to enter into an undertaking to the county in a sum to be determined by the board of county commissioners, with surety or sureties approved by such board, conditioned that such applicant shall commence active construction of such telephone, telegraph, light, heat or power lines, the laying of gas or water mains,

or such street-car system, for which such franchise, right or privilege is granted, within sixty days from the date of the granting of such franchise, right or privilege, and prosecute the construction thereof to completion with due diligence; failing to comply with the conditions of such undertaking to pay into the treasury of the county to which such undertaking is given the sum of money mentioned therein and forfeit all rights to such franchise, right or privilege.

#### 2135. Certain portion of profits to school fund.

SEC. 7. Every applicant for a franchise for any of the purposes mentioned in section 1 of this act, shall, within ten days after such franchise is granted, file with the county recorder of such county an agreement properly executed by the grantee of such franchise, right or privilege to pay annually on the first Monday of July of each year to the county treasurer of the county wherein such franchise, right or privilege is to be exercised, for the benefit of the school fund of such county, two per cent of the net profits made by such grantee in the operation of any public utility for which such franchise is granted, and no power, function, right or privilege shall be exercised until such agreement shall be filed.

#### 2136. Grantee to submit statement.

SEC. 8. The grantee of any franchise, right or privilege secured under the terms and provisions of this act shall file annually, on or before the first Monday of March in each year, with the assessor of the county wherein it is engaged in business, under such franchise, right or privilege, an affidavit made by its president and secretary setting forth the gross receipts and expenses for the preceding year, and the net profits, if any, for the same period.

#### 2137. Details of construction.

SEC. 9. Every person, company, corporation or association receiving a franchise under the provisions of this act shall provide a plant with all necessary appurtenances of approved construction for the full performance of his, her, their or its franchise duties, rights and obligations, and for the needs, comfort and convenience of the inhabitants of the various unincorporated towns and cities, county or place to which such franchise relates; shall keep such plants and appurtenances, including all tracks, cars, poles, wires, pipes, mains and other attachments in good repair, so as not to interfere with the passage of persons or vehicles, or the safety of persons or property. The board of county commissioners shall, when granting such franchise have authority to so fix and direct the location of all tracks, poles, wires, mains, pipes and other appurtenances upon the public streets, alleys, avenues and highways as to best serve the convenience of the public, and such board shall likewise have authority to change the location of any such appurtenances and permit, upon proper showing, all necessary extensions thereof when the interest or convenience of the public shall so require. All poles, except poles from which trolley wires are suspended for street-car lines, from which wires are suspended for electric railroads, power, light or heating purposes within the boundaries of unincorporated towns and over public highways shall not be less than thirty (30) feet in height, and the wires strung thereon shall not be less than twenty-five feet above the ground, and every person, company, association or corporation operating a telephone, telegraph or electric light, heat or power line, or any electric railway line, shall, with due diligence, provide itself, at its expense, a competent electrician to cut, repair and replace wires in all cases where such cutting or repairing or replacing is made necessary by the removal of buildings or other property through the public streets or highways. And no person, company, corporation or association shall be granted an exclusive franchise nor shall any

board of county commissioners have authority to grant a franchise in such manner or under such terms or conditions as to hinder or obstruct the granting of franchises to other grantees, or in such manner as to obstruct or impede reasonable competition in any business or public service to which this act applies.

### 2138. Eminent domain.

SEC. 10. If the owner of any real property upon or over which the proposed line of the grantee of the franchise is to run, shall object to the use of his said property for such purpose, the land reasonably necessary therefor may be condemned in the manner prescribed by law for the condemnation of land for the public use, such condemnation to be in a proceeding brought for the purpose by the grantee of the franchise. If any property, real or personal, abutting or adjacent to the line of the right of way of said franchise shall be injured or damaged by the running or operation of the said line under said franchise, the grantee of the franchise shall be liable, in an action at law, for all such injuries and damages, due to the negligence of the grantee.

### 2139. Other acts also govern.

SEC. 11. All persons, companies, associations or corporations in the business of conducting street railways, telephone, telegraph, electric light and power lines, gas or water mains in any of the cities, towns or places mentioned in this act under the provisions of any other act providing for the granting of such franchises, and who or which has not fully complied with the provisions of the act under which his, her, their, or its franchise was obtained, may, nevertheless, have and enjoy all the privileges and benefits of this act; *provided*, that such person, company, association or corporation shall, within six months after the passage of this act, file in the office of the secretary of state, and in the office of the county recorder of the county in which such person, company, corporation or association maintains its principal office or place of business, a duly executed and acknowledged acceptance of the terms, conditions and provisions of this act, which acceptance, in case of a corporation, shall be evidenced by a duly attested or certified copy of a resolution of its board of directors; *provided*, that nothing herein contained shall be construed to relieve any such person, company, association or corporation of any duty or obligation provided in any act or contained in any franchise under which any person, company, association or corporation is now operating.

### 2140. Certain acts repealed—Proviso.

SEC. 12. An act granting to persons and corporations the right to supply electric power, heat and light to the inhabitants of the counties, cities and counties, cities and towns of the State of Nevada, and granting to such persons and corporations the right to construct and maintain poles and wires on the county roads and highways and in the streets of said cities and counties, cities and towns of this state, and to conduct electricity over said wires, and provide for the punishment of obstruction, hindrance or damage thereto, approved March 2, 1901, the same being chapter 25 of the Laws of 1901; also an act entitled "An act to define the rights and responsibilities of owners of electric light lines and power lines in the State of Nevada," approved March 29, 1907, the same being chapter 190 of the Laws of 1907; also "An act to empower the county commissioners of the several counties of the State of Nevada to grant a right of way for the construction of telephone, telegraph and electric power lines, underground pipe lines, street-car lines and other railway lines across and along the public roads and highways of the State of Nevada, and matters relating thereto," approved March 29, 1907, the same being chapter 196 of the Laws of 1907, and all other acts and parts of acts conflicting with the provisions of this act are hereby repealed;

*provided, however,* that neither this repealing clause nor any other provision of this act shall be so construed as to deprive the railroad commission of Nevada, or any public service commission of this state now existing or hereafter created, of full power to regulate and control, as prescribed by law, the service, practices, regulations and charges subject to the maximum charges fixed by the board of county commissioners upon granting the franchise, and subject also to the provisions of section 7 of this act, of all public utilities receiving franchises as herein provided.

#### 2141. Certain act not repealed.

SEC. 13. This act shall not be construed in any way to repeal any portion of an act entitled "An act concerning franchises for furnishing electric light, heat, and power," approved March 20, 1909.

## HOMESTEADS

*An Act to exempt the homestead and other property from forced sale in certain cases.*

Approved March 6, 1865, 225

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| <p>2142. Amount exempt—Except purchase money—Mortgages—Selection of property—Held as joint tenants.</p> <p>2143. Exemption not extend to liens—Abandonment.</p> <p>2144. Appraisement when value exceeds amount exempt—Excess to be sold—Entire premises to be sold, when.</p> | <p>2145. To revert in case of death—Proviso—Exemption and descent to heirs—Litigation.</p> <p>2146. How to convey when wife is insane.</p> <p>2147. Idem—Court may make special order.</p> <p>2148. Idem—Appeal allowed.</p> <p>2149. Property not exempt from sale for taxes.</p> <p>2150. Regarded as gold coin.</p> |
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#### 2142. Amount exempt—Except purchase money—Mortgages—Selection of property—Held as joint tenants.

SECTION 1. The homestead, consisting of a quantity of land, together with the dwelling-house thereon and its appurtenances, not exceeding in value five thousand dollars, to be selected by the husband and wife, or either of them, or other head of a family, shall not be subject to forced sale on execution, or any final process from any court, for any debt or liability contracted or incurred after November thirteenth, in the year of our Lord one thousand eight hundred and sixty-one, except process to enforce the payment of the purchase money for such premises, or for improvements made thereon, or for legal taxes imposed thereon, or for the payment of any mortgage thereon, executed and given by both husband and wife, when that relation exists. Said selection shall be made by either the husband or wife or both of them, or other head of a family, declaring their intention in writing to claim the same as a homestead. Said declaration shall state when made by a married person or persons that they or either of them are married, or if not married, that he or she is the head of a family, and they or either of them, as the case may be, are, at the time of making such declaration, residing with their family, or with the person or persons under their care and maintenance, on the premises, particularly describing said premises, and that it is their intention to use and claim the same as a homestead, which declaration shall be signed by the party or parties making the same, and acknowledged and recorded as conveyances affecting real estate are required to be acknowledged and recorded; and from and after the filing for record of said declaration, the husband and wife shall be deemed to hold said homestead as joint tenants; *provided,* that if the property declared upon as a homestead be the

separate property of either spouse, both must join in the execution and acknowledgment of the declaration; and if such property shall retain its character of separate property until the death of one or the other of such spouses, then and in that event the homestead right shall cease in and upon said property, and the same belong to the party (or his or her heirs) to whom it belonged when filed upon as a homestead; *and, provided further*, that tenants in common may declare for homestead rights upon their respective estates in lands, and the improvements thereon; and hold and enjoy homestead rights and privileges therein, subject to the rights of their cotenants, to enforce partition of such common property as in other cases of tenants in common. *As amended, Stats. 1879, 140.*

For constitutional provisions, see sec. 288, ante.

Upon death of husband, widow or children entitled to remain in possession of homestead and have same set apart for them. See secs. 5956, 5957.

The homestead right is purely statutory, not existing at common law.

If a declaration of homestead is filed on community property by either spouse, the homestead vests in the survivor on the death of either, and the court must set aside the homestead in community property, even though it was not declared during the life of a deceased spouse; the property being exempt from debts of the surviving spouse or sale under execution.

Stats. 1861, c. 55, regulating the settlement of estates, provided in sec. 123 for the setting aside of the homestead to the widow and minor children, and sec. 126 provided that if there was no law in force exempting property from execution certain property should be set aside, including the homestead, as defined in that section. The homestead act of 1865 (Stats. 1864-65, c. 72), sec. 1, as amended in 1879 (Stats. 1879, c. 131) provided that if the property declared a homestead be separate property both must join in the declaration, and if it remain separate property until the death of one spouse homestead rights therein shall cease, and it shall belong to the party or his heirs to whom it belonged when filed upon; and sec. 4 of the act of 1879 (Stats. 1879, c. 131) provided that no exemption to the surviving spouse should be allowed, where the homestead declaration had been filed upon the separate property of either spouse, as provided in sec. 1. Section 101 of the act of 1897 (Stats. 1897, c. 106) authorizes the court, upon the return of the inventory, to set apart for the use of decedent's family the homestead as designated by the general homestead law "now in force," whether designated as required by said law or not; and further provides that if the property declared upon to be separate property both spouses must join in the declaration, and if it remain separate property until the death of one the homestead rights shall cease, and it shall belong to the party to whom it belonged when filed upon. Sec. 126 of the act of 1861 was omitted from the act of 1897, and sec. 123, corresponding to sec. 101 of the latter act, was modified. Held, under sec. 101, construed with the other statutes, that a widow cannot have set apart to her as a homestead land which was her husband's separate property at his death, and had not been declared

on as a homestead; there being other heirs. In re Cook, 33 Nev. — (117 P. 27).

Under former act (Stats. 1861, 24) the following decision was rendered:

Erecting a house and residing therein with one's family dedicates that building as a homestead. It makes no difference that the house erected is large or suitable for a lodging-house and used for such purpose. Being once dedicated as a homestead, it can only be divested of that character by the joint deed of husband and wife. A married woman can only convey by following prescribed forms.

No conveyance by the husband alone, and no lease made by him, could divest the property of its character as a homestead.

The statute which requires the owner of the property to make his claim of homestead is merely directory, and if the husband does not make such claim and point out the homestead property to the officers when it was levied on, the wife may do so. *Goldman v. Clarke*, 1 Nev. 607-611.

Cited, In re Cooke, 33 Nev. — (117 P. 30).

The law exempts from forced sale a tract of land on which the homestead is located to the extent of \$5,000 in value.

It does not limit or prescribe the other uses to which the land may be put if one use it for a homestead.

It makes no difference that the land is divided by imaginary lines. The entire tract of land, if not exceeding above value, is protected.

When the homestead tract does not exceed above value, the husband cannot execute a mortgage on any portion thereof without the concurrence of the wife. *Clarke v. Sharon*, 1 Nev. 568-572.

See *Hawthorne v. Smith*, 3 Nev. 182 (93 A. D. 397), under sec. 288, ante.

See *Hopper v. Parkinson*, 5 Nev. 238, under sec. 288, ante.

A decree ordering the sale of property claimed by one of the partners as a homestead, will not be set aside where the evidence shows the partnership is insolvent; that the partner claiming the homestead is largely indebted to it; that partnership funds were used to considerable extent in building the house claimed as a homestead and there is some evidence that the land was purchased and improvements made with

money derived from that source alone. *Rhodes v. Williams*, 12 Nev. 21.

Repeals by implication are not favored, and are only held to have occurred in case of irreconcilable repugnancy between the latter and former enactments, where the two cannot stand together and there is no such repugnancy between probate act and the homestead act.

Under this act the homestead is exempted from liability for the debts of the owner, so long, at least, as he continues the head of the family, no matter whether the debts were contracted before or after the family relation commenced or before or after the homestead was dedicated.

The only effect of a written abandonment of a homestead was to invest the husband with the power to alienate the premises or subject them to some specific lien during the continuance of the abandonment. *Estate of Walley*, 11 Nev. 260, 263.

See, *Smith v. Stewart*, 13 Nev. 69, 74-76, under sec. 288, ante.

When a declaration of homestead is filed, the property is held by husband and wife as joint tenants, and upon the death of either the homestead property vests absolutely in the survivor. (*Beatty, J.*, dissenting.) *Smith v. Shrieves*, 13 Nev. 303, 309, 315-318, 327.

See, *Roberts v. Greer*, 22 Nev. 318, 332, under sec. 288, ante.

A homestead cannot be carved out of land

held and claimed by parties as copartners. *Terry v. Berry*, 13 Nev. 515.

A tenant in common cannot acquire a right of homestead to government land of which he is in possession for himself and his cotenants. *Reinhart v. Bradshaw*, 19 Nev. 255 (9 P. 245).

No person is entitled to the benefit of the homestead law without filing a written declaration claiming the premises as a homestead. *Lachman v. Walker*, 15 Nev. 422-424.

A homestead in fact, in the absence of a recorded declaration that it has been selected as such, can be mortgaged by the husband alone, without the consent of his wife. *Child v. Singleton*, 15 Nev. 461, 463, 464.

A wife who has filed a declaration of homestead on community property is not affected with notice of a prior recorded mortgage executed by her husband which misdescribes the property. *Adams v. Baker*, 24 Nev. 162, 169 (77 A. S. 799, 51 P. 252).

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 29.

The issue as to whether property sought to be set aside to a widow of a homestead is separate or community property, is raised by a petition showing that the husband was in possession when he died; the presumption being in favor of the community in such case. *State ex rel. Cook v. Langan*, 32 Nev. 176, 105 P. 568.

### 2143. Exemption not to extend to liens—Abandonment.

SEC. 2. Such exemption shall not extend to any mechanic's, laborer's, or vendor's lien lawfully obtained; but no mortgage or alienation of any kind, made for the purpose of securing a loan or indebtedness upon the homestead property, shall be valid for any purpose whatsoever; *provided*, that a mortgage or alienation to secure the purchase money, or pay the purchase money, shall be valid if the signature of the wife be obtained to the same, and acknowledged by her separately and apart from her husband; nor shall said homestead property be deemed to be abandoned without a declaration thereof in writing, signed and acknowledged by both husband and wife, or other head of a family, and recorded in the same office and in the same manner as the declaration of claim to the same is required to be recorded, and the acknowledgment of the wife to such declaration of abandonment shall be taken separately and apart from her husband; *provided*, that if the wife be not a resident of this state, her signature and the acknowledgment thereof shall not be necessary to the validity of any mortgage or alienation of said homestead before it becomes the homestead of the debtor.

That portion of above act, in so far as it provides that no valid mortgage for the purpose of securing a loan or indebtedness can be made by husband or wife upon their homestead, is unconstitutional. *Dunker v. Chedie*, 4 Nev. 378.

The provisions of art. 4 of Const. sec. 30

(ante, 288), expressly prohibits the legislature from exempting the homestead from forced sale upon a lien created by husband and wife for a loan or indebtedness. *Idem*.

See *Hawthorne v. Smith*, *Dunker v. Chedie*, *Hopper v. Parkinson*, under preceding section and ante, 288.

### 2144. Appraisement when value exceeds amount exempt—Excess to be sold—Entire premises to be sold, when.

SEC. 3. Whenever execution has been issued against the property of a party claiming said property as a homestead, and the creditor in such judgment shall make oath before the judge of the district court of the county in which such premises are situated, that the cash value of such premises

exceeds, to the best of the creditor's information and belief, the sum of five thousand dollars, it shall be the duty of such judge, upon notice to the debtor, to appoint three disinterested and competent persons as appraisers to estimate and report as to the value of such premises, and if the same exceeds said sum, whether they can be divided so as to leave the premises amounting to the homestead exemption without material injury. If it appear, upon such report, to the satisfaction of the judge, that the premises can be thus divided, he shall order the excess to be sold under execution. If it appear that the premises cannot be thus divided, and the value thereof exceeds the exemption allowed by this act, he shall order the entire premises to be sold, and out of the proceeds the sum of five thousand dollars to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution; *provided*, that no bid shall be received by the officer making the sale under five thousand dollars; *and provided, further*, that when the execution is against the husband, whose wife is living, the judge may, in his discretion, direct the five thousand dollars to be deposited in court, to be paid out only upon the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition of the husband as were the original homestead premises.

#### 2145. To revert in case of death—Proviso—Exemption and descent to heirs—Litigation.

SEC. 4. The homestead and all other property exempt by law from sale under execution, shall, upon the death of either spouse, be set apart by the court as the sole property of the surviving spouse, for his or her benefit and that of his or her legitimate child or children; and in the event of there being no surviving spouse, or legitimate child or children of either, then the property shall be subject to administration and to the payment of his or her debts and liabilities; *provided*, that the exemption made by this act and the act of which it is amendatory shall not extend to unmarried persons, except when they have the care and maintenance of minor brothers or sisters, or both, or of a brother's or sister's minor children, or of a father or mother, or of grandparents, or unmarried sisters living in the house with them; and in all such cases the exemption shall cease upon the cessation of the terms upon which it is granted; and upon the death of such unmarried person, the property shall descend to his or her heirs, as in other cases, unless disposed of by will, subject to administration and the payment of debts and liabilities; *and, provided further*, that no exemption to the surviving spouse shall be allowed in cases where the homestead declaration has been filed upon the separate property of either husband or wife, as provided in section 1 of this act; *provided*, nothing in this act shall be held or construed to in any manner affect existing rights or pending litigation; but all such rights and litigation shall be determined by the act before in force, and of which this act is amendatory, *As amended, Stats. 1879, 141.*

In construing the homestead law of this state: Held, that when a declaration of homestead is filed, the property is held by the husband and wife as joint tenants, and that upon the death of either the homestead property vests absolutely in the survivor. *Smith v. Shrieves, 13 Nev. 303.*

When no declaration has been filed upon the homestead property, no joint tenancy is created; in such case, if it was common property, one-half vested in the wife upon the death of the husband, and the other half vested in the minor children of said deceased and his wife. *Idem.*

See *Roberts v. Greer, 22 Nev. 318.*

See *Estate of Walley and Smith v. Shrieves*, under sec. 1 of this act.

The words "set apart" in this act and the probate law are used in the sense that property set apart should belong absolutely to the persons for whose benefit the statute made provision. *Powell v. Campbell, 20 Nev. 240 (19 A. S. 350, 2 L. R. A. 615, 20 P. 156).*

See *Roberts v. Greer, 22 Nev. 327*, under sec. 288, ante.

It is no objection to the allowance to a widow and minor children of a \$5,000 homestead out of property valued at \$7,500, that the order fails to define the boundary or extent of the premises necessary to reach the sum allowed, and fails to find whether they can be divided. *Quinn v. Quinn, 27 Nev. 176 (74 P. 5).*

**2146. How to convey when wife is insane.**

SEC. 5. If the wife of any owner of a homestead shall be insane, and such owner shall desire to convey such homestead, or any interest therein, he may petition the district court in which such homestead may be situated for license to convey the same, and such court, upon reasonable and not less than twenty days' notice of such petition to the kindred of such insane wife, residing in this state (which notice may be personal or by publication in some newspaper in the county, or directed by the court), may hear and determine such petition, and may license such owner to convey such homestead, or any interest therein, by his sole deed; which license shall be recorded in the office where such homestead is recorded, and thereupon such sole deed shall have the same operation as if such wife had been sane and joined in such deed.

**2147. Idem—Court may make special order.**

SEC. 6. On granting such license, such court may make such special order as to the investment or disposition of the funds derived from conveyance, as a court of chancery could do in the case of the funds of married women.

**2148. Idem—Appeal allowed.**

SEC. 7. On the hearing of such petition for license, any of such kindred may appear and be heard in the premises, and may appeal from any order made on the subject in the same manner provided for other appeals from decrees of the district court.

**2149. Property not exempt from sale for taxes.**

SEC. 8. Nothing in this act shall be so construed as exempting any real or personal property from sale for taxes.

**2150. Regarded as gold coin.**

SEC. 9. In all cases wherein an amount or sum is stated in this act the same shall be held and regarded as so much money in gold coin.

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## HOTELS AND LODGING-HOUSES

*An Act for the protection of proprietors of hotels and lodging-houses.*

Approved March 2, 1867, 69

2151. Proprietor may sell baggage.

2153. Sales, how made.

2152. Proceeds, how disposed of.

2154. Baggage heretofore left may be sold.

**2151. Proprietor may sell baggage.**

SECTION 1. Whenever any person shall leave a hotel or lodging-house, indebted to the proprietor or proprietors thereof, and shall remain absent for the period of six months, it shall be lawful for such proprietor or proprietors to sell, or cause to be sold, at public auction, any baggage or property of such person so indebted, or so much thereof as may be necessary to pay such indebtedness, expenses and charges of sale, which may have been left at such hotel or lodging-house by such person.

**2152. Proceeds, how disposed of.**

SEC. 2. All baggage or property, of whatever description, left at a hotel or lodging-house for the period of twelve months, may be sold at public auction by the proprietor or proprietors thereof, and the proceeds arising from such sale, after deducting the expenses and charges of sale and storage, shall be paid over to the county treasurer of the county in which such baggage or

property is left, to be held by him for the period of six months for the benefit of the owner thereof, at which time, if the same be not paid to the owner, or some person legally entitled to the same, it shall be transferred to the school fund of the county.

### 2153. Sales, how made.

SEC. 3. All sales made under the preceding sections of this act shall be made by a licensed auctioneer, or by some constable of the township in which such baggage or property may be left; *provided*, that no sale shall be valid unless a notice of such sale shall be posted up in three public places in such township for the period of twenty days immediately preceding the day of sale, giving a particular description of the property to be sold, the time and place of such sale, the name of the hotel or lodging-house at which such baggage or property may be left, the names of the owner or owners of such baggage or property, when known, and signed by such auctioneer or constable.

### 2154. Baggage heretofore left may be sold.

SEC. 4. It shall be lawful for the proprietor or proprietors of any hotel or lodging-house, at which any baggage or property may have heretofore been left, to cause the same to be sold under the provisions of this act; *provided*, that for the purposes of such sale, such baggage or property shall be considered as left at such hotel or lodging-house at the date of the passage of this act.

For sales of other unclaimed property, see secs. 530-542.

## HUSBAND AND WIFE

Defining the rights of husband and wife, sections 2155-2189.

To authorize married women to transact business as sole traders, sections 2190-2194.

Conveyance by married woman has same effect as if unmarried and acknowledged in same manner, sections 1018, 1037.

Conveyances by married women, sections 1036, 1037.

Rights in and transfer of stock of married women same as if femme sole, sections 1131-1227.

Constitutional provision, sec. 289.

### *An Act defining the rights of husband and wife.*

Approved March 10, 1873, 193

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| 2156. Community property.  | 2168. Earnings of wife and minor children while living separate. |
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2188. Acknowledgment, effect of.  
2189. Acts repealed—Saving clause.

### 2155. Separate property of wife—Of husband.

**SECTION 1.** All property of the wife, owned by her before marriage, and that acquired by her afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property; and all property of the husband, owned by him before marriage, and that acquired by him afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

The rights of husband and wife to property acquired before the adoption of the constitution, and before the passage of any statute providing for the separate or common property of husband and wife, must be governed by the common law. *Darrenberger v. Haupt*, 10 Nev. 43, 46.

The act of 1865, 239, did not operate retrospectively so as to affect the rights or interests of husband and wife to property previously acquired. *Idem*.

Prior to the adoption of this statute property rights are governed by the common law,

and all the property which was owned by the husband at the time of marriage is his separate property, and the rents, issues and profits of his separate estate do not become common property. *Lake v. Bender*, 18 Nev. 361 (4 P. 711).

Property which is exempt from execution by statute may be transferred by the owner free from any claim of his creditors, and a gift of such property by a husband to his wife is valid and cannot be defeated by his creditors. *Bailey v. Littell*, 24 Nev. 294, 305 (53 P. 308).

### 2156. Community property.

**SEC. 2.** All other property acquired, after marriage, by either husband or wife, or both, except as provided in sections 14 and 15 in this act, is community property.

In a complaint by a husband to recover a chose in action given in the name of his wife, but belonging to the community, it is sufficient for him, to show his right of action, to allege either that he is the owner or that it is common property, and even both allegations in the same complaint will not render it demurrable. *Crow v. Vansickle*, 6 Nev. 146.

The husband for the purpose of bringing suit upon choses in action which are common property, so far as the disposition of said property is concerned, is the sole owner, and he alone is the proper party to bring actions upon them. *Idem*.

In a suit on a note given in the name of a wife, though in fact the common property of herself and husband, she has no such interest as to make her a necessary or proper party. *Idem*.

In an action against husband and wife, where the wife recovered judgment for costs, but judgment was rendered against the husband for a sum in excess of the wife's judgment, it was proper to allow plaintiff's motion to discharge the larger judgment pro tanto by the smaller, since the parties are substantially the same. *Adams v. Baker*, 24 Nev. 375-378 (55 P. 362).

The presumption is that all property acquired during coverture belongs to the community, and the burden rests upon the per-

son claiming it as separate property to overcome this presumption by sufficient proof. *Lake v. Bender*, 18 Nev. 361, 404, 411 (4 P. 711).

It is not necessary to prove that property is the product of the joint efforts of husband and wife in order that it may be declared community estate. If it is acquired after marriage by the efforts of the husband alone and not by gift, grant or devise, or by exchange of his individual property or from the rents, issues or profits of his separate estates, it belongs to the community. *Idem*.

The profits of separate property which accrue mainly from the property rather than from the joint efforts of husband and wife, or either of them, belong to the owner of the property, although the labor and skill of one or both may have been given to the business; but if the profits come mainly from the efforts of their labor and skill, they belong to the community. *Idem*.

Where title to land purchased with money after marriage is taken in the name of the wife, the land is "community property" under the husband's control, so that an action for injury thereto may be maintained by him alone. *Malmstrom v. People's D. D. Co.*, 32 Nev. 246 (107 P. 98, 102).

Act cited, *In re Cook*, 33 Nev.—(117 P. 27).

### 2157. Inventory of separate property of wife recorded—Supplemental inventory.

**SEC. 3.** A full and complete inventory of the separate property of the wife, exclusive of money in specie, must be made out and signed by her,

acknowledged or proved in the manner required for the acknowledgment of proof of a conveyance of real property by an unmarried woman, and shall be recorded, if she be a resident of this state, in the office of the recorder of the county in which she resides; and if there be included in such inventory any real estate lying in any other county, also in the office of the recorder of such other county; or, if she be not a resident of this state, then in the office of the recorder of each county wherein any portion of the property, real or personal, is situated, located, or used; and from time to time thereafter, a further and supplemental inventory shall be made out, signed, acknowledged, or proved and recorded in like manner, of all other separate property afterwards acquired by the wife, excepting money whilst in specie and unconverted, and the rents, issues, and profits of her separate property, included in the original or any subsequent inventory, if the same be money, so long as it shall remain in specie and unconverted.

See secs. 1018, 1036, 1037.

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

### 2158. Filing to be notice.

SEC. 4. When the wife is a resident of this state, the filing for record of the inventory of her separate property in the office of the recorder of the county in which she resides is notice of her title to the same, except as to any real estate situate in another county; and as to such real estate, the filing for record of the inventory thereof, in the office of the recorder of the county wherein the same is situate, is notice of her title thereto. When the wife is not a resident of this state, the filing for record of the inventory of her separate property in the office of the recorder of the county wherein any portion of such property, real or personal, included in the inventory is situate, located, or used, is notice of her title as to all such property situate, located, or used in such county.

### 2159. Failure to file, effect of.

SEC. 5. When the wife is a resident of this state, the failure to file for record an inventory of her separate property in the office of the recorder of the county in which she resides, or the omission from the inventory, filed for record in such office, of any part of such property, except as to real estate situate in another county, is prima facie evidence, as between the wife and purchasers in good faith and for a valuable consideration from the husband, that the property of which no inventory has been so filed, or which has been omitted from the inventory, is not the separate property of the wife; and as to any real estate situate in another county, the failure to file for record an inventory thereof in the office of the recorder of the county wherein the same is situate, or the omission from the inventory filed for record in such office, of any part of such real estate, is prima facie evidence, as between the wife and such purchasers as aforesaid, that such real estate of which no inventory has been so filed, or which has been omitted from the inventory, is not her separate property. When the wife is not a resident of this state, the failure to file for record an inventory of her separate property in the office of the recorder of the county wherein any portion of such property is situate, located, or used, or the omission from the inventory filed in such office, of any part of such property, is, as to all such property situate, located or used in that county, of which no inventory has been so filed, or which has been omitted from the inventory, prima facie evidence, as between the wife and such purchasers as aforesaid, that the same is not her separate property.

### 2160. Husband to control community property.

SEC. 6. The husband has the entire management and control of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate; *provided*, that no deed

of conveyance, or mortgage, of a homestead as now defined by law regardless of whether a declaration thereof has been filed or not, shall be valid for any purpose whatever unless both the husband and wife execute and acknowledge the same as now provided by law for the conveyance of real estate. As amended, *Stats. 1897, 24.*

See *Adams v. Baker*, under secs. 2 and 13 of this act.

**2161. No estate in dower or by courtesy.**

SEC. 7. 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.

**2162. May hold as tenants in common.**

SEC. 8. A husband or wife may hold real or personal property as joint tenants, tenants in common, or as community property.

**2163. Wife to control her separate property.**

SEC. 9. The wife may, without the consent of her husband, convey, charge, incumber, or otherwise in any manner dispose of her separate property.

See secs. 1018, 1036, 1037.

The exception to the common-law disability of a married woman to contract or maintain a suit, in case of abandonment by her husband, does not apply except in case the abandonment is absolute and embraces the total renunciation of marital relations. *Beckman v. Stanley*, 8 Nev. 257.

The right of married women to alienate land in this state, whether their separate estate or community property, does not depend upon the common law, but upon our statutes; so that a wife's deed or mortgage, without her husband's joining in it, though he has abandoned her for years, is inoperative and void. *Idem.*

A married woman who holds the title to her separate property may execute a mortgage thereon in her own name. *Rickards*

*v. Hutchinson*, 18 Nev. 215, 222 (2 P. 52, 4 P. 702).

The assignment by a married woman of a note and mortgage upon real estate, the same being her separate property, as collateral security for the payment of her husband's debts, without any fraud or improper inducements, and with the intention of binding her separate estate, is a valid contract, and is enforceable in equity against her separate estate. *Cartan v. David*, 18 Nev. 325-329 (4 P. 61).

Married women having been granted the right to control their separate property, must assume the risks which ordinarily follow. Having the right to make contracts respecting their separate estates, they must be held liable to the same extent as other citizens. *Idem.*

**2164. Upon death of wife community property to go to husband except in abandonment.**

SEC. 10. Upon the death of the wife the entire community property belongs, without administration, to the surviving husband, except that in case the husband shall have abandoned his wife and lived separate and apart from her without such cause as would have entitled him to a divorce, the half of the community property subject to the payment of its equal share of the debts chargeable to the estate owned in community by the husband and wife, is at her testamentary disposition in the same manner as her separate property, and in the absence of such disposition goes to her descendants equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, goes to her other heirs at law, exclusive of her husband.

**2165. Upon death of husband, how disposed of—Homestead set apart—Property subject to debts of husband.**

SEC. 11. Upon the death of the husband one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his surviving children equally, and in the absence of both such

disposition and surviving children, the entire community property belongs without administration to the surviving wife, except as hereinafter provided, subject, however, to all debts contracted by the husband during his life that were not barred by the statute of limitation at the time of his death; *provided, however*, that the homestead set apart by the husband and wife, or either of them, before his death, and such other property as may be exempt by law from execution or forced sale, shall be set apart for the use of the widow and minor heirs, and if no minor heirs, for the use of the widow. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance and charges and expense of administration; *provided, however*, that if in the absence of said testamentary disposition the surviving wife and children, and in the absence of such children the wife shall pay or cause to be paid all indebtedness legally due from said estate, or secure the payment of the same to the satisfaction of the creditors of said estate, then and in such case the said community property shall not be subject to administration. *As amended, Stats. 1881, 103; 1883, 16.*

Upon the death of an intestate, without issue, leaving a widow and brothers and sisters, a distribution of one-half of the proceeds of real property belonging to the estate to the widow and one-half to the brothers and sisters was held correct under the rules of the common law. *Clark v. Clark*, 17 Nev. 124, 128 (28 P. 238).

The title to community property after a man's death is vested in the widow, subject to the payment of the debts, and if the widow pays all the indebtedness legally due from the estate, then the community property is not subject to administration. *Wright v. Smith*, 19 Nev. 143, 146, 147 (7 P. 365).

## 2166. Division in case of divorce.

SEC. 12. In case of the dissolution of the marriage by decree of any court of competent jurisdiction, the community property must be equally divided between the parties, and the court granting the decree must make such order for the division of the community property, or the sale and equal distribution of the proceeds thereof, as the nature of the case may require; *provided*, that when the decree of divorce is rendered on the ground of adultery or extreme cruelty, the party found guilty thereof is only entitled to such portion of the community property as the court granting the decree may, in its discretion, from the facts in the case, deem just and allow; and such allowance shall be subject to revision on appeal in all respects, including the exercise of discretion, by the court below.

Upon granting a divorce the question as to the amount of allowance for the support of the wife is left to the legal discretion of the trial court, and should not be interfered with in the appellate court unless the dis-

cretion has been abused. *Lake v. Bender*, 18 Nev. 361, 382, 404 (4 P. 711).

Facts justifying an increase of monthly allowance. *Idem*.

## 2167. Earnings of wife.

SEC. 13. The earnings of the wife are not liable for the debts of the husband.

A judgment for costs recovered by a married woman is not her earnings, so as to be exempt from the debts of her husband, especially when there is no showing where the money paid out as costs had been earned by her, but on the contrary it was shown that

they were paid out of money "earned, obtained or accumulated" by the husband and wife since their marriage, so as to be community property. *Adams v. Baker*, 24 Nev. 375-378 (55 P. 362).

## 2168. Earnings of wife and minor children while living separate.

SEC. 14. 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.

## 2169. Earnings of wife deemed gift, when.

SEC. 15. When the husband has allowed the wife to appropriate to her

own use her earnings, the same, with the issues and profits thereof, is deemed a gift from him to her, and is, with such issues and profits, her separate property.

### 2170. Debts of wife contracted before marriage.

SEC. 16. The separate property of the husband is not liable for the debts of the wife, contracted before the marriage.

### 2171. Debts of husband.

SEC. 17. 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.

### 2172. Separate property.

SEC. 18. Except as mentioned in the next section, neither husband nor wife has any interest in the property of the other.

### 2173. Contract between husband and wife.

SEC. 19. Either husband or wife may enter into any contract, engagement, or transaction with the other, or with any other person, respecting property, which either might enter into if unmarried, subject in any contract, engagement, or transaction between themselves, to the general rules which control the actions of persons occupying relations of confidence and trust towards each other.

See *Cartan v. David*, under sec. 11 of this act.

The statute in respect to community property recognizes the superiority of the husband. *Crawford v. Crawford*, 24 Nev. 410, 417 (56 P. 94).

In every fiduciary relation the law implies that one of the parties has a superiority over the other, and that the contract between

them is to the advantage of the one presumably superior. *Idem*.

In this case, after reciting the facts, it was held that there was no evidence of undue influence or fraud vitiating the contract within the rule that conveyances between persons occupying fiduciary or confidential relations are presumably fraudulent. *Idem*.

### 2174. Contract of separation.

SEC. 20. A husband and wife cannot by any contract with each other alter their legal relations except as to property, and except that they may agree to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

### 2175. *Idem*—Consideration of.

SEC. 21. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

### 2176. Necessaries furnished wife, husband bound for.

SEC. 22. If the husband neglects to make adequate provision for the support of his wife, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

### 2177. Husband not liable for support, when.

SEC. 23. 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.

### 2178. Support of husband by wife, when required.

SEC. 24. The wife must support the husband out of her separate property, when he has no separate property, and they have no community property, and he, from infirmity, is not able or competent to support himself.

**2179. Wife may sue and be sued when living separate.**

SEC. 25. When the wife is living separate and apart from her husband she may sue and be sued alone.

**2180. Property rights to be governed by this act—Proviso.**

SEC. 26. The property rights of husband and wife are governed by this act, unless there is a marriage contract or settlement containing stipulations contrary thereto.

**2181. Marriage contracts to be in writing—Form of.**

SEC. 27. All marriage contracts or settlements must be in writing, and executed and acknowledged or proved in like manner as a conveyance of land is required to be executed and acknowledged or proved.

**2182. Marriage contract to be recorded.**

SEC. 28. When such marriage contract or settlement is acknowledged or proved it must be recorded in the office of the recorder, of every county in which any real estate may be situated which is conveyed or affected by such contract.

**2183. Record of contract to impart notice.**

SEC. 29. When such marriage contract or settlement is deposited in the recorder's office for record it shall, as to all property affected thereby in the county where the same is deposited, impart full notice to all persons of the contents thereof.

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

**2184. Contract not valid, when.**

SEC. 30. No such marriage contract or settlement shall be valid as to any real estate, or affect the same, except as between the parties thereto, until it shall be deposited for record with the recorder of the county in which such real estate is situate.

**2185. Marriage contract of minors.**

SEC. 31. A minor, capable of contracting marriage, may make a valid marriage contract or settlement.

**2186. Acknowledgment of wife to convey realty.**

SEC. 32. No estate in the real property a married woman possesses is affected by any conveyance or other instrument, except a will purporting to be executed or acknowledged by her, unless the same be acknowledged by her in the manner that conveyances by married women are required to be acknowledged.

**2187. Wife's power of attorney, how acknowledged.**

SEC. 33. A power of attorney of a married woman, authorizing the execution of an instrument conveying or affecting her real property, shall be acknowledged as above mentioned.

**2188. Acknowledgment, effect of.**

SEC. 34. A conveyance or other instrument affecting or relating to real estate, except a will made by a married woman, has no validity until acknowledged as above provided; but when so acknowledged has the same effect as if she were unmarried.

See secs. 1018, 1036, 1037.

**2189. Acts repealed—Saving clause.**

SEC. 35. An act entitled "An act defining the rights of husband and wife," approved March seventh, eighteen hundred and sixty-five [p. 239], and all

other acts and parts of acts in conflict with this act, are hereby repealed; *provided*, that no rights already vested, or any proceeding already taken, shall be affected by anything in this act contained.

*An Act to authorize married women to transact business in their own names as sole traders.*

Approved February 6, 1867, 49

2190. Right to transact business, how.

2191. Applicants to give notice—Hearing of application—Order—To be recorded.

2192. Rights and liabilities of sole traders.

2193. Responsible for maintenance of children.

2194. Husband not responsible for wife's debts—Exception.

**2190. Right to transact business, how.**

**SECTION 1.** Married women shall have the right to carry on and transact business under their own name, and on their own account, by complying with the regulations prescribed in this act.

The sole trader act was passed for the protection of married women. It was designed only to protect the wife against an improvident and worthless husband. The business in which she is engaged cannot be carried on for the purpose of defrauding any creditor of her husband.

The words "managed" and "superintended," as used in the statute, are synonymous. The husband cannot direct, conduct, or control the business in which his wife is engaged, or any part of it.

If the wife allows the husband to exercise his own judgment and discretion, and to direct, conduct, and control the business, or any separate branch of it, she brings herself within the prohibition of the statute, and must suffer the consequences.

The fact whether the husband was

employed at fixed wages or an agreed salary, whether he received a reasonable compensation for his labor or rendered his services gratuitously, would be material in enabling the jury to determine whether or not the transaction was sincere and bona fide, or only a colorable device to cheat, wrong, and defraud the creditors of the husband.

If the husband intermingles his skill, industry and energy with the labor of his wife without receiving, or without any agreement that he should receive, any compensation for his time and attention, then the profits arising from said business, and the property paid for with such funds, would be community property (*ante*, 2156), and would be liable for the husband's debts. *Youngworth v. Jewell*, 15 Nev. 45-49.

**2191. Applicants to give notice—Hearing of application—Order—To be recorded.**

**SEC. 2.** Any married woman residing within this state, desirous to avail herself of the benefit of this act, shall give notice thereof, by advertising in some public newspaper published in the county in which she has resided, for four successive weeks preceding such application; *provided*, if no newspaper be published in said county, said publication shall be made by posting advertisements in three of the most public places in said county, four weeks prior to the day of application. Such notice shall set forth that it is her intention to make application to the district court of said county, on the day therein named, for an order of said court permitting her to carry on business in her own name and on her own account; and it shall specially set forth the nature of the business to be carried on. On the day named in the notice, or at such future time as the court may appoint, on filing proof of publication, the court shall proceed to examine the applicant, on oath, as to the reasons which induce her to make the application; and if it appear to the court that a proper case exists, it shall make an order, which shall be entered on the minutes, that the applicant be authorized and empowered to carry on, in her own name and on her own account, the business, trade, profession, or art named in the notice; but the insolvency of the husband, apart from other causes tending to prevent his supporting his family, shall not be deemed to be sufficient cause for granting this application. Any creditor of the husband may oppose such application, and may show that it is made for the purpose of defrauding such creditor, and preventing him from collecting his debt, or will occasion such result, and if it shall so appear to the court, the applica-

tion shall be denied. On the hearing, witness may be examined on behalf of either party. Before making the order, the court or judge shall administer to the applicant the following oath:

"I, A. B., do, in the presence of Almighty God, truly and solemnly swear, that this application is made in good faith, for the purpose of enabling me to support myself and my children (if the applicant have minor children), and not with any view to defraud, delay, or hinder any creditor or creditors of my husband; and that of the moneys so to be used in said business, not more than five hundred dollars has come, either directly or indirectly, from my husband. So help me God."

A certified copy of such order, with the said oath indorsed thereon, shall be recorded in the office of the recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

## 2192. Rights and liabilities of sole traders.

SEC. 3. After the order has been duly made and recorded, as provided in the second section of this act, the person named shall be entitled to carry on such business in her own name, and the property, revenues, moneys, and credits, so invested, shall belong exclusively to such married woman, and shall not be liable for any debts of her husband; and said married woman shall be allowed all the privileges, and be liable to all legal process, now or hereafter provided by law, against debtors and creditors, and may sue and be sued alone, without being joined with her husband. But nothing contained in this act shall be deemed to authorize a married woman to carry on business in her own name when the same is managed or superintended by her husband.

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

## 2193. Responsible for maintenance of children.

SEC. 4. Any married woman availing herself of the benefit of this act, shall be responsible for the maintenance of her children.

## 2194. Husband not responsible for debt—Exception.

SEC. 5. The husband of the wife availing herself of the benefit of this act, shall not be responsible for any debts contracted by her in the course of the said business, without the special consent of her husband, given in writing; nor shall his separate property be taken on execution for any debts contracted by her.

The sole trader act was passed for the protection of married women. It was designed only to protect the wife against an improvident and worthless husband. The business in which she is engaged cannot be carried on for the purpose of defrauding any cred-

itor of her husband. *Youngworth v. Jewell*, 15 Nev. 45.

The words "managed" and "superintended," as used in the statute, are synonymous. The husband cannot direct, conduct, or control the business in which the wife is engaged, or any part of it. *Idem*.

## INSANE

Concerning insane—Location of asylum, section 2195.

To fix legal name of institution for care of indigent insane, sections 2196, 2197.

Creating board of commissioners for care of indigent insane, sections 2198, 2199.

To provide for care of insane, sections 2200, 2201.

To provide for taking care of insane, sections 2202, 2207.

To provide for transfer of insane convicts, sections 2208, 2209.

To provide for commitment of insane persons, section 2210.

To provide for admission of certain persons into insane asylum, sections 2211, 2212.

### *An Act concerning the insane of the state.*

Approved March 11, 1879, 140

WHEREAS, It is the duty of the state at some time in the near future to provide for and take care of its own insane at home:

#### 2195. Selection of grounds for asylum.

SECTION 1. The state grounds at Reno are hereby selected as the site for an insane asylum, and such insane asylum is hereby located on said grounds.

[Sec. 2, carrying appropriation, omitted.]

#### HOSPITAL FOR MENTAL DISEASES

*An Act to determine and definitely fix the legal name of the public institution for the care of the indigent insane belonging to the State of Nevada.*

Approved March 12, 1895, 44

#### 2196. Legal name.

SECTION 1. The public institutions of the State of Nevada and the buildings appertaining thereto, established and maintained for the care of the indigent insane of the state, shall hereafter be known as and called the Nevada hospital for mental diseases.

#### 2197. Words considered identical.

SEC. 2. The words "Insane Asylum," "Institute for the Care of the Insane," and all words of like import, now or heretofore used in any law, process, investigation, subpoena or commitment, or in relation to any board or commission pertaining to or in any way concerning the arrest, examination, detention or care of the insane or mentally diseased in the State of Nevada shall be deemed to relate to, and be the equivalent of, Nevada hospital for mental diseases, and hereafter, all processes and proceedings, relating to the insane or mentally diseased of the State of Nevada, shall run and be held in that name.

*An Act creating a board of commissioners for the care of the indigent insane of the State of Nevada.*

Approved February 4, 1887, 39

#### 2198. Board created.

SECTION 1. The governor, state controller and state treasurer are hereby constituted a board of commissioners for the purpose of providing for the care and maintenance of the indigent insane of the state.

#### 2199. Quorum.

SEC. 2. A majority of said board shall constitute a quorum for the transaction of business.

*An Act to provide for the care of the insane of the State of Nevada, and create a fund for that purpose.*

Approved March 2, 1869, 104

[Section 1 obsolete.]

[Sec. 2 superseded.]

**2200. Guardian—Payment of charges required.**

SEC. 3. The district judge shall cause inquiry to be made touching the ability of insane persons committed by him to bear the expenses attending the arrest, examination, transmission to the capital, and such other charges as may be necessary in order to properly provide for his or her support. In any case where the insane person is able, by the possession of money, or real or personal property, to pay said expenses, the district judge shall appoint a guardian for said insane person, who shall be subject to the general law in relation to guardians, as far as the same may be applicable; and when there is not sufficient money in hand, the judge shall order the sale of the property of such person, or so much thereof as may be necessary, and from the proceeds said guardian shall pay all proper costs and charges incidental to arrest, transmission and proper care and support of such insane person during the period of his or her insanity, or so long as there shall be sufficient means to meet said charges and expenses. And in case such insane person has no means applicable to his or her own support; but has kindred in the degree of husband or wife, or (if a minor) father or mother living within this state, of sufficient means and ability to support such insane person, the judge before whom the examination is had shall order that all expenses and charges be paid by the nearest of such kindred, or may assess the same among such kindred as he may deem just and equitable, causing such charges as the state may be obligated to pay to the directors of the asylum at Stockton, to be paid quarterly in advance to the secretary of state, together with all costs and expenses necessarily incurred in transmitting said person to said asylum. And from the date of such order of the district judge, such expenses and charges shall be a lien against the property of such kindred, and may be enforced as other liens against real or personal property.

**2201. Payment of expenses by guardian—Bond.**

SEC. 4. The district judge shall require of the guardian of any insane person appointed by him, in addition to the bond now required by law to be given by guardians, to enter into bond with good and sufficient sureties, payable to the State of Nevada, conditioned for the prompt payment in advance to the secretary of state of all charges and expenses set forth in this act, so long as said insane person shall be cared for and supported by this state, or so long as said means or property shall be sufficient therefor, which bond shall be filed in the office of the secretary of state at the same time that other papers in relation to insane persons are filed; and all sums of money so received by the secretary of state, as well as those sums received from kindred, as provided in section 3 of this act, shall be paid over to the state treasurer to the credit and become a part of the insane fund created by section 7 of this act, under a sworn statement at least once in every three months, and for all moneys thus paid the secretary of state shall take duplicate receipts, one of which shall be filed with the state controller. When the means of any insane person shall become exhausted, or the kindred mentioned in this act shall become unable longer to provide for the support of such insane person, upon a proper showing to the judge of the district court where such person was committed, he shall certify such fact to the secretary of state, who shall immediately transfer the same to the indigent list, and from the date of such certificate said guardian or kindred, as the

case may be, shall be relieved from any further liability on account of such bond or insane person.

Sec. 1 cited, *Ormsby Co. v. State*, 6 Nev. 283.

When a district judge was pronounced insane and sent to an insane asylum under the provisions of this act, and upon a certificate the governor appointed another person to fill his office as in case of a vacancy: Held, that the office was not vacant and that the appointment of another judge was void.

*State ex rel. O'Neale v. McClinton*, 5 Nev. 329, 333.

The finding and declaration of an incumbent of the office of district judge to be insane in accordance with the provisions of this act, does not create a vacancy in his office. *Idem.* (See Const. 336, ante.)

[Secs. 5, 6, 7, 8 and 9 are obsolete.]

*An Act to provide for the taking care of the insane of the State of Nevada.*

Approved February 24, 1881, 59

[Sections 1-10, obsolete, omitted.]

[Secs. 11 and 12, regarding bonds and payment thereof, obsolete, or nearly so.]

**2202. Powers of commissioners—Rules and regulations—Submit report to the legislature.**

SEC. 13. The board of commissioners, as named in this act, shall have full power and exclusive control of and over all the grounds, buildings, property and inmates of the asylum, and shall furnish or cause to be furnished all needful supplies, provisions, and medicines for the care of the insane, and have charge of all other matters connected with the institution. They shall establish such rules, regulations, and by-laws for the construction and government thereof as they may deem proper. The board of commissioners shall cause to be kept a record of their proceedings, which shall at all times be open to inspection by a committee of the legislature. During the first week of the session a report shall be submitted to the legislature, showing the annual receipts and expenditures, the condition of the asylum, number of patients admitted during the year, number remaining in the asylum at the date of report, and all matters touching the general affairs of the institution as they may deem proper, and shall from time to time visit the asylum, examine into its affairs, condition, government, and make thorough inspection thereof. \* \* \*

**2203. Superintendent—His qualifications, pay.**

SEC. 14. The board of commissioners shall elect one resident physician who shall be the general superintendent of the asylum, subject at all times to the order and direction of said board, who shall have power at any time to discharge and remove said superintendent whenever in their judgment it shall be deemed proper for the best interest of the state. The superintendent so elected shall reside at the asylum, be a graduate in medicine, and receive a salary of two thousand four hundred dollars per year, payable monthly, in equal installments. He shall cause to be kept a fair and full account of all his doings, and of the entire business and operations of the institution, and submit a monthly report to the board of commissioners. The superintendent shall employ all necessary help needed at the asylum, subject to the approval of the board of commissioners.

**2204. District judge's duty, in regard to commitments—Form of certificates.**

SEC. 15. From and after the completion of this asylum, and when it shall be ready for the reception of patients, the insane patients now in California shall be received therein, and it shall be the duty of the judge of the district court in each judicial district in this state, upon the application of any per-

son, under oath, setting forth that any person, by reason of insanity, is unsafe to be at large, or is suffering under mental derangement, to cause the said person to be brought before him at such time and place as he may direct; and the said judge shall also cause to appear at the same time and place one or more licensed practicing physicians, who shall proceed to examine the person alleged to be insane; and if said physicians, after careful examination, shall certify upon oath that the charge is correct, and if the judge is satisfied that such person is, by reason of insanity, unsafe to be at large, and is incompetent to provide for his or her own proper care and support, and has no property applicable for such purpose, and no kindred in the degree of husband or wife, father or mother, children, brother or sister living within this state of sufficient means or ability to provide properly for such care and support, he shall cause the said indigent insane person to be conveyed to the insane asylum of this state, at the expense of the state, and place the said person in charge of the proper person having charge of the said asylum, together with a copy of the complaint, commitment, and physician's certificate, which shall be in such form as the board of commissioners may prescribe.

### 2205. Paying patients—Medical care of indigents.

SEC. 16. Paying patients whose friends or property can pay their expenses, shall pay according to the terms directed by the board of commissioners; but the insane poor shall, in all respects, receive the same medical care and treatment from the institution, and good, wholesome food, and no record of debt shall be made against them.

### 2206. Claims approved and payment provided.

SEC. 17. All sums due for the support, care, and clothing of the insane, and all other needful expenses of the asylum shall be certified by the board of commissioners of said asylum and approved by the board of examiners, as now provided by the constitution of the State of Nevada, and audited by the controller, and paid by the state treasurer, out of any moneys in the state treasury appropriated for that purpose.

### 2207. Warrants.

SEC. 18. The state controller is hereby authorized to draw his warrant in favor of the commissioners for their incidental expenses in carrying out the provisions of this act, after the board of examiners have properly allowed the same.

For expenses of transportation of indigent insane persons and convicts, see secs. 7589-7591. This act embraces but one subject, the care of the insane, which is fairly expressed in its title.

The different steps by which the result is to be accomplished, are not different subjects but minor parts of the same general subject. *Klein v. Kinkead*, 16 Nev. 194, 200, 201.

See ante, sec. 275.

In providing for the erection of an insane asylum, the statute declared that the board of commissioners might adopt or reject any and all bids not deemed reasonable or satisfactory, but in determining bids for the same work or material the lowest responsible bid should be taken. It was held that the provision for the lowest responsible bid

is mandatory; but in ascertaining whether or not a bidder was responsible, the board was required to deliberate and decide and in doing so they exercised judicial functions. *Hoole v. Kinkead*, 16 Nev. 217, 220, 222.

In deciding upon the responsibility of bidders, it was the duty of the board to consider their pecuniary ability to perform the contract and to ascertain which ones, in point of skill, ability and integrity, would be most likely to do faithful, conscientious work, and to fulfill the terms of the contract. *Idem*.

Cited, *Kinkead v. Benton*, 19 Nev. 438 (14 P. 294).

Cited, *State ex rel. Fletcher v. Ruhe*, 24 Nev. 251, 259 (52 P. 274).

*An Act to provide for the transfer of insane convicts to the state insane asylum.*

Approved March 1, 1883, 102

### 2208. When removed to asylum.

SECTION 1. Whenever a convict, while undergoing imprisonment in the

Nevada state prison, shall become insane and be so adjudged by a commission of lunacy appointed by the court as in other cases of insanity, it shall be the duty of the warden to deliver such convict to the superintendent of the state insane asylum at Reno, Nevada, for detention and treatment therein.

### 2209. When returned to state prison—Escape.

SEC. 2. The superintendent of the insane asylum shall receive such insane convict and safely keep him, and if such convict be restored to sanity before the expiration of his sentence to said prison, shall deliver him to the warden thereof, who shall retain such convict therein for the unexpired term of his sentence, unless said convict shall be released by order of the board of pardons. An escape from said insane asylum by any convict confined therein under the provisions of this act, shall be deemed an escape from the state prison, and be punished as such.

*An Act to further provide for the commitment of insane persons to the insane asylum.*

Approved February 21, 1889, 40

### 2210. County clerk may commit.

SECTION 1. Whenever, by reason of the absence of the district judge from the county, an insane person cannot be brought before him for examination, he may be taken before the county clerk of such county, and thereupon said county clerk shall be vested with power to hold such examination and discharge such person or commit him to the insane asylum in the same manner as may be now done by the district judge.

*An Act to provide for the admission of certain persons into the Nevada state insane asylum.*

Approved February 27, 1893, 58

### 2211. Idiots and feeble-minded persons admitted to the insane asylum, how and when.

SECTION 1. It shall be the duty of the district judge in each judicial district of this state, upon the application of any person under oath that any person within said district who has been a bona fide resident of the state for more than five years and of the county wherein he is at the time residing for one full year next preceding the making of said application, is an idiot or feeble-minded person, to cause such person to be brought before him at such time and place as he may direct, and the said judge shall also cause to appear at such time and place such witnesses as he may deem proper and one or more licensed practicing physicians. Said physicians shall proceed to examine the person and the witnesses so brought before said judge, the witnesses to be placed under oath, and if said physicians, after careful examination, shall certify upon oath that the charge is correct, giving their reasons therefor, and if the district judge is satisfied that such person is an idiot or a feeble-minded person and is incompetent to provide for his or her own proper care and support, and has no property applicable to such purpose, and no kindred in the degree of husband or wife, father or mother, child, brother or sister living within this state of sufficient means or ability to provide properly for such care and support, and is further satisfied that it will be for the best interest of said indigent and the county of which he is at the time a resident, he shall cause the said indigent, idiot or feeble-minded person to be conveyed to the insane asylum of this state at the expense of the county of which said person was a bona fide resident during the period of one year next preceding the making of such application, and placed in charge of the proper person having charge of said asylum, together with a copy of the

complaint, commitment and physicians' certificate, which shall be in such form as the board of commissioners for the care of the indigent insane of the State of Nevada may prescribe.

## 2212. Expense of care of such persons, how provided for.

SEC. 2. The county of which any person committed to said asylum, under the provisions of section 1 of this act, was a bona fide resident during all of the year next preceding the making of application for his or her said commitment, shall pay into the treasury of the State of Nevada, quarterly, on the first Monday of January, April, July and October, from and ever after such commitment, the actual expense of maintaining and keeping such person at said asylum, for which said county shall be liable to the State of Nevada, the amount of said expense to be certified to the board of commissioners of such county by the superintendent of said insane asylum.

## LIENS

To secure liens to mechanics and others, sections 2213-2231.

To secure liens to ranchmen and other persons, 2232.

### *An Act to secure liens to mechanics and others, and to repeal all other acts in relation thereto.*

Approved March 2, 1875, 122

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## 2213. Labor or material—Contractor held as owner or agent.

SECTION 1. Every person performing labor upon, or furnishing material of the value of five (5) dollars or more, to be used in the construction, alteration or repair of any building or other superstructure, railroad, tramway, toll road, canal, water ditch, flume, aqueduct or reservoir, building, bridge, fence, or any other structure, has a lien upon the same for the work or labor done or material furnished by each, respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent; and all miners, laborers and others who work or labor to the amount of five (5) dollars or more in or upon any mine, or upon any shaft, tunnel, adit, or other excavation, designed or used for the purpose of prospecting, draining or working any such mine; and all persons who shall furnish any timber or other material, of the value of five (5) dollars or more, to be used in or about any such mine, whether done or furnished at the instance of the owner of such mine or his agent, shall have, and may each respectively claim and hold, a lien upon such mine for the amount and value of the work or labor so performed, or material furnished; and every contractor, subcontractor, architect, builder, or other persons, having charge or control of any

mining claim, or any part thereof, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner, for the purposes of this chapter. *As amended, Stats. 1881, 49.*

Kerr, C. C. P. 1183.

Employees to have preferred lien for wages in case of insolvent corporations, sec. 1187.

A former act (Stats. 1867, 48), allowing liens in favor of laborers for work done on mining claims, did not give a lien for labor done before its passage. *Hunter v. Savage Cons. S. M. Co.*, 4 Nev. 153-155.

Where lien was intended to apply only to labor thereafter done, it was held that the first day's labor for which a lien could attach was not the day of the passage of the statute, but the day after. *Idem.*

This statute contemplates a formal suit, a publication of notice, and appearance upon the part of lien claimants other than those commencing the suit, and a disposition of the entire matter of liens against the property affected, in one proceeding; and any person prejudiced by error in the proceeding may object. *Elliott v. Ivers*, 6 Nev. 287, 289.

The paper called a mechanic's lien is simply evidence that the acts required by statute have been performed and that therefore the lien created by the statute has attached; and an assignment of such paper with all rights thereunder is an assignment of the debt as well as of the lien. *Skyrme v. Occidental M. & M. Co.*, 8 Nev. 220.

The mechanic's lien law is to be liberally construed so as to give lien claimants the benefits intended by the legislature. *Skyrme v. Occidental M. & M. Co.*, 8 Nev. 221.

A repeal of an old law relating to mechanics' liens by a new law containing all the essential parts of the law repealed, does not destroy existing rights thereunder. *Capron v. Strout*, 11 Nev. 310.

When the work is continuous, although done under different contracts, the lien is preserved by giving notice within sixty days after the work is completed. *Idem.*

## 2214. Liens on city lots.

SEC. 2. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

Kerr, C. C. P. 1191.

## 2215. Land subject to lien.

SEC. 3. The land occupied by any building or other superstructure, railroad, tramway, toll road, canal, water ditch, flume, aqueduct, or reservoir, bridge, or fence, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement, or structure to be constructed, altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

Kerr, C. C. P. 1185.

Where a foreman of a mine is employed to "boss" the men at work in a mine, keep their time and give them orders for their pay, his employment is of that kind that is protected under this law. *Idem.*

County recorders are authorized to administer the oath and certify to the verification required in filing mechanics' liens. *Arrington v. Wittenberg*, 12 Nev. 99, 101.

The lien law is to be liberally construed. A substantial compliance with its provisions is all that is required. *Hunter v. Truckee Lodge*, 14 Nev. 24, 27, 40, 44.

The legislature intended to give subcontractors and material-men direct liens upon the premises for the value of their labor and materials regardless of payments on the principal contract made prior to the time within which the law required a notice of their claim to be recorded. *Lonkey v. Cook*, 15 Nev. 58.

Cited, *Gould v. Wise*, 18 Nev. 266, 267 (3 P. 30).

Where materials were furnished from time to time, as ordered on a running account, on an understanding that they were to be used in the construction of a building, and the material-man had reasonable grounds to expect that the materials would be ordered from time to time to finish the building, the materials were furnished under an entire and continuing contract. *Tonopah Lumber Co. v. Nevada Amusement Co.*, 30 Nev. 445, 446, 456 (97 P. 636).

While a material-man's lien can only legally exist when perfected as prescribed by the statute creating it, yet the statute, being remedial, must be liberally construed, and a substantial compliance is sufficient. *Idem.*

Testimony showing that the land and reduction works had been leased together, and sold together, tends to prove that the property subjected to the liens has been treated as a unit and used for a common

purpose, and in the absence of any other testimony or objections, the court has the right to infer that the land so used and treated was reasonably convenient for the use of the reduction works. *Gould v. Wise*, 18 Nev. 254, 265 (3 P. 30).

## 2216. Priority of liens.

SEC. 4. The liens provided for in this chapter are preferred to any lien, mortgage or other incumbrance which may have attached subsequent to the time when the building, improvement, or structure was commenced, work done, or materials were commenced to be furnished; also, to any lien, mortgage, or other incumbrance of which the lien holder had no notice and which was unrecorded at the time the building, improvement, or structure was commenced, work done, or the materials were commenced to be furnished; (every mortgage or incumbrance imposed upon, or conveyance made of, property affected by the liens herein provided for between the time when the building, improvement, structure, or work thereon was commenced, or the materials thereof were commenced to be furnished, and the expiration of the time herein fixed in which liens therefor may be filed whatever the terms of payment may be, shall be subordinate and subject to the liens in full herein authorized, regardless of the date of filing of said liens). *As amended, Stats. 1899, 98.*

Kerr, C. C. P. 1186.

Lien held subordinate to mortgage. *Capron v. Strout*, 11 Nev. 304.

## 2217. Duty of owner to file affidavit on completion—Time within which lien claim may be filed—Contents of same—Amendments—Substitution of parties.

SEC. 5. It shall be the duty of the owner of any building, improvement, or structure, mentioned in section 1 of this act, upon or after the completion thereof, or of any alteration or repair thereof, to file or cause to be filed with the county recorder of the county where the same or some part thereof is situated, an affidavit, under the oath of himself or of some other person conversant with the facts, stating that such building, improvement or structure, or the alteration or repair thereof, as the case may be, has been completed, giving the date of such completion, and a description of the same sufficient for identification. If any such affidavit be filed before the building, improvement or structure, or the alteration or repair thereof, as the case may be, has in fact been completed, such filing shall be void and a mere nullity, and the time within which any claim of lien as hereinafter provided shall be filed, shall not commence to run until after such building, improvement or structure, or the alteration or repair thereof, as the case may be, has in fact been completed, and a valid and legal affidavit thereafter been filed. Every person claiming the benefit of this chapter shall, not earlier than ten days after the completion of his contract, or the delivery of material by him, or the performance of his labor, as the case may be, and not later than fifty days after filing of the owner or other person as aforesaid of the affidavit hereinbefore provided for, or within fifty days after the performance of any labor in a mining claim, file for record with the county recorder of the county where the property or some part thereof is situate, a claim containing a statement of his demand after deducting all just credits and offsets, with the name of the owner or reputed owner if known, also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien sufficient for identification, which claim must be verified by the oath of himself or some other person.

Upon the trial of any action or suit to foreclose such lien no variance between the lien and the proof shall defeat the lien or be deemed material

unless the same shall result from fraud or be made intentionally, or shall have misled the adverse party to his prejudice, but in all cases of immaterial variance the claim of lien may be amended, by amendment duly recorded, to conform to the proof. No error or mistake in the name of the owner or reputed owner contained in any claim of lien shall be held to defeat the lien, unless a correction of the lien in this particular shall prejudice the rights of an innocent, bona fide purchaser or encumbrancer for value. But upon the trial, if it shall appear that an error or mistake has been made in the name of the owner or reputed owner, or that the wrong person has been named as owner or reputed owner, in any such claim of lien, the court shall order an amended claim of lien to be recorded with the recorder where the original claim was recorded, and shall issue to the person who is so made to appear to be the original or reputed owner, a notice directing such person or persons to be and appear, within the same time as is provided by law for the appearance in other actions after the service of summons, and said notice shall be served in all respects as a summons is required to be served, before said court and to show cause why he should not be substituted in said claim of lien and in said suit in lieu of the person so made defendant and alleged to be owner or reputed owner by mistake, and to further show why he should not be bound by the judgment or decree of the court. And such proceedings shall be had therein as though the party so cited to appear had been an original party defendant in the action or suit, and originally named in the claim of lien as owner or reputed owner, and the rights of all parties shall thereupon be fully adjudicated. *As amended, Stats. 1903, 51; 1911, 320.*

Kerr, C. C. P. 1187.

In an action for the foreclosure of a mechanic's lien, where the complaint states that the work was done and materials furnished at the special instance and request of the agent of the defendant, a plea that the "plaintiffs ought not to be allowed to maintain this action" because they had obtained a judgment against the said agents, constitutes no defense to the action. *Dickson v. Corbett, 11 Nev. 277.*

The fact that plaintiffs recovered a judgment against the agent, only proves that he also made himself personally liable on the contract which he entered into on behalf of his principal. *Idem.*

A complaint describing the property as a large building on certain lots in a certain block belonging to defendant, together with a convenient space of ground around the same, was held sufficiently specific. *Idem.*

The claimant is only required to file his notice before the expiration of thirty days after the completion of the building. *Hunter v. Truckee Lodge, 14 Nev. 24, 28, 30.*

It is not essential to the validity of a mechanic's lien to specify the items of the account. It is sufficient to set forth a statement of the demand showing its nature and character and the amount due or owing thereon.

If there are no special terms, time or conditions given in the contract, none need be stated in the lien. *Lonkey v. Wells, 16 Nev. 271, 272, 276.*

A contractor must file his lien within sixty days after his contract is completed. Every other person entitled to a lien must file it within thirty days after the completion of the building. *Idem.*

A mechanic's lien, although the act giving it is to be liberally construed, is purely of statutory creation, and can only be maintained by a substantial observance of, and compliance with, the provisions of the statute. *Malter v. Falcon M. Co., 18 Nev. 209, 212, 213 (2 P. 50).*

The omissions in the notice and claim, of a mechanic's lien, as recorded, cannot, in essential particulars, be aided by any averments in the complaint, or by extrinsic evidence. *Idem.*

It is essential to the validity of a lien, under the provisions of the statute, that the name of the owner, or reputed owner, of the building, improvement or structure, upon which the lien is sought to be enforced, should be stated. If the name of the owner is unknown that fact ought to be stated, and the name of the reputed owner given. These facts should be stated, independent of the description of the property, in a direct, clear and positive manner. *Idem.*

The mere fact that a lien claimant has included in his statement charges for which the law allows no lien will not defeat that portion for which he is entitled to a lien when the charges are separately stated. *Maynard v. Ivey, 21 Nev. 241, 244 (29 P. 1090).*

A statement claiming a mechanic's lien is sufficient, which describes the property sought to be charged, gives the name of the owner, the names of the persons by whom claimant was employed, and the total amount due after deducting all credits and offsets. A lien claimant is not required to particularize the number of days he has labored upon different parts of the property sought to be charged. *Idem.*

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

A mechanic's lien claim, stating that it is for "outside work on house and painting on inside blinds, \$190" does not substantially comply with this section and is insufficient to support a lien. *Porteous Decorative Co. v. Fee*, 29 Nev. 375, 381 (91 P. 135).

A material-man furnished materials as ordered, from time to time, by the contractors. Owing to strikes and the stringency of

the money market, the work on the building ceased. Subsequently a room therein was finished according to the original plans. The material-man furnished materials when the work was resumed. Held, that the materials were furnished under a continuing contract, and the filing, within fifty days after the completion of the work, of a claim for a lien for all materials, was sufficient. *Tonopah Lumber Co. v. Nevada Amusement Co.*, 30 Nev. 446, 456 (97 P. 636); *Self & Sellman Co. v. Savage*, 34 Nev. —.

## 2218. Liens upon separate buildings—Amount to be stated.

SEC. 6. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims, or other improvements, otherwise the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens by judgment or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are constructed.

Kerr, C. C. P. 1188.

## 2219. Record of claim.

SEC. 7. The recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

Kerr, C. C. P. 1189.

## 2220. Limitation of lien as to time.

SEC. 8. No lien provided for in this chapter binds any building, mining claim, improvement, or structure for a longer period than six months after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; *provided, nevertheless*, that if there are other claims outstanding against the property, no time or credit shall be given upon the lien after the expiration of the six months in which proceedings are required to be commenced, which will tend to delay or postpone the collection of other claims or incumbrances against the property; but no lien continues in force for a longer time than two years from the time the work is completed by any agreement to give credit.

Kerr, C. C. P. 1190

## 2221. Owner must post notices, or property will be responsible.

SEC. 9. Every building or other improvement mentioned in section 1 of this act, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this chapter, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon said land, or upon the building or other improvement situate thereon.

Kerr, C. C. P. 1192.

The interest of the owner of reduction works may be subjected to lien claims, notwithstanding the labor and materials have not been performed and furnished at his instance if knowing that alterations and repairs are being made by the lessee he fails to give notice that he will not be responsible therefor. *Gould v. Wise*, 18 Nev. 253, 258, 259, 265 (3 P. 30).

Evidence that the owner had an agent, residing in the vicinity of the premises who personally visited the reduction works and knew that the work was being done and improvements being made, is prima facie sufficient to charge the owner with knowledge of that fact. *Idem*.

Persons performing labor or furnishing material used in operating and "carrying on"

reduction works, are entitled to a lien against the property (Leonard, J., dissenting in part). *Idem*.

The notice required by the section, to be effective, must be given by posting a notice in writing, proof of personal service being held not sufficient. *Rosina v. Trowbridge*, 20 Nev. 106 (17 P. 751).

A complaint, in an action to foreclose a material-man's lien, brought against the owner, lessee, and contractors, which alleges that the owners at all times knew that the lessee was constructing a building, and did not at any time give notice that they would not be responsible therefor, sufficiently charges the owners with "knowledge," within this section. *Tonopah Lumber Co. v. Nevada Amusement Co.*, 30 Nev. 445, 456 (97 P. 636).

## 2222. Recovery upon lien—Owner may recover from original contractor.

SEC. 10. The contractor shall be entitled to recover, upon a lien filed by him, only such amount as may be due to him according to the terms of his contract after deducting all claims of other parties, for work done and material furnished, as aforesaid; and in all cases where a lien shall be filed under this chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and, during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the lien, the said owner shall be entitled to deduct, from any amount due or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor, he shall be entitled to recover back from the contractor any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable.

Kerr, C. C. P. 1193.

A covenant in a bond, "to secure the plaintiff and keep it harmless from all liens and claims of liens," is a contract of indemnity and is not violated by simply permitting liens to be filed. It would only be broken when plaintiff was actually damaged by reason of liens or claims of liens. *Carson Opera House Association v. Miller*, 16 Nev. 333-336.

Plaintiff was not authorized to withhold any part of the contract price until suits to enforce the liens were pending, and it could not refuse to pay money according to the contract until the contractors were in default. *Idem*.

Cited, *Truckee Lodge v. Wood*, 14 Nev. 293, 301.

## 2223. Rank or order of liens.

SEC. 11. In every case in which different liens are asserted against any property, the court, in the judgment, must declare the rank of each lien, or class of liens, which shall be in the following order, viz.:

First—Labor.

Second—All persons other than original contractors and subcontractors.

Third—The subcontractors.

Fourth—The original contractors.

And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank. *As amended, Stats. 1909, 103.*

Kerr, C. C. P. 1194.

Cited, *Arrington v. Wittenberg*, 12 Nev. 101.

## 2224. Claims consolidated, when.

SEC. 12. Any number of persons claiming liens may join in the same action; and when separate actions are commenced the court may consolidate

them. The court may also allow, as part of the costs, the moneys paid for filing and recording the lien, and shall also allow to the prevailing party reasonable attorney's fees. *As amended, Stats. 1903, 51; 1909, 169.*

Kerr, C. C. P. 1195.

### 2225. Exempt from attachment.

SEC. 13. Whenever materials have been furnished for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement.

Kerr, C. C. P. 1196.

Cited, *Gould v. Wise*, 18 Nev. 260 (3 P. 30).

### 2226. Personal action not impaired.

SEC. 14. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done or material furnished, to maintain a personal action to recover such debt against the person liable therefor.

Kerr, C. C. P. 1197.

### 2227. Action on lien—Trial of—Sale of premises—Justice courts.

SEC. 15. Said liens may be enforced by an action in any court of competent jurisdiction, on setting out in the complaint the particulars of the demand, with a description of the premises to be charged with the lien; and at the time of filing the complaint and issuing the summons the plaintiff shall cause a notice to be published at least once a week, for three successive weeks, in one newspaper published in the county, and if there is no newspaper published in the county, then in such mode as the court may determine, notifying all persons holding or claiming liens under the provisions of this act on said premises, to be and appear before said court on a day specified therein, and during a regular term of such court, and to exhibit then and there the proof of their said liens. On the day appointed, the court shall enter judgment according to the right of the parties, and shall, by decree, proceed to hear and determine the said claims in a summary way, or may refer the same to a referee to ascertain and report upon said liens and the amount justly due thereon; and all liens not so exhibited shall be deemed to be waived in favor of those which are so exhibited. On ascertaining the whole amount of said liens with which the said premises are justly chargeable, as hereinbefore provided, the court shall cause said premises to be sold in satisfaction of said liens and costs, including costs of suit; and any party in whose favor such judgment may be rendered may cause the premises to be sold within the time and in the manner provided for sales on execution, issued out of any district court, for the sale of real estate; and if the proceeds of sale, after the payment of costs, shall not be sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the right of the several parties. In case the proceeds of such sale amount to more than the sum of said liens and the cost of sale, then the remainder shall be paid over to the owner of said property; and each party whose claim is not satisfied in the manner hereinbefore provided for, shall have personal judgment for the residue against the party legally liable for the same; *provided*, such person has been personally summoned or has appeared in the action. (SEC. 2.) Section 15 of an act entitled "An act to secure liens to mechanics and others, and to repeal all other acts in relation thereto," as to action on, trial of, and sale of premises under mechanics' liens, shall be applicable to such actions in a justice court,

where the sum involved does not exceed three hundred dollars. *As amended, Stats. 1907, 192.*

Kerr, C. C. P. 1198.

Failure of a plaintiff, in an action to foreclose a mechanic's lien, to publish notice of the suit, will not deprive a lien claimant, who intervenes in the action, of his right to have an adjudication of his claim. *Elliott v. Ivers*, 6 Nev. 288.

Where, in a suit to foreclose a mechanic's lien, certain lien claimants intervene and defendant answered and demurred to their interventions, it was held that the court acquired jurisdiction of the subject-matter, and the parties, and the whole thereof; and that the plaintiff could not, by dismissal of the suit, prevent an adjudication as to the rights of the interveners. *Idem.*

Where a complaint to foreclose mechanics' liens fails to show that they were filed within six months before the commencement of the action, it was held that the omission was one which should be taken advantage of by demurrer, and that after issue joined and decision rendered on the merits, the pleading would be upheld by every legal intendment. *Skyrme v. Occidental M. & M. Co.*, 8 Nev. 219.

The sufficiency of a complaint for foreclosure of mechanics' liens it to be determined by the statute, and if there is a substantial compliance with its requirements it is sufficient. *Idem.*

Mechanics' liens are assignable and may be enforced by action in the name of the assignee. *Idem.*

Where various holders of liens assigned to one upon understanding that he was to bring suit in his own name, each assignor to bear his proportion of the expense and to share pro rata in the amount realized, it was held, that a suit by such assignee on all the liens might be maintained. *Idem.*

## 2228. Satisfaction and discharge of lien.

SEC. 16. The claimant of any such lien filed as aforesaid, on the payment of the amount thereof, together with the costs incurred and the acknowledgment of satisfaction, shall, at the request of any person interested in the property charged therewith, enter or cause to be entered an acknowledgment of satisfaction of the same [of] record within ten days from the request, and for failure of the claimant to enter satisfaction within the time, shall forfeit and pay to the person making the request the sum of twenty dollars per day until the same shall be entered, to be recovered in the same manner as other debts.

## 2229. Liens may be assigned.

SEC. 17. Two or more creditors of the same class may assign their claims, duly verified, to any other creditor or person of the same class, and the assignee may commence and prosecute the action upon them all in his own name. All liens under this act shall be assignable as any other chose in action.

## 2230. Liens by wood choppers—Proceedings—Jurisdiction.

SEC. 18. All persons who shall perform work or labor upon any tract or tracts of lands, by cutting or cording the wood or timber growing, or being thereon, shall have and may each, respectively, claim and hold a lien upon the wood or timber so cut or corded, for the amount in value of the work or

Form of assignment sustained. *Idem.*

No particular words are necessary to constitute an assignment of the debt; it is sufficient that the intent of the parties to effect an assignment be clearly established. *Idem.* Cited, *Arrington v. Wittenberg*, 12 Nev. 101.

The court proceeded to hear and determine a case without proof that notice had been given to other lien claimants, and it was held that as there was no showing that there were other lien claimants, the defendant could not have been prejudiced, and is not entitled to a new trial. *Lonkey v. Wells*, 16 Nev. 272, 277.

In an action to enforce a lien for labor performed upon a mine in which defendant was a partner and held the legal title in trust for the benefit of his copartners, he pleaded this fact in his answer, alleging knowledge thereof by plaintiff. It was held, that such portion of the answer was properly stricken out, the other members of the firm not being necessary, although proper parties to the suit. *Rosina v. Trowbridge*, 20 Nev. 105, 109, 110, 112, 118 (17 P. 751).

It was also held immaterial what plaintiff knew in regard to the ownership of the mine at the time he worked therein, and that ownership in the other members of the firm of an interest in a mine did not affect defendant's liability. *Idem.*

In an action to foreclose a number of liens against a mining claim of a nonresident corporation, it was held that the statutory notice, as published to lien holders, was no notice to defendant of the pendency of the action. *Lonkey v. Keyes S. M. Co.*, 21 Nev. 313, 314, 320 (17 L. R. A. 351, 31 P. 57).

labor so performed, by retaining possession of the same, until the whole amount due for such work or labor shall have been paid; *provided*, that any lien claimed and held, as aforesaid, shall be deemed to be waived, unless an action be brought in some court of competent jurisdiction, for the recovery of the amount for which such lien is claimed as security, within sixty days after such wood or timber shall have been taken into possession by the claimant; and the fact that such lien is claimed, shall be set out in the complaint, together with a description of, and the number of cords of wood, or feet of timber, retained in possession by the claimant. If the judgment be for the plaintiff in such action, the execution shall direct the same, with costs, to be satisfied out of the wood or timber so retained, if the same shall be sufficient; if not, then the balance to be satisfied out of any other property of the defendant in the same manner provided by law. In all cases where two or more persons are jointly engaged under a contract or employment, in cutting or cording wood or timber, on any tract or tracts of land in this state, any one of such persons may claim, have, hold and enforce a lien, for all the work or labor performed, as in this section provided, and for the benefit of the other persons jointly interested with him; in such cases, in all actions brought under the provisions of this section, it shall be the duty of the court, in case the judgment shall be for the plaintiff, to designate in such judgment the amount due each of the persons interested. Possession of wood or timber within the meaning of this section shall be deemed to be in the person or persons cutting or cording wood or timber, for the purposes of this act, from the time of cutting or cording the same; and shall not be deemed to have been released or yielded by the person or persons performing the work or labor, as herein provided, except such person or persons, by word or act clearly and distinctly declare, or evidence his or their intention to so release or yield possession; and in cases of a joint contract or employment, the possession of any part of the wood or timber, cut or corded, shall not be deemed yielded or released without the assent of all the persons cutting or cording the same, manifested as in this section provided. Justices of the peace shall have jurisdiction of all actions under the provisions of this act, when the amount claimed does not exceed three hundred dollars. *As amended, Stats. 1879, 52.*

### 2231. Foundrymen. liens of.

SEC. 19. All foundrymen and boilermakers, and all persons performing labor, or furnishing machinery, or boilers, or castings, or other materials for the construction, or repairing, or carrying on of any mill, manufactory, or hoisting works, shall have a lien on such mill, manufactory, or hoisting works, for such work or labor done on such machinery, or boiler, or castings, or other material furnished by each respectively; and all the provisions of this act respecting the mode of filing, recording, securing, and enforcing the liens of contractors, subcontractors, journeymen, laborers, and others, and the word "superstructure," wherever it occurs in this act, shall be applicable to the provisions of this section of this act.

The word "on" before "such machinery" should read "or." The change of the word "or" to "on" in the statute was a clerical mistake and should be disregarded. *Gould v. Wise*, 18 Nev. 261. Cited, *Idem*, pp. 254, 260.

### *An Act to secure liens to ranchmen and other persons.*

Approved February 14, 1866, 65

[Secs. 1 and 2 repealed by Stats. 1911, Civ. Prac. Act, sec. 6821, and made a part of said act, and are now secs. 5822-5823 of this work.]

### 2232. Lien of ranch owner—Misdemeanor to remove stock without payment of keep.

SEC. 3. Any person or persons who shall take and drive away any such

animal or animals, while in the possession of such ranchman or person boarding the same, without having first paid all reasonable charges due thereon, and against the consent of such ranchman or other person, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, in any court having jurisdiction of the same, shall be fined in any sum not exceeding the value of the stock so taken or driven away, nor less than fifty dollars; *provided*, that nothing herein contained shall be so construed as to release the owner or owners of said property from the amount of any lien there may be due thereon, under and by virtue of this act.

See sec. 2278, estray animals.

## LIVE STOCK

To regulate marks and brands, sections 2233-2242.

Regulating use of marks and brands, sections 2243-2248.

Concerning unlawful stock, sections 2249-2260.

To prohibit certain live stock from running at large, sections 2261-2265.

To protect live stock from disease, sections 2266-2268.

To prevent the spread of contagious diseases among live stock, sections 2269-2271.

To provide for immediate destruction of animals dying of contagious diseases, sections 2272-2273.

Concerning estray animals, sections 2274-2284.

To provide for the appointment of inspectors of hides, sections 2285, 2286.

To protect horse growers, sections 2287, 2288.

Providing for inspection of horses, sections 2289-2296.

Authorizing destruction of wild unbranded stallions, section 2297.

To prevent dissemination of contagious diseases among sheep, sections 2298-2312.

Act supplementary to above act, sections 2313-2316.

To prohibit herding or grazing of sheep within three miles of any town or village, sections 2317, 2318.

In relation to herding, grazing and driving of sheep, sections 2319-2321.

To prohibit swine from running at large, sections 2322-2324.

To make it unlawful for the owner of swine or goats to allow them to run at large during a certain period of each year, sections 2325-2327.

Relating to trespass of swine, sheep and goats, sections 2328-2331.

To prevent trespassing of animals upon private property, sections 2332-2334.

To prevent trespass upon real estate by live stock, sections 2335-2337.

See State Board of Sheep Commissioners, secs. 4586-4602.

### *An Act to regulate marks and brands of stock.*

Approved February 27, 1873, 99

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| 2233. Stock at large must have particular brand. | 2239. Penalty for using unrecorded brand.                         |
| 2234. Brand to be recorded—Fees for.             | 2240. Not more than half ear removed—Penalty.                     |
| 2235. Transcript of marks and brands.            | 2241. Mark and brand unlawful if not recorded—Sales—Counterbrand. |
| 2236. Neglect of recorder—Penalty.               | 2242. Mismarking or misbranding to defraud a misdemeanor.         |
| 2237. Stock, when to be branded—Evidence.        |   |
| 2238. But one mark and brand to be used.         |   |

### 2233. Stock at large must have particular brand.

SECTION 1. Owners of horses, mules, cattle, sheep, goats, or hogs, running at large, must have a mark or brand, and counterbrand, different from any one in use by any other person, so far as may be known.

### 2234. Brand to be recorded—Fees for.

SEC. 2. Every such owner shall record with the recorder of his county, his mark, brand, and counterbrand, by delivering to said recorder his mark,

cut upon a piece of leather, and his brand and counterbrand burnt upon it, and the same shall be kept in the recorder's office; a certified copy thereof made by the recorder, with the seal of his office attached thereto, shall be deemed evidence on the trial of any action in a court of competent jurisdiction, as to the ownership of all animals legally marked or branded as hereinafter provided. The recorder shall enter in a book to be kept by him for that purpose, a copy of said marks, brands, and counterbrands, provided that such recorder shall be satisfied that such brand and counterbrand tendered to him for record is unlike any other mark, brand, or counterbrand in the county, or as far as his knowledge extends, is different from any other in the state. For recording the mark, brand, and counterbrand, and transmitting the same as hereinafter provided, the recorder shall be entitled to demand and receive two dollars.

#### 2235. Transcript of marks and brands.

SEC. 3. It shall be the duty of every recorder in this state to transmit to the recorders of the adjoining counties, a transcript of all the marks, brands, and counterbrands recorded in his office, which shall be filed by any such recorders in their offices, and reference thereto shall be made in every case of application for the record of marks and brands under this act.

#### 2236. Neglect of recorder—Penalty.

SEC. 4. Any recorder knowingly and wilfully neglecting or refusing to comply with the provisions of this act, shall forfeit and pay for every such neglect or refusal, any sum not less than twenty-five nor more than one hundred dollars, to be recovered before any justice of the peace of said county where such neglect or refusal may occur, by any person suing therefor, together with all costs and damages that may occur by such neglect or refusal.

#### 2237. Stock, when to be branded—Evidence.

SEC. 5. Every person shall brand his horses and mules, and mark and brand his cattle before they are twelve months old, and mark his sheep, goats, and hogs before they are six months old. On the trial of an action as provided in section 2 of this act, to recover possession of any animal which is marked or branded as provided in this act, the mark and brand shall be primary evidence that the animal belongs to the owner or owners of the mark or brand, and that he, she, or they were entitled to the possession of the said animal at the time of the commencement of the action.

#### 2238. But one mark and brand to be used.

SEC. 6. No person shall use more than one mark, brand, or counterbrand; *provided, however,* this shall not extend to those persons who are the owners of more than one ranch or farm.

#### 2239. Penalty for using unrecorded brand.

SEC. 7. If any person shall use any mark, brand, or counterbrand, other than the one recorded by him, except by the consent of the owner of such other mark, brand, or counterbrand, he shall be liable to forfeit and lose to any person suing therefor, the stock so marked or branded with any other than his proper mark or brand recorded by him.

#### 2240. Not more than half ear removed—Penalty.

SEC. 8. No person, company, corporation, or association shall be allowed to use a mark made by cutting off more than half of the ear, measuring from the tip or extreme outer limit of the ear towards the animal's head, or by cutting the ear on both sides to a point. All companies, corporations, associations or individuals who may now be using such marks are hereby required to change the same immediately after the passage of this act. Any

person who shall, either for himself, or as agent for any company, corporation or association, violate any of the provisions of this section, shall be deemed 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 imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment. *As amended, Stats. 1901, 18.*

**2241. Mark and brand unlawful if not recorded—Sales—Counterbrand.**

SEC. 9. No mark, brand, or counterbrand shall be considered as lawful if not recorded as specified in this act; and all persons selling or disposing of any cattle which are not intended for slaughter, or any horses, mares, mules, jacks, or jennies, shall be required to counterbrand them on the shoulder, or give a written descriptive bill of sale; and any person failing to so counterbrand said animals, or give such written bill of sale, shall lose all benefits of this act, and all rights to use said brand as evidence in any court under this act.

The provisions of this section have no application to the use of such mark or brand in the identification of cattle as evidence in a criminal prosecution for larceny. *State v. Cardelli, 19 Nev. 320, 328 (10 P. 433).*

**2242. Mismarking or misbranding to defraud, a misdemeanor.**

SEC. 10. Any person, who with intent to defraud, shall wilfully mismark or misbrand any stock not his own, on conviction thereof shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for the period of not less than ten days nor more than one hundred days, or a fine of not less than twenty dollars nor more than two hundred dollars, or by both such fine and imprisonment, as the court may impose. *As amended, Stats. 1887, 88.*

This section, before amendment, contained a provision in relation to the unlawful killing of stock and making it a felony and was therefore held unconstitutional under the provisions of Const., sec. 277, ante, in *State v. Silver, 9 Nev. 227.* This defect was cured by above amendment.

*An Act regulating the use of marks and brands of stock, and the recording thereof, and providing penalties for the violation thereof and repealing all acts in conflict therewith.*

Approved March 20, 1909, 128

- 2243. Similar brand in same place not to be used.
- 2244. Idem—Change of record—Other restrictions.
- 2245. Idem—Changes to be recorded without charge.
- 2246. Restrictions as to recording.
- 2247. Penalties.
- 2248. Idem.

**2243. Similar brand in same place not to be used.**

SECTION 1. It shall be unlawful for any person or persons, firm, association, copartnership or corporation to have a brand and mark stock therewith, upon the same place on the animal marked and branded, which brand is similarly placed on the animal branded and is similar in form and design to, or a modification of, any brand or mark recorded prior thereto, in accordance with the laws now in effect regulating the recording of marks and brands of stock.

**2244. Idem—Change of record—Other restrictions.**

SEC. 2. From and after the passage of this act, it shall be unlawful for any person or persons, firm, association, copartnership or corporation to mark and brand stock on the same place on the animal marked and branded, with a brand similar in form and design to, or a modification of any prior recorded brand, after having been served with a written notice by the owner of said

prior recorded brand to change the place where the similarly formed or designed or modified brand is placed on the animals branded and marked therewith, and shall place the said brand or mark upon a different place on all animals marked and branded therewith thereafter; and shall, within ninety days after receiving such written notice, have the change in the location of said brand made in the proper records in the offices of the respective county recorders where said brands are recorded.

#### 2245. *Idem*—Changes recorded without charge.

SEC. 3. All such changes in the locations of brands or marks made necessary by the provisions of this act, shall be made by the respective county recorders without charge. The respective county recorders may and shall, upon the application of the owner or owners of the similarly designed or formed or modified brand, amend the original record of said brand so as to cause it to conform to the provisions of this act.

#### 2246. Restrictions as to recording.

SEC. 4. It shall be unlawful for any county recorder to record any mark or brand which shall be similar in form and design to any prior recorded brand, or any modification thereof, if said brand or mark is to be placed upon the same place on the animal branded or marked therewith as the prior recorded brand, to which it is similar in form and design, or a modification thereof.

#### 2247. Penalties.

SEC. 5. Any person or persons, or the agent or agents of any firm, association, copartnership or corporation violating the provisions of sections 1 and 2 of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not less than one hundred dollars nor more than three thousand dollars, or by both such fine and imprisonment.

#### 2248. *Idem*.

SEC. 6. Any county recorder violating the provisions of section 4 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars.

### *An Act concerning unlawful stock.*

Approved April 10, 1862, 9

2249. Stallions at large unlawful.

2250. *Idem*—Duty of persons taking up.

2251. May be sold—Proceeds, how disposed of.

2252. Original horses not allowed to run at large—Constable may sell.

2253. Hogs or goats trespassing.

2254. *Idem*—Notices to be posted.

2255. *Idem*—Restitution of property.

2256. *Idem*—Forfeiture of property—Sale by constable.

2257. *Idem*—Arbitration of charges.

2258. *Idem*—Fees of constable.

2259. Surplus money paid to whom.

2260. Liability of constable—Misdemeanor.

#### 2249. Stallions at large unlawful.

SECTION 1. From and after the passage of this act, it shall be unlawful for stallions, of the age of two years and upwards, to run at large among the settlements of this state.

#### 2250. *Idem*—Duty of persons taking up.

SEC. 2. If the owner or owners, or the agent of any owner or owners, shall permit any animal as aforesaid, contrary to the provisions of the first section of this act, to run at large in the settled portions of this state, it shall be lawful for any person to take up and confine the same, giving information to the owner or owners, or agent as aforesaid, of such seizure, if the party

or parties shall be known; or, if they shall not be known, then posting notices, conveying such information, in three of the most public places in the township or district in which the animal is taken up. If, at the expiration of ten days from the date of such information given, or of such notice posted, the owner, owners, or agent, as aforesaid, of such animal, shall not appear and legally reclaim it, by paying all the expenses that may have been incurred in the taking up, confining and keeping of the animal, then it shall be lawful for the taker up to have it emasculated at the risk and additional expense of the owner or owners.

#### 2251. May be sold—Proceeds, how disposed of.

SEC. 3. If, at the expiration of thirty days thereafter, no such owner, owners, nor agent shall appear and legally reclaim such animal as aforesaid, then it shall be the duty of the person having possession of it to deliver the same to the constable of the township in which the animal has been found and confined, whose duty it shall be, after three days' notice of the intent, to make sale of the same to the highest cash bidder, and after paying all the necessary expenses incurred in the premises, then to pay the residue of the proceeds of such sale into the treasury of the county in which such sale shall have taken place, for the benefit of the common school fund; *provided, however*, that if the owner or owners of such property shall make claim to it at any time before such sale can legally be made, nothing in this act shall be construed to exempt such owner or owners from payment of all expenses incurred.

#### 2252. Original horses not allowed to run at large—Constable may sell.

SEC. 4. No original horse shall be allowed to run at large in any of the settled portions of this state, and any owner or owners of such horse who shall permit it to run at large for the space of five days shall be liable to a forfeiture of the same. Any person shall be authorized to take up the same; and it is hereby made the duty of such person to deliver the animal, immediately, to the constable of the township in which it may be taken up, who, after twenty days' notice, by written or published notification of the intent, posted in two conspicuous places in such township, shall proceed to sell the same to the highest cash bidder; and, after all expenses incurred in the premises shall have been defrayed, the residue of the proceeds of such sale, if there be any, shall be paid into the treasury of the county in which such sale shall have taken place, to be appropriated to the common school fund.

#### 2253. Hogs or goats trespassing.

SEC. 5. Any hog or hogs, goat or goats, found trespassing upon the premises of any person or persons in this state, may be taken up by the owner or owners of such premises, and safely kept at the expense of the owner or owners of the hog or hogs, goat or goats, so found trespassing. *As amended, Stats. 1875, 146.*

#### 2254. Idem—Notices to be posted.

SEC. 6. All persons taking up hogs trespassing upon their lands, whether inclosed or not, shall, immediately thereafter, post notices in three conspicuous places in the precincts in which such persons reside, containing a description of the ear or other marks of such hogs, whereby the owners may identify them as their property.

#### 2255. Idem—Restitution of property.

SEC. 7. If the owners of such hogs come forward within ten days of the time when such notices were posted, and prove them to be their property, the person or persons taking them up shall deliver them to such owner or

owners, upon their paying all the costs, charges, and damages sustained by reason of their trespassing.

**2256. Idem—Forfeiture of property—Sale by constable.**

SEC. 8. If, however, the owner or owners shall not claim the same within ten days, then the person taking up such hogs shall immediately notify a constable of the precinct wherein the trespass has been committed, and the constable shall proceed to sell, at public auction, after giving five days' notice of such sale, by posting notices in three public places in said precinct, all such hogs so taken up; *provided*, that the owners may prove their property and receive the same, by paying all costs and damages, at any time before such sale can take place.

**2257. Idem—Arbitration of charges.**

SEC. 9. If the parties cannot agree as to the amount of charges and damages, then each party may choose one disinterested person, and they may choose a third person, who shall determine the amount thereof; and should the owners not come forward, then the constable shall select three disinterested persons to determine the amount.

**2258. Idem—Fees of constable.**

SEC. 10. The fees of the constable, under the provisions of this act, shall be the same as allowed by law for all similar services.

**2259. Surplus money paid to whom.**

SEC. 11. If there shall be any surplus money arising from the proceeds of such sales, after paying all costs, charges and damages, the constable shall pay the same to the owner or owners of such hogs sold; *provided*, that they prove they are entitled to it within fifteen days after the sale, otherwise he shall pay it into the treasury of the county in which such sale shall have been made, taking the receipt of the treasurer for the same, for the benefit of the common school fund.

**2260. Liability of constable—Misdemeanor.**

SEC. 12. Any constable refusing or neglecting to pay to the county treasurer, or to the owner or owners, the surplus derived from any sale made under the provisions of this act, shall be liable for the same on his official bond, and shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars.

This act cited, *Chase v. Chase*, 15 Nev. 259.

*An Act to prohibit certain live stock from running at large upon the streets, highways or commons of the cities and towns of the State of Nevada.*

Approved February 11, 1893, 19

**2261. Animals not to run at large in town—Limits defined.**

SECTION 1. It shall be unlawful for the owner or owners, or any person or persons having in charge any cow, calf, bull, steer, heifer, horse, gelding, mare, colt, jack, jenny, mule or any neat-foot animal, or any number of such animals, to permit or allow them to run at large within the ordinary limits of any city or town of this state between the hours of six o'clock p. m. and seven o'clock a. m. of each day, during any period of the year. Said ordinary limits shall be defined as follows: Within an incorporated city or town, the limits shall be as defined in said incorporated clause or clauses; and within a town or city not incorporated in this state, the said ordinary limits shall be defined as follows: Within such city or town with fifty or more inhabitants, the said limits shall be defined as being within a radius of half mile, radiating from the postoffice of said city or town.

**2262. Duties of sheriffs and constables.**

SEC. 2. It shall be the duty of the sheriff, deputy and deputies, constable and policemen of or in any town described in section 1 of this act, to impound any or all animals mentioned herein.

**2263. Fine for violation.**

SEC. 3. The owner or owners, agent or agents, or person or persons having charge of such animal or animals, shall be fined five dollars for each and every violation of this act, and as much more, as in the discretion of the court having jurisdiction thereof, may deem a sufficient amount to cover all damages.

**2264. When animals may be impounded and sold—Disposition of proceeds.**

SEC. 4. Any officer, officers, person or persons named in section 2 of this act, having in his charge, after they have been impounded, any of the animals mentioned in this act, shall post a notice that such animal or animals are in his charge, and if not taken out by the owner or owners, agent or agents, person or persons in charge, by paying all costs, charges and damages, will be sold. After the expiration of ten days the officer or officers, person or persons having such animal or animals, and having given notice as aforesaid, shall post three written or printed notices in conspicuous places in the town or city where such animal or animals have been taken up, describing the same, giving all marks or brands, if any, and that such animal or animals will be sold by him to pay the charges that have, and will have accrued, against the property, and the costs. He shall sell to the highest bidder, and upon payment of the purchase money shall turn over to the buyer the animal or animals sold, and after deducting the costs of impounding and all accrued costs, including the costs of feeding, keeping and selling, shall pay the balance, if any remains, into the county treasury, where it shall remain subject to the laws governing escheats.

**2265. Duty of officers.**

SEC. 5. It is hereby made the duty of the several officers in this act named, to enforce its provisions, and a failure to do so shall be deemed a misdemeanor, and any officer found guilty thereof shall be fined in a sum not exceeding twenty dollars.

*An Act to protect the live stock of this state from disease, and providing a penalty for driving or allowing diseased stock to run at large upon the public lands.*

Approved February 19, 1887, 72

**2266. Unlawful to drive diseased stock on highway.**

SECTION 1. It shall be unlawful to drive any horse infected with glanders, or pink eye; any sheep infected with scab, or foot rot; and neat cattle infected with Spanish or Texas or splenic fever, or with pleuro-pneumonia; any hog infected with cholera or trichina, or any of said animals that are infected with or that have been exposed to any of the above diseases whatever, along any highway or traveled road in this state.

**2267. To be enclosed or herded.**

SEC. 2. The owner of any animal or animals so infected or diseased, as mentioned in section 1 of this act, or that has been exposed to any contagious disease, and the person or persons in charge thereof shall keep such animal or animals safely enclosed or securely herded upon lands owned by or held in actual possession by them under the laws of this state by the owner or person in charge of such animal or animals.

**2268. Penalty—Entitled to recover damages.**

SEC. 3. Every person who may violate either of the preceding sections of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished therefor by a fine not less than thirty nor exceeding five hundred dollars, or by imprisonment in [the] county jail for a term not exceeding six months, or by both such fine and imprisonment in the discretion of the court, and the owner or owners of any animal or animals injured or damaged by any act or omission in violation of the provisions of this act shall be entitled to recover the amount of damages sustained from the owner or owners of the diseased live stock from which the contagion came, and shall also be entitled to recover the costs of prosecution.

*An Act to prevent the spread of contagious diseases among live stock of the State of Nevada, and to quarantine against other states or infected districts.*

Approved March 13, 1903, 99

**2269. Proclamation of quarantine—Proviso.**

SECTION 1. Whenever, upon the application of ten or more citizens of this state to the governor, asking for a proclamation of quarantine against any state or states, district or districts, infected by contagious diseases prevailing among live stock of said states or districts, the governor may issue a proclamation giving notice to such state or district, by mailing to the governor of said state or states, district or districts, where such disease exists, a copy of said proclamation in which it shall be stated that all diseased or infected, and all stock having been exposed to any infectious or contagious disease or diseases, are prohibited from entering within the borders of this state during the time of quarantine; *provided*, that said prohibition shall not apply to any stock being transported through and beyond the limits of this state by any railroad company by permit or authority granted by any agent or inspector acting under the instruction and authority of the United States government.

**2270. Governor to employ veterinary.**

SEC. 2. The governor shall at all times have the power to employ a veterinary surgeon to investigate epidemic and contagious diseases affecting live stock in this state.

**2271. Misdemeanor—Penalty.**

SEC. 3. Any person who, in violation of the quarantine regulations expressed in section 1 of this act by bringing the live stock into this state from the state or district so quarantined, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars and not more than two thousand dollars, together with all the costs of treatment and disinfection, and the stock so treated and disinfected shall be held by the veterinary surgeon appointed by the governor for the full cost of treatment and fine imposed and shall not be released until both fine and costs are paid.

*An Act to provide for immediate destruction of domestic animals dying of contagious or infectious diseases.*

Approved February 25, 1905, 32

**2272. Disposal of bodies—Animals dying of infectious diseases must be burned or buried—Proviso.**

SECTION 1. It is hereby made the duty of any person, firm or corporation, or of the officers or agents of any person, firm or corporation, owning or

claiming any cattle, sheep, pigs, horses or other animals that shall die of any contagious or infectious disease, to cause any of said animals dying as aforesaid to be burned or buried with not less than three feet of earth over the carcass within twenty-four hours after the knowledge of death as aforesaid shall have come to said person, firm, corporation, officers or agents; *provided, however,* this act shall not apply to domestic animals dying without a limit of one mile of any town, city, inhabited ranch house, or one-half mile of any public highway, situated in the State of Nevada.

### 2273. *Idem*—Penalty.

SEC. 2. Any person, firm or corporation, or the officers or agents of any person, firm or corporation, that shall fail or refuse to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars, or be imprisoned in the county jail for any term not less than ten days nor more than twenty days, or by both such fine and imprisonment.

### *An Act concerning estray animals.*

Approved November 8, 1861, 22

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| 2274. Estrays to be reported to a justice—<br>Procedure—Failure misdemeanor—<br>Larceny. | 2279. Removing, larceny, when.                             |
| 2275. Record of estray—How restored to<br>owner.   | 2280. Right to reclaim forfeited.                          |
| 2276. Penalty for neglect to comply with act.  | 2281. Moneys paid, how disposed of.                        |
| 2277. Estrays not to be used.  | 2282. Fees of justice and recorder—Costs, by<br>whom paid. |
| 2278. Penalty for moving estrays.  | 2283. Taker up not liable for escape, or death.            |
|  | 2284. Stallions and Spanish bulls to be castrated.         |

### 2274. Estrays to be reported to a justice—Procedure—Failure misdemeanor—Larceny.

SECTION 1. Every person finding any stray horse, mare, colt, jack, or jenny, or any neat-foot animal, or any number of these animals, upon his farm or premises, or upon the public highway or domain, and shall take the same up for keeping, shall, within ten days, if said animal or animals remain on his farm or premises, or keeping, go before some justice of the peace of his township, and give, under oath, a full description of the marks and brands, color, and kind of such animal or animals, also the time, and all necessary information that will lead to the cause of the said animal or animals coming into his keeping, that may have come to his knowledge, and the marks and brands have not been altered since they came to his farm or premises; *provided,* no animal shall be considered an estray if the owner is known to the person finding it. At the time the taker up appears before the justice, as aforesaid, the justice shall, without delay, appoint two disinterested appraisers, who are resident householders of the county, to appraise and describe such animal or animals, and cause a notice of such estray or estrays, with a full description of the same, giving the brands, marks and colors thereon, to be published once a week for two consecutive months, in a newspaper published at the county-seat of the county in which the animal or animals may be taken up, and if there be no newspapers published at the county-seat, then the said notice shall be published in the newspaper nearest to the same. The said justice shall also cause three notices to be posted of such estrays, in conspicuous places, one of which shall be the justice's office, and the others the vicinity of the place where the estray animal or animals may have been taken up. For refusing or neglecting to comply with the provisions of this section of this act, justices of the peace shall be deemed guilty of misdemeanor in office, and the taker up of such estray or estrays shall be deemed guilty of grand or petit larceny, according to the value of the estray animal or animals taken up, and, on conviction thereof, shall be punished as

is provided in the law of the State of Nevada entitled "An act concerning crimes and punishments." *As amended, Stats. 1877, 90.*

#### 2275. Record of estray—How restored to owner.

SEC. 2. It shall be the duty of the said justice to record the description, together with full information given by the taker up, and the justice shall, within ten days, if the estray animal or animals is or are not before proved by their proper owner, transmit a full transcript to the county recorder of his county, and the said recorder shall record the same in his estray book; said book shall be subject to examination by all persons making application to the recorder, and also the estray book of the justice of the peace; and every person claiming and proving said estray animal or animals that has or have been posted by this act, shall have restitution of the property so claimed, by paying all costs and such charges as may be awarded to the taker up by the justice of the peace of his county.

#### 2276. Penalty for neglect to comply with act.

SEC. 3. Any person knowing of any horse, mare, colt, mule, jack, or jenny, or any number of neat cattle, or any number of these animals, running at large on his farm or premises, and not knowing the proper owner, who refuses or neglects to comply with the requisitions of the foregoing section, shall be subject to a fine not exceeding the value of the stock so neglected to be posted, recoverable before any court having jurisdiction of the same.

#### 2277. Estrays not to be used.

SEC. 4. No person shall be allowed or permitted to use, or cause to be used, to profit or otherwise, any animal within his charge or keeping, under the foregoing provisions of this act; and any persons failing or refusing to comply with the requisitions set forth in this section shall be deemed guilty of grand or petit larceny, according to the value of the same, and, on conviction thereof, be punished in accordance with the provisions of the act concerning crimes and punishments. *As amended, Stats. 1877, 91.*

#### 2278. Penalty for moving estrays.

SEC. 5. The owners of any stray animal, which is legally taken up under the provisions of this act, shall not be permitted to take, lead, or drive the same from the farm or possession of the person legally possessed of such animal, until proven and charges paid according to the provisions of this act; and any person knowingly and wilfully violating the provisions of this section, shall be subject to all the penalties that he would be subject to under the statute law, provided he had no claim on such animal.

See sec. 2232.

#### 2279. Removing, larceny, when.

SEC. 6. If any one shall remove any stray animal from any rancho, or farm, or inclosure, contrary to the provisions of this act, who shall not be the owner of the same, he shall be deemed guilty of grand or petit larceny, according to the value of the property.

#### 2280. Right to reclaim forfeited.

SEC. 7. If the owner of any lost or stray animal shall not appear and prove his property therein within three months, provided they are neat-foot animals and valued at fifty dollars and under that amount, and six months, provided they are horses, mules, or other animals, and valued at one hundred dollars and upwards, after the same is posted, he shall forfeit his right thereto, and the property in such animal shall be vested in the taker up, on his paying into the county treasury the one-half appraised value thereof, as fixed by the appraisers as aforesaid.

**2281. Moneys paid, how disposed of.**

SEC. 8. All moneys paid into the county treasury, under the provisions of this act as above provided, shall become a part and belong to the county school fund of the county in which the proceedings are had, and be drawn from the county treasury on proper warrant, and shall be exclusively appropriated to the county school fund, and for no other purpose.

**2282. Fees of justice and recorder—Costs, by whom paid.**

SEC. 9. The justice of the peace and recorder shall receive for their services in any one case, whether for one or more animals, two dollars and fifty cents each; and all other officers or persons shall receive for their services the same fees as are allowed for similar services within the county. All costs and charges accruing [accruing] under this act shall be paid by the person taking up the stray animal or animals, but shall be reimbursed by the owner, upon proof and delivery of his property. *As amended, Stats. 1877, 186.*

**2283. Taker up not liable for escape or death.**

SEC. 10. If any stray animal die or escape from the possession of the taker up, at any time before the expiration of six months from the taking up, he shall not be held liable in any manner on account of such animal.

**2284. Stallions and Spanish bulls to be castrated.**

SEC. 11. That if any stallion one and a half years old or upwards, shall be found running at large, out of the enclosed ground of the owner or keeper of said horse, it shall be lawful for any person to take up such horse, and forthwith give notice to the owner or keeper thereof, if said owner or keeper be known; and if the owner or keeper do not appear within three days thereafter, and pay to the said taker up five dollars as a compensation for his trouble, the taker up shall proceed to advertise said horse; and the same proceedings shall be had in every respect, as hereinbefore provided in cases of stray horses; *provided*, that the taker up may, at the expiration of twenty days from the time of advertising, castrate, or procure to be castrated, the said horse, which shall be done at the risk and expense of the owner. And all Spanish bulls of one and a half years old and upwards, found running at large, shall be castrated, or cut, as hereinbefore provided.

Act cited, *Chase v. Chase*, 15 Nev. 261.

*An Act to amend an act entitled "An act to provide for the appointment of inspectors of hides, defining their duties, and mode of compensation," approved March 3, 1881.*

Approved March 10, 1897, 72

**2285. Appointment of hide inspector—Duties.**

SECTION 1. It shall be the duty of any district court in this state, upon the application in writing, of three or more property owners in any township of any county within said district, to appoint in and for such township, and for such length of time as may be deemed necessary not exceeding two years, an inspector of hides, whose duty it shall be to examine, when requested so to do by any three taxpayers of said township, the hides of any or all cattle killed in said township, and to mark each hide inspected in such a manner as may be indicated by the district judge, and shall, upon the request of said taxpayers as aforesaid, have the right, and it shall be his duty to go upon the premises of any resident of such township and make search for any hides concealed, or which such inspector or said taxpayers may have reason to believe are concealed upon said premises, and shall report, in writing, to the district attorney of the county in which he has been appointed at such times as may be designated by the district court making the appointment, giving the number of hides inspected, the brands or other

marks upon such hides, the names of the persons in whose possession they were found, and whether the persons having them in possession had killed the cattle from which the hides were taken, or had obtained them from other persons, and the names of such persons.

**2286. Idem—Compensation.**

SEC. 2. The rate of compensation of such inspectors shall be fixed by the court at the time the appointments are made, and shall be paid by the parties on whose petition they are appointed, or by the taxpayers upon whose request they act, as provided in section 1 of this act.

Above act supersedes act of 1881, 118.

*An Act to protect horse growers.*

Approved March 9, 1889, 97

**2287. Punishment for erroneous pedigree.**

SECTION 1. Any person who shall sell any stallion within the limits of this state, intended for breeding purposes, and who shall give a false or erroneous written pedigree, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the state prison for a term of not less than one year nor more than five years, and such person so offending shall be liable to the person so purchasing for all damages he may sustain by reason of such false record of pedigree; *provided*, that the provisions of this act shall not apply to any representation concerning pedigree unless the same has been reduced to writing and signed by the party so making the same.

**2288. To keep pedigree posted—Penalty.**

SEC. 2. Every person who shall keep a stallion for the service of mares shall keep posted in a conspicuous place on or near the stable where such stallion is kept, a full and complete pedigree of such stallion headed by the name by which said stallion is known; *provided*, that in cases where the pedigree is unknown such fact shall be inserted in such notice in lieu of pedigree. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and as a further punishment for the offense the owner or keeper of such horse shall have no legal right to collect any charges made for services of such horse.

*An Act providing for the inspection of horses about to be driven or shipped out of the state; creating the sheriffs of the several counties inspectors of horses, and prescribing their duties as such; prohibiting the transportation by railroad companies of horses without inspection; and providing penalties for the violation of the provisions of this act.*

Approved March 29, 1907, 431

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| 2289. Inspection of horses required before removal from state. | 2293. Sheriff to inspect all brands on horses—Report.                |
| 2290. Idem—Railroad companies held liable.                     | 2294. False certificate, punishment.                                 |
| 2291. Sheriffs to be inspectors—Report.                        | 2295. Avoiding inspection, punishment.                               |
| 2292. Sheriff to give clearance certificate—Expenses.          | 2296. Inspection fee—Sale of unclaimed horses—Lien—Redemption—Proof. |

**2289. Inspection of horses required before removal from state.**

SECTION 1. It shall be the duty of every person or persons, firm, association or corporation, shipping or driving any horses out of this state to hold the same at some convenient place for inspection as hereinafter provided by this act, and it shall be unlawful for any person or persons, firm, association or corporation to ship, drive or in any manner remove beyond the boundaries

of this state any herd, band or carload of horses until the same shall have been duly inspected as hereinafter provided for.

#### 2290. *Idem*—Railroad companies held liable.

SEC. 2. It shall be unlawful for any railroad company to receive for transportation beyond the boundaries of this state any herd, band or carload of horses until the same shall have been duly inspected as hereinafter provided by this act, and until such railroad company shall have been furnished with a certificate by a duly authorized inspector of the county in which the shipment is to be made showing that the brands upon such horses have been duly inspected as required by this act, and any railroad company, or any officer, agent or servant of any railroad company who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars and not more than five thousand dollars, in the discretion of the court.

#### 2291. Sheriffs to be inspectors—Report.

SEC. 3. The sheriff of each county shall be an inspector of horses under the provisions of this act and it is hereby made the duty of the sheriff of each county to perform the duties hereinafter provided as such live stock inspector, and he shall keep a record of all inspections made, giving the name of the owner and shipper of any horses, the several brands, the number of the car and the destination of the shipment. He shall file with the board of county commissioners of his county, on the first day of each month, a complete report of all inspections made during the month, and shall also furnish a copy of such report to the official newspaper of the county, and such report shall be published at the expense of the county, and the publisher of such paper shall forward a copy of his paper free of charge, containing such report, to each of the sheriffs of the state.

#### 2292. Sheriff to give clearance certificate—Expenses.

SEC. 4. Every person or persons, firm, association or corporation, their or either of their agents, servants or employees having charge of any horses destined for transportation by rail or to be driven beyond the limits of this state, shall make application to the sheriff of the county in which such stock is located, or to his duly authorized agent to inspect the brand or brands of any such horses, stating in such application the time and place, when and where said horses will be ready for inspection; and it shall be the duty of such sheriff or his deputy so notified to attend at the time and place designated in such application and inspect said horses, make the necessary record, and give the necessary certificate required by the provisions of this act, free of charge to the owner of said horses or to said railroad company or corporation; *provided, however*, that the actual and necessary expenses of the sheriff or his deputy, in making such inspection, shall be paid by the county; *provided, further*, that in all cases of horses transported out of this state by rail, the place of inspection shall be at some stock yard near the proposed point of shipment of said horses from this state; *and provided further*, that if the owner or person in charge of said horses shall cause any unreasonable delay or loss of time to such sheriff or his deputy so notified to attend, such owner or person in charge of any such horses shall pay the expenses and salary of such inspector during such delay or loss of time not to exceed five dollars per day.

#### 2293. Sheriff to inspect all brands on horses—Report.

SEC. 5. It shall be the duty of the sheriff or his deputy who shall be notified as hereinafter provided, to inspect the brands of all horses transported or driven out of this state, and make a sworn report to the board of county commissioners of the result of such inspection at least once in every thirty

days. It shall also be the duty of such sheriff or his deputy to furnish any person, firm, association or corporation or either of their agents, servants or employees, having horses destined for transportation by rail or to be driven beyond the limits of this state, with a certificate to the effect that he has duly inspected the brands of all such horses therein enumerated, and that he has a full and complete record of such horses.

#### 2294. False certificate; punishment.

SEC. 6. Any sheriff or his deputy who shall knowingly make any false certificate under the provisions of this act, and who shall knowingly swear falsely as to the truth of any report made by him to the board of county commissioners, or who shall accept any bribe or compensation for the performance or failure to perform the duties prescribed by this act, shall upon conviction thereof be guilty of a felony, and be fined in a sum not exceeding one thousand dollars or imprisonment in the state prison not exceeding five years, or both, at the discretion of the court.

#### 2295. Avoiding inspection; punishment.

SEC. 7. Any person or persons, who shall violate any of sections 1, 4, and 5 of this act, or who shall remove any band, herd, or carload of horses beyond the limits of this state without having the same inspected as required by the provisions of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be fined in any sum not less than five hundred dollars and not more than five thousand, or be imprisoned in the state prison of this state for a period not less than one year nor more than three years, or both such fine and imprisonment. But nothing in this act contained shall be construed as in any manner affecting the laws now in force respecting the larceny of live stock.

#### 2296. Inspection fee—Lien—Sale of unclaimed horses—Redemption—Proof.

SEC. 8. A fee of twenty-five cents per head shall be charged on all horses inspected under the provisions of this act, and such fee or charge shall be a lien upon the horses inspected until the same shall be paid. Said fees shall be in full compensation for all services rendered in making such inspection; *provided, however*, that said sheriffs shall have power and are hereby authorized to sell all unclaimed horses which shall come into their possession while in the discharge of their duties as such inspectors in the manner and form now prescribed for the advertising and sale of personal property under writ of execution and shall pay the proceeds of such sale, less the actual expenses of advertising, care and keeping of such unclaimed horses, into the county treasury to the credit of the general fund of the county; *provided, further*, that if ownership of such estrays shall be established to the satisfaction of the board of county commissioners of the county in which such animals are sold, within one year after the date of notice of sale of such unclaimed horses, it shall be the duty of the board of county commissioners to cause a county warrant to be issued against the general fund of the county in favor of the owner or owners of such unclaimed horses in the amount of the net proceeds derived from such sale. Proof of ownership shall be by affidavit of the owner or owners and at least one credible corroborative witness.

*An Act authorizing the destruction of wild, unbranded stallions found running at large on government range lands.*

Approved February 17, 1893, 27

#### 2297. Stallion running at large.

SECTION 1. Any person or persons are hereby authorized, and it shall be

lawful for him or them to kill any wild, unbranded stallion found running at large on any of the government range lands in the State of Nevada.

*An Act to prevent the dissemination of contagious diseases among sheep; to provide for the appointment of sheep inspectors in the several counties of this state, and to define their duties and compensation.*

Approved February 23, 1893, 37

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| 2298. County commissioners to appoint sheep inspector—Bond.           | 2306. Persons having interest jointly and severally liable—Herder to give information—Misdemeanor. |
| 2299. Powers and duties of inspector—Deputies.                        | 2307. Prosecutions may be made, how.   |
| 2300. Duties of inspectors as to sheep coming into the state—Penalty. | 2308. Permit to move from county to county to be obtained.   |
| 2301. Permit to move sheep—Penalties.                                 | 2309. Certificate for transportation.  |
| 2302. Infectious diseases in sheep—Dipping, misdemeanor.              | 2310. Penalty for having in possession scabby sheep.   |
| 2303. Fees of inspector, how paid.                                    | 2311. False charges—Liability for making.  |
| 2304. Penalties for failure of inspector.                             | 2312. Act to be printed and distributed.   |
| 2305. Failure to report sheep with scab misdemeanor.                  |  |

### 2298. County commissioners to appoint sheep inspector—Bond.

SECTION 1. It is hereby made the duty of the several boards of county commissioners in this state, at their first regular meeting in April, nineteen hundred and one, and annually thereafter, to appoint an inspector of sheep for each of the counties of this state, who shall reside in the county for which he is appointed. Each inspector so appointed, before entering upon the duties of his office, shall take his oath of office, and give an undertaking to the people of the State of Nevada, for the use of the respective counties thereof, with two or more sureties, to be approved by the board of county commissioners, conditioned for the faithful performance of his duties, and in such sum as the county commissioners of the several counties may deem sufficient for the faithful performance of the duties of his office and the enforcement of the requirements of this act. *As amended, Stats. 1901, 70.*

### 2299. Powers and duties of inspector—Deputies.

SEC. 2. Said inspector is hereby empowered (and it shall be his duty) to administer oaths and to personally examine all sheep and bands of sheep in his county every year, between the first day of March and the first day of July, and again between the first day of September and the first day of December of each and every year, and also at any time he may be called to do so, by request in writing, of at least five persons owning or controlling any sheep or band of sheep, said persons making a written statement that said sheep (stating their locality and name of owner) are affected with some infectious or contagious disease, to at once proceed to examine said sheep, and if upon examination said sheep are found to be affected or infected with any infectious or contagious disease, and there is imminent or immediate danger of the spreading of said disease, and that it will cause great and irreparable injury to other owners in the vicinity of said infected or affected sheep, the said inspector, shall forthwith issue his orders quarantining said sheep, and he shall engage a sufficient number of persons to hold said sheep secure from other sheep, and shall immediately dip, or cause to be dipped, all of said sheep found to be so affected. Each inspector may appoint one or more deputies, not exceeding one for each precinct, for whose acts he shall be responsible, and by any of whom he may perform any act required of him by this act, except the semiannual inspections, which shall be made by the inspector in person; and it shall be the duty of the inspector to advertise in at least one local paper, if there be one in his county, at his own expense, the names and postoffice address of any and all of his deputies.

Any indebtedness incurred under the provisions of this act, except for which the inspector should pay, may be recovered by such inspector in his official capacity, by an action in any court having jurisdiction of the amount. He shall also, at the request of the owner or owners of any sheep about to be brought from any other state or territory into this state, make an examination of such sheep, and if found free from all contagious or infectious disease, certify to such fact, as provided in section 3 of this act. *As amended, Stats. 1899, 37.*

### 2300. Duties of inspector as to sheep coming into the state—Penalty.

SEC. 3. Any person, company, corporation, or association intending to bring, or cause to be brought, sheep from any other state or territory into this state must first obtain from an inspector of sheep, duly appointed under this act, a certificate that said sheep are free from all infectious and contagious disease, before crossing the boundary line of this state; and it shall be the duty of every inspector, at the request of any person, company, association, or corporation owning or controlling any sheep in his county, or within twenty miles of the line of such county, upon being tendered the amount of his compensation for other special examinations as herein provided, to with all convenient speed examine any sheep he shall be requested so to examine, and if such sheep be sound and free from all infectious and contagious diseases, and are perfectly sound, to give his written certificate to said applicant, over his official signature, setting forth the soundness and freedom from disease of said sheep, together with the date of such examination, and permit and authorize such applicant to move such sheep to all counties of this state. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than two hundred and fifty dollars.

See sec. 2315.

### 2301. Permit to move sheep—Penalties.

SEC. 4. Any person, company, corporation, or association desiring to move his or its sheep which are not sound, or are affected or infected with scab or any infectious or contagious disease, shall obtain from the inspector a traveling permit; but such permit shall only be granted for the purpose of moving said sheep to some place where they may be treated for said disease, and by such route as the inspector may designate. Any person, company or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars; and any party injured or damaged by the reason of the moving of said sheep, without such permit, shall be entitled to recover off of said person, company, or corporation, by a civil action, three times the amount of damage, direct and consequential, that said party has actually sustained by reason thereof.

### 2302. Infectious diseases in sheep—Dipping—Misdemeanor.

SEC. 5. Whenever, on examination of any bands or herds of sheep kept or herded in any county of this state, the inspector shall find such sheep, or any portion of them, afflicted with scab or any infectious or contagious disease, he shall forthwith notify the person in charge of such sheep, in writing, to dip such sheep for said disease within a period of thirty days from such notice, and also, during such period to keep such sheep from contact with other sheep by such means as he may direct; and if the owner or owners, or person or persons in charge of such sheep shall not dip said sheep for said disease, as required by said notice, within said thirty days, or if said diseased sheep shall not be kept from contact with other sheep that are free from said disease, by such means as the said inspector may specify, the owner or

owners, or person or persons controlling said sheep, 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 two hundred and fifty dollars; and in case said sheep have not been dipped for said disease, the inspector shall immediately take possession of said sheep and dip them for said disease, and all expenses incurred in so doing, including a compensation of three dollars per day for every day, or part of a day, in which the inspector may be engaged in dipping said sheep shall become a lien upon said sheep, and the inspector shall hold the sheep until the same is paid; or, if it be not paid within ten days after such dipping is completed, he shall collect the same together with the costs and expenses of collection, by advertising and selling said sheep, or so many thereof as may be necessary, in the manner provided by law for the sale of personal property upon execution. If, however, at the expiration of thirty days from such notice as before mentioned, the inspector finds that said sheep have been dipped for such disease, but are still infected with the same disease, then he shall instruct the owner or controller of said sheep to dip said sheep a second time as soon as possible, but with an interval between the dippings of not less than fifteen nor more than thirty days, and if, upon examination at the end of thirty days further, the inspector finds that said sheep have been dipped but are still infected, then he shall at once take possession of said sheep and dip them for said disease, as above specified. If, however, upon examination, he finds that said sheep have not been dipped for said disease, he shall seize said sheep and dip them for said disease, as above specified, and the owner or owners 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 two hundred and fifty dollars; *provided*, no person, company or corporation shall be required to dip a band of ewes in which there are ewes with lambs at any time between the first day of March and the first day of July of any year. *As amended, Stats. 1899, 38.*

#### 2303. Fees of inspector, how paid.

SEC. 6. The sheep inspectors of the several counties of this state shall be entitled to an animal fee of one-half cent per head while making the regular semiannual inspection required by this act, and which shall be collected by him at the time of making the first inspection only. He shall also be allowed to collect a fee of three dollars per day for every day or part of a day in which he shall be engaged in making special inspections, or in inspecting sheep for the purpose of granting traveling permits, or certificates of soundness, together with ten cents per mile for the distance necessarily traveled by him in making such inspections; *provided*, that no person, company, or corporation owning or controlling any band or bands of sheep, and holding a certificate of soundness issued by the inspector of the proper county, within thirty days of such time as such person, company, or corporation shall desire to move said band or bands, shall be required to have a traveling permit for the purpose of moving said sheep from one locality to another within the county in which said sheep are located.

#### 2304. Penalties for failure of inspector.

SEC. 7. Any inspector, who shall at any time grant a permit to allow any sheep to travel without first having examined such sheep, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than two hundred and fifty dollars; and for any violation or failure of any inspector to comply with the requirements of this act, it is hereby made the duty of the district attorney of the county where such inspector may reside to forthwith institute, in the name of the state, an action on his official bond against said inspector and his sureties for the enforcement herein provided for.

**2305. Failure to report sheep with scab misdemeanor.**

SEC. 8. Any person or persons owning or having under their control any sheep which are infected with scab or other contagious disease for a period of fifteen days, without reporting the same to the inspector, in writing, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than two hundred and fifty dollars. Upon such notice, the inspector shall proceed as provided in section 5 of this act. Any person, company or corporation violating any of the provisions of this act shall be liable in a civil action for all damages sustained by any other person, company or corporation in consequence of such violation.

**2306. Persons having interest jointly and severally liable—Herder to give information—Misdemeanor.**

SEC. 9. In any proceedings arising under the provisions of this act all persons having any interest in sheep concerning which said proceedings is had, shall be deemed the owners of such sheep, and such owners shall be liable severally and jointly for violations of this act. Any herder, shepherd or other person in charge of sheep, or who shall wilfully refuse to give an inspector information as to the condition of sheep in his charge shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

**2307. Prosecutions may be made, how.**

SEC. 10. The provisions of this act requiring sheep inspectors to prosecute for violation of its provisions shall not be so construed as to prevent such prosecutions from being commenced and prosecuted by other persons, as in other criminal actions.

**2308. Permit to move from county to county to be obtained.**

SEC. 11. Any person, company, or corporation shall, before moving any sheep from one county to another in this state, first obtain from an inspector a traveling permit; and any violation of this section shall be deemed a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars.

**2309. Certificate for transportation.**

SEC. 12. It shall be unlawful for any person, company, or corporation, owning, controlling or managing any railroad car, or other thing used for transportation, to allow any sheep to be carried thereon unless the party in charge of said sheep shall first produce a certificate (which shall not have been issued more than thirty days prior to the date upon which said sheep shall be shipped or transported) from an inspector appointed under this act, or of an act amendatory to this act, that said sheep are free from scab, scabbies, and infectious and contagious diseases. Any violation of this section shall be deemed a misdemeanor, and any person, company, or corporation violating any of its provisions shall be fined in a sum not less than one hundred nor more than two hundred and fifty dollars.

**2310. Penalty for having in possession scabby sheep.**

SEC. 13. Any person, company, or corporation, who shall own or have in his or their possession any sheep or band or herd of sheep affected with any contagious or infectious disease, knowing such sheep to be so affected, or after having received notice that said sheep are so affected, who shall permit such sheep to run at large, or who shall keep such sheep where other sheep not affected with such disease shall be exposed to such contagious or

infectious disease, or who shall sell, trade, or give away such sheep, without first informing the party to whom the sheep are sold, traded, or given, that such sheep are diseased, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than two hundred dollars nor more than five hundred dollars.

### 2311. False charges, liability for making.

SEC. 14. If any person or persons shall make complaint against another person, company, or corporation for violation of any of the provisions of this act, and said information shall prove false, the person so informing shall pay all costs, damages, expenses and disbursements incurred by reason of such complaint.

### 2312. Act to be printed and distributed.

SEC. 15. The state printer is hereby authorized and directed to print five hundred copies of this act, in addition to the usual number printed, for the use of county officers as required by law, and the secretary of state is hereby directed to distribute the same to the several county assessors of this state as he may deem proper. The said additional copies herein provided for shall be furnished to owners of sheep on application, free of charge.

*An Act supplemental to an act entitled "An act to amend an act entitled 'An act to prevent the dissemination of contagious diseases among sheep; to provide for the appointment of sheep inspectors in the several counties of this state, and to define their duties and compensation,' approved February 23, 1893," approved March 6, 1899.*

Approved March 21, 1901, 113

### 2313. Inspector to collect fees—When paid.

SECTION 1. The inspector of sheep in any county of this state where sheep are inspected shall collect the fees for such inspection in two annual installments; the first installment to be paid prior to the thirtieth day of June, and the second installment to be paid prior to the thirty-first day of December of each year.

### 2314. Sheep, when dipped.

SEC. 2. It is hereby made compulsory on the part of any person or persons owning or controlling sheep in this state, between the first day of July and the first day of December in each year, where scab is visible, to dip the infected sheep twice at interval of from ten to fourteen days.

### 2315. Sheep from other states.

SEC. 3. Any person or persons owning or controlling sheep and driving or bringing them into this state from any state, shall without delay, on entering this state, notify the nearest sheep inspector of their presence, with sheep, within this state.

See sec. 2300.

### 2316. Duty of inspectors—Expenses, sale to pay.

SEC. 4. The sheep inspectors of the several counties of this state are hereby authorized, empowered and instructed that, on the neglect or refusal of any person or persons owning or controlling sheep to comply with the provisions of this act in respect to the dipping of infected sheep, to dip or cause to be dipped said infected sheep, the expenses of which shall be a charge against the band of sheep so infected, and unless the claim or demand is otherwise liquidated, the sheep inspector shall sell to the highest bidder a sufficient number of sheep from out the infected band to satisfy the claim.

*An Act to prohibit herding or grazing of sheep within three miles of any town or village.*

Approved March 2, 1901, 37

**2317. Unlawful to herd within three miles of town.**

SECTION 1. It shall be unlawful for any person to herd or cause to be herded or grazed, any number of sheep on any unoccupied land within a radius of three miles of the postoffice of any town or village that has a population of fifty or more persons; *provided*, that this shall not apply to sheep driven to railroad to be shipped or sheared.

**2318. Idem—A misdemeanor—Punishment.**

SEC. 2. Any person who, for himself, or as agent or employee of any other person, firm, corporation, company or association, shall violate the provisions of section 1 of this act shall be deemed guilty of a misdemeanor and shall upon conviction thereof, be punished by a fine in any sum not less than fifty dollars nor more than two hundred dollars for each and every offense, or by imprisonment in the county jail for a period of not less than twenty-five days nor more than one hundred days, or by both such fine and imprisonment as the courts may order.

*An Act in relation to herding, grazing and driving of sheep.*

Approved March 29, 1907, 427

**2319. Prohibited from grazing on lands of others or within one mile of ranch house.**

SECTION 1. It is not lawful for any person owning or having charge of sheep to herd the same, or permit them to be herded, on the land or possessory claims of other persons, or to herd the same or permit them to be grazed within one mile of a bona fide home or bona fide ranch house; *provided*, that nothing in this act shall prevent the owners from herding or grazing their sheep on their own lands; *and provided further*, that nothing in this act shall be so construed as to prevent sheep being driven along any public highway.

**2320. Penalty for violation—Damages.**

SEC. 2. The owner or agent of such owner of sheep violating the provisions of section 1 of this act, on complaint of the party or parties injured before any justice of the peace for the precinct where either of the interested parties may reside, is liable to the party injured for all damages sustained, and if the trespass be repeated is liable to the party or parties injured for the second and every subsequent offense in double the amount of damages sustained.

**2321. Sheep, when deemed estrays.**

SEC. 3. When the owner or agents of such owner of sheep found trespassing upon the land or possessory claims of another, is unknown to the party or parties injured by such trespass, all sheep so trespassing may be treated as estrays.

*An Act to prohibit swine from running at large and being free commoners.*

Approved March 2, 1885, 50

**2322. Swine not to be free commoners.**

SECTION 1. It shall be unlawful for any person or persons, who are the owner or owners, or who may have charge of any swine within this state, to allow them to run at large and be free commoners.

**2323. Owners of swine responsible for twice the value of property destroyed.**

SEC. 2. Any swine belonging to any person or persons, or under the charge of any person or persons, that shall break into any yard, flower or vegetable garden, or in any inclosure whatever, or shall root up or destroy any pasture, field or growing grass for hay purposes, or any kind of growing crop whatever, whether the same be inclosed or not, such person or persons, owner or owners, shall be subject to such damages as shall be equal to twice the value of the property broken into, eaten up or destroyed.

**2324. Actions tried, where.**

SEC. 3. All actions for damages arising under the provisions of this act shall be tried and determined in the court having jurisdiction thereof, as in other cases made and provided.

*An Act entitled "An act to make it unlawful for the owner or owners of swine, goat or goats to allow them to run at large during a certain period of each year, from and after the approval of this act."*

Approved February 19, 1879, 42

**2325. Goats and swine prohibited to run at large during certain season.**

SECTION 1. It shall be unlawful, from and after the passage of this act, for any person or persons, who are the owner or owners, or who may have charge of any swine, goat or goats, within this state, to allow them to run at large and be free commoners, from and after the first day of March to the tenth day of November of each and every year. But the intervening period between the tenth day of November to the first day of March of each year, such swine, goat or goats, may be free commoners.

**2326. Owners subject to damages—Amount of damages.**

SEC. 2. Any swine, goat or goats, belonging to any person or persons, that shall break into any yard, flower or vegetable garden, or any inclosure whatever, or shall root up or destroy any pasture, field, or growing grass for hay purposes, or any kind of growing crop whatever, whether the same be inclosed or not during the period that such swine, goat or goats are prohibited to run at large and be free commoners, by section 1 of this act, such owner or owners shall be subject to such damages as shall be equal to twice the value of the property broken into, eaten up or destroyed.

**2327. Actions, where tried.**

SEC. 3. All actions for damages arising, under the provisions of this act shall be tried and determined in the court having jurisdiction thereof, as in other causes made and provided.

*An Act relating to trespass of swine, sheep, and goats.*

Approved March 5, 1885, 67

**2328. Unlawful for swine, goats or sheep to run at large in city or town limits.**

SECTION 1. It shall be unlawful for any swine, sheep, goat or goats, to run at large, or the owner or owners, or any person or persons, having in charge any swine, sheep, goat or goats, to permit or allow them to run at large within the ordinary limits of any city or town of this state, during any period of the year. Said ordinary limits shall be defined as follows: Within an incorporated city or town the limits shall be as defined in said incorporated clause or clauses; and within a town or city not incorporated in this state, the said ordinary

limits shall be defined as follows: Within such city or town, which contains one hundred or more inhabitants, the said limits shall be defined as being within a radius of one mile, radiating from the postoffice of said city or town.

### 2329. *Idem.*

SEC. 2. It shall be the duty of any sheriff or constable, and the privilege of any citizen, of or in any town described in section 1 of this act, to impound any swine, sheep, goat, or goats. *As amended, Stats. 1901, 46.*

### 2330. Owners may be fined.

SEC. 3. The owner or owners, agent or agents, having jurisdiction over, or charge of, any swine, sheep, goat or goats, shall be fined five dollars for each and every violation of this act, and as much more as in the wisdom of the court having jurisdiction may deem a sufficient amount to cover all damages.

### 2331. Manner in which impounded animals may be sold—Escheats.

SEC. 4. Any constable, person or persons having in his charge, after they have been impounded, any swine, sheep, goat or goats, shall post a notice that such animal or animals are in his charge, and if not taken out by the owner will be sold. After the expiration of ten days the person having such animal or animals, and having given notice as aforesaid, shall post three written or printed notices in conspicuous places in the town or city where such animal or animals have been taken up, describing the same, giving all marks or brands, if any, and that such animal or animals will be sold by him to pay the charges that have and will have accrued against it, and costs. He shall sell to the highest bidder, and upon payment of the purchase money shall turn over to the buyer the animal or animals sold, and after deducting the damages and costs of sale, shall pay the balance, if any remains, into the county treasury, where it shall remain subject to the laws governing escheats.

### *An Act to prevent the trespassing of animals upon private property.*

Approved December 12, 1862, 13

### 2332. Liability of owner of stock for trespass.

SECTION 1. If any horse, mule, jack, jenny, hog, sheep, goat, or any head of neat cattle, shall break into any grounds inclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such inclosed premises for all damages sustained by such trespass; and if the trespass be repeated by neglect of the owner or manager of said animals, he shall for the second and every subsequent offense or trespass be subject to double the damages of such trespass to the owner of said premises.

### 2333. Animals not to be injured—Treated as estrays—Jurisdiction.

SEC. 2. If any owner or occupier of any grounds or crops trespassed upon, provided said ground be enclosed within a fence, by animals entering upon or breaking into his or their grounds, whether enclosed by a lawful fence or not, shall kill, maim, or materially injure the animal or animals so trespassing, he, she, or they shall be liable to the owner of such stock for all damages, and for the costs accruing from a suit for such damages, when necessarily resorted to for their recovery; *provided*, the owner or occupier of such grounds or crops so damaged and trespassed upon, may take up and safely keep, at the expense of the owner or owners thereof, after due notice to said owners, if known, such animals, or so many of them as may be necessary to cover the damages he may have sustained, for ten days, and if not applied for by the proper owner or owners before the expiration of ten days, the same may be posted under the stray laws of the state, and before restitution shall be had by the owner or owners of such animals, all damages done by them, as well

also as the expense of posting and keeping them, shall be paid. Any justice of the peace in the township or precinct shall have jurisdiction of all such reclamation of animals, together with the damages, expense of keeping and posting the same, when the amount claimed does not exceed one hundred dollars.

**2334. Lands of two or more under one inclosure—Damages by one to other.**

**SEC. 3.** When two or more persons shall cultivate lands under one inclosure, neither of them shall place or cause to be placed any animal on his, her or their ground, to the injury or damage of the other or others, but shall be liable for all damages thus sustained by the other or others; and if repeated, after due notice is given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

See *Chase v. Chase*, 15 Nev. 259.

*An Act to prevent trespass upon real estate by live stock, fixing damages therefor, and other matters relating thereto, and to repeal an act entitled "An act to prevent trespass upon real estate by live stock, and other matters relating thereto," approved March 15, 1889.*

Approved February 18, 1893, 30

**2335. Consent of owner of range to be obtained.**

**SECTION 1.** It shall be unlawful for any person or persons to herd or graze any live stock upon the lands of another without having first obtained the consent of the owner or owners of the land so to do; *provided*, that the person claiming to be the owner of said lands has the legal title thereto, or an application to purchase the same, with first payment made thereon.

The act of 1903, 47, did not repeal this act by implication. *Pyramid L. & S. Co. v. Pierce*, 30 Nev. 237 (95 P. 210).

**2336. Damages, how recovered—Stock may be attached—Lien superior.**

**SEC. 2.** The live stock which is herded or grazed upon the lands of another, contrary to the provisions of the first section of this act, shall be liable for all damages done by said live stock while being unlawfully herded or grazed on the lands of another, as aforesaid, together with costs of suit and reasonable counsel fees, to be fixed by the court trying an action therefor, and said live stock may be seized and held by writ of attachment issued in the same manner provided by the general laws of the State of Nevada, as security for the payment of any judgment which may be recovered by the owner or owners of said lands for damages incurred by reason of a violation of any of the provisions of this act, and the claim and lien of a judgment or attachment in such an action shall be superior to any claim or demand which arose subsequent to the commencement of said action.

The provision for an attorney's fee in this section in favor of the party recovering damages is a proper police regulation and is constitutional. *Pyramid L. & S. Co. v. Pierce*, 30 Nev. 237 (95 P. 210).

Cited, *Dangberg v. Ruhenstroth*, 26 Nev. 455 (70 P. 320).

Cited, *State ex rel. Jones v. Brown* in dis-

senting opinion of Sweeney, J., 30 Nev. 501 (98 P. 871).

This statute merely contemplates an action at law for damages, and an action brought thereunder is in no sense an equity proceeding, so as to give the district court jurisdiction. *Dangberg v. Ruhenstroth*, supra.

**2337. Act not applicable to certain stock.**

**SEC. 3.** This act shall not apply to any live stock running at large on the ranges or commons.

Act of 1889, 129, to prevent trespass upon real estate by live stock and the act of 1903, 47, both since repealed, are cited in *Pyramid L. & S. Co. v. Pierce*, 30 Nev. 237 (95 P. 210).

The act of 1877, 76, now repealed, but incorporated in the crimes and punishment act, was cited in *Chase v. Chase*, 15 Nev. 262.

The act of 1862, 13, to prevent the tres-

passing of animals upon private property was also cited in same case in support of the principle that no action can be sustained for injuries done to real estate, or to the crops growing thereon by horses and cattle

that are allowed to run at large unless the land is enclosed with a lawful fence.

A previous act to regulate marks and brands of stock, Stats. 1873, 99, was cited in same case.

## MARRIAGE

### *An Act relating to marriage and divorce.*

Approved November 28, 1861. 94

2338. Marriage a civil contract.
2339. Legal age—Consanguinity—Consent of parents.
2340. Who may perform marriage—License—Minister must be licensed—Must exhibit license—Clerk to keep record.
2341. Marriage licenses—County clerk to grant—Fee of clerk and recorder.
2342. Solemnization—No particular form—Two witnesses.
2343. Marriage certificate.
2344. Record of certificates—Form of.
2345. Certificate to be filed and recorded by county recorder.
2346. Failure to record certificate a misdemeanor—Penalty.
2347. Making of false certificate a gross misdemeanor.
2348. Unauthorized persons performing—Ceremony where known legal impediment—Gross misdemeanor.
2349. Want of power unknown—Marriage valid.
2350. Record presumptive evidence of marriage.
2351. Illegitimate children legitimized.
2352. Fines—Application of.
2353. Forms used by Friends or Quakers valid.
2354. When void without decree of divorce.
2355. Marriage of parties incapable of assenting or when fraud practiced—When void.
2356. When not to be judged a nullity—Insanity—Cohabitation after disability removed.
2357. Actions for annulment.

### 2338. Marriage a civil contract.

SECTION 1. That marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential.

Defendant was married in 1893 to S. by written contract. Subsequently the parties separated by mutual consent and thereafter the defendant was formally married to L. by justice of the peace. It was held that the marriage to S. was a valid marriage, and that the subsequent marriage to L. constituted bigamy in defendant. *State v. Zichfeld*, 23 Nev. 304 (62 A. S. 800, 34 L. R. A. 784, 46 P. 802).

### 2339. Legal age—Consanguinity—Consent of parents.

SEC. 2. Male persons of the age of eighteen years, and female persons of the age of sixteen years, not nearer of kin than second cousins or cousins of the half blood, and not having a husband or wife living, may be joined in marriage; *provided, always*, that male persons under the age of twenty-one years, and female persons under the age of eighteen years, shall first obtain the consent of their fathers, respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians; *and provided, further*, that nothing in this act shall be construed so as to make the issue of any marriage illegitimate if the person or persons shall not be of lawful age. *As amended, Stats. 1867, 88; 1891, 15.*

Sec. 3 repealed, Stats. 1867, 89.

Bigamy, penalty for, secs. 6456-6457.

Incest, penalty for, sec. 6458.

Abandonment of wife or child, penalty for, sec. 6446; failure to support, penalty for, sec. 6481.

Gross misdemeanor for person of white race to intermarry with person of black, brown, yellow or red race, or for any person to perform ceremony of marriage in such case, secs. 6514-6516.

See *State v. Zichfeld*, under sec. 1 of this act.

The lawful age of marriage in this state is eighteen years in males and sixteen years in females, and marriages made by persons of such age are valid and binding, though made without consent of parents or guardians. *Fitzpatrick v. Fitzpatrick*, 6 Nev. 63.

When a female of the age of sixteen years entered into a marriage "without force or fraud, and with her full and free consent," it was held that there was no ground of divorce on account of want of legal age, though there was no consent by any parent or guardian. *Idem*.

The proviso in this section, that the issue of a marriage of persons not of lawful age shall not be illegitimate, refers to the issue of marriages under eighteen years in males and sixteen in females. *Idem*.

The proviso in this section against the illegitimacy of the issue of a marriage of persons not of lawful age, does not indicate any intention on the part of the legislature to render marriages of males between eighteen and twenty-one, or of females between sixteen and eighteen, void on account of being made without the consent of guardian or parents. *Idem*.

### 2340. Who may perform marriage—License—Ministers must be licensed—Must exhibit license—Clerk to keep record.

SEC. 4. It shall be lawful for any ordained minister of any religious society or congregation within this state, who has or hereafter may obtain a license for that purpose, as hereinafter provided, or for any justice of the supreme court, or for any judge of the district court in his district, or justice of the peace in his county, to join together as husband and wife all persons not prohibited by this act; *provided*, that the persons herein authorized to perform said marriage ceremony shall first receive the license previously issued, as hereinafter provided, to the persons wishing to be married. Any minister of the gospel, upon producing to the district court of any county, or district within this state, credentials of his being a regularly ordained minister of any religious society or congregation, shall be entitled to receive from said court a license authorizing him to solemnize marriages within this state so long as he shall continue a regular minister in such society or congregation. It shall be the duty of any minister licensed to solemnize marriages as aforesaid to produce to the county clerk in every county in which he shall solemnize any marriage, his license so obtained, and the said clerk shall thereupon enter the name of such minister upon record as a minister of the gospel duly authorized to solemnize marriages within this state, and shall note the court from which such license issued, for which service no charge shall be made by such clerk. The record so made, or the certificate thereof by the said clerk under the seal of his office, shall be good evidence that said minister was duly authorized to solemnize marriages. *As amended, Stats. 1867, 88; 1899, 47; 1901, 19; 1911, 317.*

Misdemeanor to perform marriage without license, secs. 6479-6480.

### 2341. Marriage license—County clerk to grant—Fee of clerk and recorder.

SEC. 5. Previous to persons being joined in marriage, a license shall be obtained for that purpose from the county clerk of the county where the persons, or one of them, intending to be married, reside (or in case the persons intending to be married do not reside in this state, then from any county clerk in the state). The county clerk may inquire of the party applying for marriage license upon oath or affirmation relative to the legality of such contemplated marriage; and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and if any of the persons intending to marry shall be under age, and shall not have been previously married, the consent of the parent or guardian shall be personally given before the clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said clerk and make oath that he saw the parent or guardian, whose name is annexed to such certificate subscribed, or heard him or her acknowledge the same, whereupon the clerk is authorized to issue and sign such license, affixing thereto the seal of the county. The clerk shall be entitled to receive as his fee for issuing the license the sum of one dollar, and if any clerk shall in any

other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars to and for the use of the party aggrieved. The clerk shall also at the time of issuing such license collect the sum of one dollar and pay the same over to the county recorder as his fee for recording the certificate named in section 8. *As amended, Stats. 1867, 89; 1899, 48.*

The above provisions are formal and directory, and do not render void a common-law marriage by consent per verba de presenti.

State v. Zichfeld, 23 Nev. 304 (62 A. S. 800, 34 L. R. A. 784, 46 P. 802).

### 2342. Solemnization—No particular form—Two witnesses.

SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare, in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

### 2343. Marriage certificate.

SEC. 7. When a marriage shall have been solemnized the persons solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residence of the parties, and of at least two witnesses present, and the time and place of such marriage. *As amended, Stats. 1867, 89.*

### 2344. Record of certificate—Form of.

SEC. 8. Every person solemnizing a marriage shall make a record thereof, and within thirty days after such marriage shall make and deliver to the recorder of deeds of the county where such license was issued a certificate, under his hand, containing the particulars mentioned in the preceding section. The certificate may be in the following form:

State of Nevada, County of \_\_\_\_\_, ss.

This is to certify that the undersigned, a justice of the peace of said county (minister of the gospel, or judge, etc., as the case may be), did on the \_\_\_\_ day \_\_\_\_\_, A.D. 18\_\_\_\_, join in lawful wedlock A. B. and C. D., with their mutual consent, in presence of E. F. and G. H., witnesses. J. P., justice of the peace. *As amended, Stats. 1899, 48.*

### 2345. Certificate to be filed and recorded by county recorder.

SEC. 9. All such certificates shall be filed and recorded by the said recorder in a book to be kept by him for that purpose; and he shall receive a fee of one dollar from the county clerk who shall be entitled to collect the same from the parties applying for such license before he issues the license. *As amended, Stats. 1899, 49.*

### 2346. Failure to record certificate—Penalty.

SEC. 10. Every person solemnizing a marriage who shall fail or neglect to make and deliver to the recorder, a certificate thereof, within the time specified in section 8, shall be guilty of a misdemeanor and punished by a fine of not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than ten days nor more than fifty days or by both such fine and imprisonment; and every recorder whose legal fees therefor shall have been tendered him, who shall fail or neglect to record such certificate, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than fifty days or more than six months, or by both such fine and imprisonment. *As amended, Stats. 1903, 70.*

**2347. False certificate—Gross misdemeanor.**

SEC. 11. If any person shall wilfully make any false certificate of any marriage or pretended marriage, he shall forfeit for every such offense a sum not exceeding five hundred dollars, or may be imprisoned in the territorial prison not exceeding one year, or by both such fine and imprisonment.

**2348. Unauthorized persons performing—Ceremony where known legal impediment—Gross misdemeanor.**

SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall on conviction be fined in any sum not exceeding five hundred dollars, and be imprisoned in the territorial prison until such fine is paid.

**2349. Want of power unknown—Marriage valid.**

SEC. 13. No marriage solemnized before any person professing to be a judge, justice, or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

**2350. Record presumptive evidence of marriage.**

SEC. 14. The original certificate and records of marriage made by the judge, justice, or minister, as prescribed in this act, and the record thereof by the recorder of the county, or a copy of such record duly certified by such recorder, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

**2351. Illegitimate children legitimized.**

SEC. 15. Illegitimate children shall become legitimized by the subsequent marriage of their parents with each other.

**2352. Fines—Application of.**

SEC. 16. All fines and forfeitures arising in consequence of a breach of this act shall be paid into the county treasury for the use of common schools; and in all cases, when a violation of the provisions of this act is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the county treasurer.

See sec. 355 (constitution).

**2353. Forms used by Friends or Quakers valid.**

SEC. 17. All marriages solemnized among the people called "Friends" or "Quakers," in the forms heretofore practiced and in use in their meetings, shall be good and valid.

**2354. When void without decree of divorce.**

SEC. 18. All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void without any decree of divorce or other legal proceedings.

**2355. Marriage of parties incapable of assenting or when fraud practiced—When void.**

SEC. 19. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when fraud shall have been proved, and there shall have been no subsequent voluntary cohab-

itation of the parties, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

Forcing woman against her will to marry is a felony and conviction thereof operates as a divorce, sec. 6444.

### 2356. When not to be judged a nullity—Insanity—Cohabitation after disability removed.

SEC. 20. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under the age of legal consent, if it shall appear that the parties, after they attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife after such insane person was restored to a sound mind.

See Fitzpatrick v. Fitzpatrick, under sec. 2 of this act.

### 2357. Actions for annulment.

SEC. 21. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the probate court of the county where the parties or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

NOTE—The probate court as it existed under territorial law was abolished by the constitution and its jurisdiction conferred upon the district court, see secs. 316, 407, also 386.

Remainder of act, secs. 22-29, relating to divorce, will be found under that head in civil procedure, see secs. 5838-5845.

## MEDICINE, SURGERY AND OBSTETRICS

*An Act regulating the practice of medicine, surgery and obstetrics in the State of Nevada; providing for the appointment of a state board of medical examiners and defining their duties; providing for the issuing of licenses to practice medicine; defining the practice of medicine; defining certain misdemeanors and providing penalties, and repealing all other acts, or parts of acts, in conflict therewith.*

Approved March 4, 1905, 87

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| 2358. License necessary.  | 2368. Compensation and expenses of board—<br>Salary of secretary.  |
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| 2361. Board to meet and organize—Regular and special meetings, notice of.   | 2371. Practicing without license, misdemeanor—Penalty—Proceedings at law.  |
| 2362. To adopt rules—Administer oaths—Seal—Duty of secretary.               | 2372. False impersonation, penalty for.  |
| 2363. Quorum—Issuance of certificates—Certificates of other boards—Proviso. | 2373. Issuing false certificate, penalty for.  |
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| 2365. Applicant's qualification and examination—Fee.                        |  |
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### 2358. License necessary.

SECTION 1. That it shall hereafter be unlawful for any person, or persons,

to practice medicine, surgery or obstetrics in this state without first obtaining a license so to do as hereinafter provided.

Section 6 of a previous act on this subject (Stats. 1875, 47), which contained a provision that it shall not apply "to those who have practiced medicine or surgery in this state for a period of ten years next preceding the passage of this act," was held not in violation of Const., art 4, sec. 21 (ante, 279). *Ex Parte Spinney*, 10 Nev. 323.

Based upon the same act: To make a defense for the sale of opium by a practicing physician complete, the defendant must show

that he comes within the provisions of this act. *State v. Ching Gang*, 16 Nev. 62.

Act cited, *State v. Cons. Virginia M. Co.*, 16 Nev. 443.

The act of 1889, 88, relating to this subject is wholly repealed by this act, providing that it shall be unlawful for any person to practice medicine without first obtaining a license, and making no provision for a temporary license. *State ex rel. Weyerhorst v. Lee*, 28 Nev. 380 (82 P. 229).

### 2359. Governor to appoint board of examiners—Qualifications of—Term of office.

SEC. 2. Within thirty days after this law goes into effect, it shall be the duty of the governor of the State of Nevada to appoint a state board consisting of five members, which shall be known as the board of medical examiners of the State of Nevada, and shall be reputable practicing physicians, duly licensed as such by some legally chartered medical institution in the United States, and who shall have been actually engaged in the practice of medicine in the State of Nevada, three of whom shall be selected from the school of medicine known as the regular, one from the school known as the eclectic, and one from the school known as the homeopathic. This board shall be selected without regard to their individual political beliefs, and they shall hold office for the time for which they were appointed, viz., two for four years, one for three years, one for two years, and one for one year from the date of their appointment, and shall serve until their successors are appointed and qualified. Hereafter one member shall be appointed annually for the term of four years. In the event of a vacancy occurring in said board, or absence from the state for a period of six months without permission, the governor shall appoint a person duly qualified under this act to fill the unexpired term.

### 2360. Oath.

SEC. 3. Each member of said board shall, before entering upon the duties of his office, take the constitutional oath of office, and shall, in addition, make oath that he is a graduate in medicine, and a legally qualified practitioner of medicine in this state.

### 2361. Board to meet and organize—Regular and special meetings, notice of.

SEC. 4. The said board shall meet in Carson City, Nevada, on the first Monday in May, 1905, and shall organize by electing from its number a president, vice-president, secretary and treasurer, who shall hold their respective positions during the pleasure of the board. Said board shall hold its regular meetings on the first Monday in May and the first Monday of November of each year, at such time and place as shall be most convenient to the said board, and due notice of all special meetings of the board shall be given by publication twice a week for each of the two weeks next preceding such meeting, in three papers published in the State of Nevada. Special meetings of the board may be held at the call of the president, and the same notice thereof shall be given as in the case of regular meetings.

### 2362. To adopt rules—Administer oaths—Seal—Duty of secretary.

SEC. 5. Said board may, from time to time, adopt such rules as may be necessary to enable it to carry into effect the provisions of this act. Any member of said board may administer oaths in all matters pertaining to the duties of said board, and the board shall have the authority to take evidence as to any matter cognizable by it. Such board shall procure a seal, and shall

receive through its secretary applications for the certificates provided to be issued under this act.

### 2363. Issuance of certificates—Quorum—Certificates of other boards—Proviso.

SEC. 6. A majority of said board shall constitute a quorum to transact all business. All certificates issued by said board shall bear its seal and the signatures of its president and secretary, and shall authorize the person to whom it is issued to practice medicine in all its branches in this state, upon complying with the requirements of this act. Said board may, in its discretion, accept and register, upon payment of the registration fee, and without examination of the applicant, any certificate which shall have been issued to him by the medical examining board of the District of Columbia, or of any state or territory of the United States; *provided, however*, that the legal requirements of such medical examining board shall have been, at the time of issuing such certificate, in no degree or particular less than those of Nevada at the time when such certificate shall be presented for registration to the board created by this act; *and provided further*, that the provisions in this paragraph contained shall be held to apply only to such of said medical examining boards as accept and register the certificates granted by this board without examination by them of the ones holding such certificates.

### 2364. Certificate must be procured—Method—Evidence—Time limitation.

SEC. 7. After this law goes into effect, any person desiring to practice medicine, surgery, or obstetrics or any of the various branches of medicine in this state, shall, before beginning to practice, procure from the state board of medical examiners a certificate that such person is entitled to practice medicine, surgery, or obstetrics in this state. In order to procure such certificate the applicant shall submit to the said board his or her diploma, issued by some legally chartered medical school, the requirements of which medical school shall have been at the time of granting such diploma in no particular less than those prescribed by the association of American medical colleges for that year, and he must accompany said diploma or license with an affidavit setting forth the number and duration of terms the applicant was required to be in attendance, and that he is the lawful possessor of the same, that he is the person therein named, and that the diploma or license was procured without fraud or misrepresentation of any kind. Such application shall be accompanied by the affidavit of two freeholders, resident of the same county in which the applicant resides, stating that the applicant is the identical person named in the accompanying diploma, and that he or she is of good moral standing and reputable. In addition to such affidavit, said board may hear such further evidence as, in its discretion, it may deem proper as to any of the matters embraced in said affidavit. If it should appear from such evidence that said affidavit is untrue in any particular, or if it should appear that the applicant is not of good moral character, the application must be rejected. Said board shall retain such diploma such time as is necessary, but in no case shall said board retain such diploma to exceed two weeks. All such diplomas and affidavits shall be addressed to the secretary of the board.

### 2365. Applicant's qualification and examination—Fee.

SEC. 8. Applicants for certificates to practice medicine, surgery or obstetrics in the State of Nevada shall be required to present a diploma from a legally recognized college, and to pass a satisfactory examination before the state board of medical examiners as to his or her qualifications. The applicant must appear personally before the board, and the examination shall be conducted in the English language, and shall be, in whole or in part in writ-

ing, and in each branch shall obtain seventy-five per cent, and shall be on the following subjects, to wit: Anatomy, physiology, materia medica, and therapeutics, chemistry, bacteriology, pathology, toxicology, obstetrics, surgery, general medicine, diseases of the skin, eye, ear, nose, throat, brain, genito-urinary system. Said examination shall be fair and impartial, and the questions of such character as will determine the fitness of the applicant to practice his or her profession. When applicant applies for examination in materia medica and therapeutics and theory and practice of medicine, he shall designate in which school of medicine he desires to practice, and only the member or members of the board who belong to the school so designated shall participate in this part of the examination. Examinations shall be practical in character, and designed to discover the applicant's fitness to practice medicine and surgery. If an applicant fail in his first examination, he may, after not less than six months, be reexamined, without additional fee. If he fails in a second examination, he shall not thereafter be entitled to another examination in less than one year after the date of second examination, and shall be required to pay for such examination the full fee. The examination papers shall form a part of the records of said board, and shall be kept on file by the secretary, and said records shall be open to public inspection whenever requested after the examination; *provided*, that any person, who is a regular graduate from a regularly chartered college of the practice of the system of what is generally known and recognized as the drugless system, may present themselves for examination under the regulations hereinbefore specified, and shall be required to pass an examination in all the subjects noted, with the exception of materia medica and therapeutics, and upon the passing satisfactorily of said examination by the board, shall have issued to them a license to practice the said system of drugless medicine in this state, under the same rules and regulations prescribed and required of the practitioners of other systems of medicine. Each applicant, on making application, shall pay to the secretary of the board a fee of twenty-five dollars (\$25), at the same time the diploma and affidavit is filed with him, and this fee shall not be returned in the event of the applicant's failing to pass a satisfactory examination. Any person who may hereafter be granted a license to practice medicine and surgery in this state under this act, upon the grounds of reciprocity with other states and without examination, shall pay a fee of twenty-five dollars (\$25) for such license. *As amended, Stats. 1907, 194; 1911, 380.*

### 2366. Right of appeal to courts.

SEC. 9. Any unsuccessful applicant shall have the right to appeal to the courts, requiring the said board to show cause why such applicant should not be permitted to practice medicine, surgery or obstetrics in the State of Nevada.

### 2367. Register of applicants—List to be furnished county clerks.

SEC. 10. Said board shall procure a book for the purpose of recording the names of all persons to whom it issued certificates. In this book shall be entered the names of the applicants, together with the name of the school granting the diploma, the date of the diploma, the number of terms the applicant attended school, residence of applicant, and the date of issuance of certificate. This book shall be retained by the secretary, who shall note the unsuccessful applicants, furnishing the same information as is given above. The secretary shall furnish each county clerk in this state a complete list of persons to whom certificates have been issued, after each meeting of the board. Such list shall be retained and filed by the county clerk and it shall show the name, age, and location of the holder of each certificate, together with the name of the institution conferring the degree, and the date of the issuance of certificate.

### 2368. Compensation and expenses of board—Salary of secretary.

SEC. 11. The members of the board shall serve without compensation, except that their actual expenses incurred while attending a regular or special meeting of the board shall be refunded; *provided*, that the secretary shall receive a semiannual salary of one hundred and fifty (\$150) dollars for his services. All moneys received by the board shall be paid out on its order for its expenses, and the traveling expenses of the members, and if the moneys received are not sufficient to meet such expenses, then the board shall certify to the board of examiners, with accompanying vouchers, over its seal and the signatures of its president and secretary, the amount actually necessary to meet the remainder of its expenses, and upon the approval of said claim by the board of examiners the state controller shall draw his warrant upon any moneys in the general fund not otherwise appropriated, and the state treasurer shall pay the same.

### 2369. Certificate filed with recorder—Refusal and revocation of certificates—Unprofessional conduct defined—Right of appeal.

SEC. 12. Every person to whom the board shall issue a certificate shall present the same to the county recorder of the county in which he desires to practice, and have the same recorded, and shall pay the fee usually paid for recording such papers. The board may refuse a certificate to any applicant guilty of unprofessional conduct, and may revoke any certificate for a like cause. In all cases of refusal or revocation the party aggrieved may appeal to the courts. The words "unprofessional conduct," as used in this act, are hereby declared to mean:

First—The procuring or aiding or abetting in procuring a criminal abortion.

Second—The obtaining of any fee on the assurance that a manifestly incurable disease can be permanently cured.

Third—The wilfully betraying a professional secret.

Fourth—All advertising of medical business in which grossly improbable statements are made.

Fifth—All advertising of any medicines, or of any means, whereby the monthly periods of women can be regulated, or the menses reestablished if suppressed.

Sixth—Conviction of any offense involving moral turpitude.

Seventh—Habitual intemperance.

### 2370. "Practice" defined—Proviso—Exceptions—Sufficiency of charge in indictment for violation of act.

SEC. 13. For the purposes of this act the words "practice of medicine, surgery and obstetrics," shall mean to open an office for such purpose, or to announce to the public, or to any individual in any way, a desire or willingness, or readiness to treat the sick or afflicted in any county in the State of Nevada; or to investigate or diagnosticate, or to offer to investigate or diagnosticate any physical or mental ailment, or disease, of any person, or to give surgical assistance to, or to suggest, recommend, prescribe or direct for the use of any person, any drug, medicine, appliance or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or bodily injury, or deformity, after having received or with the intent of receiving therefor, either directly or indirectly, any money, gift, or any other form of compensation. It shall also be regarded as practicing medicine within the meaning of this act if any one shall use in connection with his or her name, the words or letters "Dr.," "Doctor," "Professor," "M. D.," or "Healer," or any other title, word, letter or other designation intended to imply or designate him or her as a practitioner of medicine, or surgery, or obstetrics in any of its branches; *provided*, that nothing in this act shall be

construed to prohibit gratuitous services of druggists or other persons in cases of emergency, or the domestic administration of family remedies, and this act shall not apply to commissioned surgeons of the United States army or navy in the discharge of their official duties, nor shall it apply to professional or other nurses in the discharge of their duties as nurses, nor to physicians who are called into this state for consultation, and who are legally qualified to practice in the state where he or she resides. In charging any person in an affidavit, information or indictment with a violation of this act by practicing medicine, surgery or obstetrics without a license, it shall be sufficient to charge that he or she did, upon a certain day, and in a certain county of this state, engage in the practice of medicine, he, or she, not having a license to do so, without averring any further or more particular facts concerning the same.

**2371. Practicing without license, misdemeanor—Penalty—Proceedings at law.**

SEC. 14. Any person who shall practice medicine, surgery or obstetrics in this state without first complying with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than two hundred dollars, or by imprisonment in the county jail for not less than fifty days, nor more than one hundred and eighty days, or by both such fine and imprisonment for each and every such offense. Any person may institute proceedings at law provided for in this act.

**2372. False impersonation, penalty for.**

SEC. 15. Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in such certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of felony, and, upon conviction thereof, shall be punished by imprisonment in the state prison not less than one year nor exceeding five years.

**2373. Issuing false certificate, penalty for.**

SEC. 16. Any person assuming to act as a member of a state board of medical examiners, or who shall sign, or subscribe, or issue or cause to be issued, or seal or cause to be sealed, a certificate authorizing any person to practice medicine or surgery in this state, except the person so acting and doing shall have been appointed a member of said board of medical examiners as in this act provided, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of not less than sixty nor more than one hundred and eighty days, or by both such fine and imprisonment.

**2374. Registration fee—Free to certain persons—Proviso.**

SEC. 17. Every person practicing medicine, surgery or obstetrics in the State of Nevada on the first Monday of May, 1905, shall submit to the said board his, or her, diploma for registration, and a fee of twenty-five (\$25) dollars shall accompany such diploma; *provided*, that the owner of such diploma shall, if he or she was practicing medicine, surgery or obstetrics prior to the passage of the act approved March 15, 1899, and has not complied with said act of March 15, 1899, pay a fee of five (\$5) dollars for such registration, but said person shall submit to the board said diploma on the first Monday of May, 1905; *provided further*, that all persons who have complied with the act of March 15, 1899, shall be entitled to full registration by the said board of medical examiners, and nothing in this act shall be construed to prevent such registration, and the secretary of said board shall

enter free of all charge, upon the record book of said board, the names of all persons who have complied with the act of March 15, 1899. *And be it further provided*, that a certificate of registration or license issued by the proper examining board of any state, which agrees on reciprocal registration with this state, may be accepted as evidence of qualification for reciprocal registration in this state; *provided*, that the holder of such certificate was, at the time of such registration, the legal possessor of a diploma issued by a medical college in good standing in this state, and that the date thereof was prior to the passage of this act.

## MINES AND MINING

### FEDERAL LAWS

General mining laws of the United States relating to lode and placer claims, tunnels and millsites, appearing in United States Revised Statutes, sections 2375-2391, 2396-2407.

Amendment of 1875, providing that money expended on tunnel shall be considered as expended on claim, section 2382.

Amendment of 1882, providing that adverse claims may be verified by agents and affidavit of citizenship of applicants for mineral patents may be made out of district, section 2384.

Act extending to saline lands the laws relating to placer locations, section 2392.

Act authorizing entry of land valuable for building stone, under the placer mining laws, section 2393.

Act of February 11, 1897, authorizing entry of lands containing petroleum and other mineral oils under the laws relating to placer locations, section 2394.

Act of February 12, 1903, providing that the annual assessment work on oil lands may be done on any one of a group of not more than five claims, section 2395.

United States laws relating to coal lands, sections 2408-2413.

Act authorizing use of timber on public domain for mining and domestic purposes, approved June 3, 1878, sections 2414-2416.

Act restricting entry under all land laws to 320 acres and reserving right of way for government canals, section 2417.

Act modifying the last-named act so as to allow the acquiring of mines in addition to 320 acres of other land, and regarding townsite entries on mineral lands, sections 2418, 2419.

Act of June 4, 1897, relating to forest reserves, mineral and agricultural lands therein and the use of timber and stone thereon, and rights of settlers, section 2420.

Act for refunding certain payments made by applicants for mineral surveys, approved February 24, 1909, section 2421.

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| 2375. Possessory actions for recovery of mining titles or damages.                                      | 2386. Pending applications—Existing rights.  |
| 2376. Mineral lands reserved.   | 2387. Placers subject to entry similarly to lodes—Conformity of to surveys—Limits of.                                |
| 2377. Mineral lands open to location—Regulations.   | 2388. Subdivisions of ten-acre tracts—Maximum of placer locations—Preemption and homestead claims not impaired.      |
| 2378. Dimensions of mining claims upon veins or lodes—End lines must be parallel.                       | 2389. Conformity of placer claims to surveys—Limitations of claims.  |
| 2379. Proof of citizenship.   | 2390. What evidence of possession to establish right to patent—Statute limitations—Liens not impaired by the patent. |
| 2380. Locators' rights—Surface and veins apexing on claim.  | 2391. Proceedings for patent for placer claims containing lode.  |
| 2381. Owners of tunnels, rights of.   | 2392. Mining laws extended to saline lands.  |
| 2382. Money expended on tunnel considered expended on lode—Period for annual work.                      | 2393. Entry of lands chiefly valuable for building stone under the placer mining laws.                               |
| 2383. Patents for mineral lands, how obtained.  | 2394. Entry of lands containing petroleum and other mineral oils under the placer mining laws of the United States.  |
| 2384. Adverse claim—Proceedings on affidavits of citizenship or of applicant out of district.           |  |
| 2385. Description of vein—Claims on surveyed and unsurveyed lands—Monuments on patented claims control. |  |

2395. Annual labor may be done on one for not more than five contiguous oil claims.
2396. Surveyor-general to appoint surveyors of mining claims—Fixing and sworn statement of charges.
2397. Verification of affidavits—Contest and proof as to character of land.
2398. Where veins intersect—Right of way.
2399. Patents for nonmineral lands for mill-sites.
2400. Conditions may be made by local legislature.
2401. Vested rights of water—Rights of way for canals.
2402. Patents, preemptions and homesteads subject to vested and accrued water rights.
2403. Mineral lands in which no valuable mines are discovered open to homesteads.
2404. When lands may be set apart as agricultural lands.
2405. Additional land districts and officers—Power of president to provide.
2406. Provisions of this chapter not to affect acquired rights or Sutro Tunnel.
2407. Grant of lands to states or corporations not to include mineral lands.
2408. Entry of coal lands.
2409. Persons in possession making improvements have preference of entry.
2410. Time for filing claims.
2411. Only one entry allowed—Time for proof and payment.
2412. Conflicting claims—Preference—Commissioner may make rules.
2413. Prior rights not impaired—Mines of gold, silver or copper excluded.
2414. Timber may be felled subject to regulations of secretary of interior.
2415. Register and receiver to ascertain if timber is being cut for unauthorized purposes.
2416. Penalty for violation.
2417. Reservations in patents for rights of way for ditches and canals.
2418. Townsites on mineral lands authorized—Possessors of veins protected.
2419. Lands entered under the mineral laws not included in restriction to 320 acres.
2420. Forest reservations, when to be established; valuable mineral lands not to be included—Use of timber and stone by settlers and miners—Egress and ingress of settlers within reservations—Restoration of mineral or agricultural lands to public domain.
2421. Repayment of deposits for mineral surveys.

For schedule of state mining laws, see section 2422.

The following subsection numbers are from United States Revised Statutes:

### 2375. Possessory actions for recovery of mining titles or damages.

**SEC. 910.** No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States, but each case shall be adjudged by the law of possession.

The following cases refer to this section: *Harris v. Kellogg*, 117 Cal. 489; *Duffy v. Mix*, 24 Ore. 265; *Duggan v. Davey*, 4 Dak. 110; *Belk v. Meagher*, 104 U. S. 283; *Gillis v. Downey*, 85 Fed. 486; *Fulkerson v. Chisma M. Co.*, 122 Fed. 784; *Rico Aspen*

*Con. M. Co. v. Enterprise M. Co.*, 53 Fed. 321; *Davidson v. Calkins*, 92 Fed. 230; *Aurora Hill Con. M. Co. v. Eighty-Five M. Co.* 34 Fed. 520.

See Fed. Stat. Anntd. vol. 5, p. 35, cases and notes.

### 2376. Mineral lands reserved.

**SEC. 2318.** In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law (Title XXXII, chapter 6, Revised Statutes of the United States).

Cited, *Merrill v. Dixon*, 15 Nev. 407; *South End M. Co. v. Tinney*, 22 Nev. 19 (35 P. 89).

General interpretation. *Davis v. Weibold*, 139 U. S. 516; *Reynolds v. Iron Silver M. Co.*, 116 U. S. 693; *Kas. City M. Co. v. Clay*, 29 P. 9; *Deffeback v. Hawke*, 115 U. S. 402.

Character of lands reserved. *Merrill v. Dixon*, 15 Nev. 406; *Heil v. Martin*, 71 S. W. 814; *Bay v. Okl. S. Gas & M. Co.*, 13 Okl.

425, 73 P. 936; *Alaska Gas M. Co. v. Barbridge*, 1 Alaska, 311; *Lynch v. U. S.*, 138 Fed. 535; *Heine v. Roth*, 2 Alaska, 416.

Mineral value question of fact. *Standard Quicksilver Co. v. Habishaw*, 132 Cal. 115.

Purchase by fraud. *U. S. v. Culver*, 52 Fed. 81.

See, also, *Lindley on Mines*, 2d ed., secs. 47, 86, 136-139, 140, 152, 154, 155; *Cent. Dig.* vol. 34, title, Mines and Mining, secs. 1, 2.

### 2377. Mineral lands open to location—Regulations.

**SEC. 2319.** All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and

open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

See state law, sec. 2422.

U. S. R. S., secs. 2318-2346 cited, *Golden Fleece Co. v. Cable Con. Co.*, 12 Nev. 322; *Merrill v. Dixon*, 15 Nev. 407; *Gleason v. Mining Co.*, 13 Nev. 455; *Hand v. Cook*, 29 Nev. 518; *Nash v. McNamara*, 30 Nev. 114, 128, 137.

Requisites for valid location under sec. 2319—Statute construed generally. *Trappaagen v. Kirk*, 77 P. 58; *St. Louis M. Co. v. Montana M. Co.*, 194 U. S. 235, 48 L. Ed. 953; *Steele v. Tanana M. Co.*, 148 Fed. 678; *Bulette v. Dodge*, 2 Alaska, 427.

The majority of the court in *Hand v. Cook*, 29 Nev. 518, held that under the U. S. Rev. Stats., sec. 452, providing that "the officers, clerks and employees in the general land office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands," a U. S. deputy mineral surveyor is not prohibited from locating a mining claim.

The contrary view is taken by the ninth circuit court of appeals in *Waskey v. Hammer*, 170 Fed. 31, and by the supreme court of Utah in *Lavagnino v. Uhlig*, 26 Utah, 1, 71 P. 1046.

Title by occupancy. *Burns v. Clark*. 133 Cal. 634.

Property rights in. *Forbes v. Gracey*, 94 U. S. 766; *Gorman M. Co. v. Alexander*, 2 S. D. 557; *Mt. Rose M. Co. v. Palmer*, 26 Colo. 56; *Cent. Eureka M. Co. v. East Cent. Eureka M. Co.*, 146 Cal. 147, 79 P. 834, affirmed, 204 U. S. 266, 51 L. Ed. 476; *Reed v. Munn*, 148 Fed. 737 (see *Ibex M. Co. v. Same*, and *Munn v. Ibex*).

Deposits distinguished from land. *Waterloo M. Co. v. Doe*, 82 Fed. 45. But see *St. Louis M. Co. v. Montana M. Co.*, 113 Fed. 900.

Building stone valuable deposit. *Sullivan v. Schultz*, 22 Mont. 541; *Johnson v. Harrington*, 5 Wash. 78. But see *Wheeler v. Smith*, 5 Wash. 704; *N. P. R. R. v. Soderberg*, 188 U. S. 534.

Lands withdrawn from sale. *Lockhart v. Johnson*, 181 U. S. 520.

Location of lode after patent of placer claim. *Mutchinor v. McCarty*, 149 Cal. 603, 87 P. 85.

Certain government officials may or may

not locate. *Hand v. Cook*, 29 Nev. 518, 92 P. 3; *Lavagnino v. Uhlig*, 26 Utah, 1, 71 P. 1046, 198 U. S. 443, 49 L. Ed. 1119.

Private corporations may locate. U. S. v. *Trinidad Coal Co.*, 137 U. S. 160; *McKinley v. Wheeler*, 130 U. S. 630; also, 32 L. Ed. 1048; *Thomas v. Chrisholm*, 13 Colo. 105, 21 P. 1019; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522, 6 Sawy. 299; 34 Cent. Dig., *Mines and Minerals*, sec. 14.

Minor may locate. *Thompson v. Spray*, 72 Cal. 531.

Abandonment, rights of junior and senior locators. *Nash v. McNamara*, 30 Nev. 114, 93 P. 405.

Location by alien voidable. *Ferguson v. Neville*, 61 Cal. 356; *Manuel v. Wulff*, 152 U. S. 505, 46 L. Ed. 331; *McKinley Creek M. Co. v. Alaska United M. Co.*, 183 U. S. 563; *Billings v. Aspen M. Co.*, 51 Fed. 338; *Gorman M. Co. v. Alexander*, 2 S. D. 557; *North Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522, 6 Sawy. 299; *Croesus M. Co. v. Colo. Land & Mineral Co.*, 19 Fed. 78; *Anthony v. Jillson*, 83 Cal. 296, 23 P. 419; *Lee v. Justice M. Co.*, 2 Colo. App. 112, 29 P. 1020; *Rosenthal v. Ives*, 2 Idaho, 244, 12 P. 904; *Bohanon v. Howe*, 2 Idaho, 417, 17 P. 583; *Golden Fleece M. Co. v. Cable Consol. M. Co.*, 12 Nev. 312; *Shea v. Nilima*, 133 Fed. 209; *Stewart v. Gold and Copper Co.*, 29 Utah, 443, 82 P. 475.

Conflict of state and federal legislation—validity of state regulations. *Butte City Water Co. v. Baker*, 196 U. S. 119, 49 L. Ed. 409; *Mares v. Dillon*, 75 P. 963; *Wright v. Lyons*, 77 P. 81. See, also, note in 11 L. R. A. 528. *Lindley on Mines*, 2d ed., secs. 85-89, 223, 224-226, 227, 231-234, 237, 238, 242-244, 249, 250, 268-275, 323, 419-428; *Cent. Dig. vol. 34*, title, *Mines and Minerals*, sec. 15; *Fed. Stats. Anntd. vol. 5*, p. 35, cases and full notes.

The rights of a locator of a mining claim on a forest reserve under act of Congress of June 4, 1897, c. 2, *Stats. 34* (U. S. Comp. *Stats.* 1901, p. 1538), are those of a locator on the public domain, under *Rev. Stats. sec. 2322* (U. S. Comp. *Stats.* 1901, p. 1425). *United States v. Rizzinelli* (D. C.), 182 Fed. 675.

## 2378. Dimensions of mining claims upon veins or lodes—End lines must be parallel.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal,

but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Cited, *Fox v. Myers*, 29 Nev. 169; *Golden Fleece Co. v. Cable Con. Co.*, 12 Nev. 323; *Gleason v. Mining Co.*, 13 Nev. 442.

Mining claim defined, section construed. *N. P. R. R. Co. v. Sanders*, 49 Fed. Rep. 129, affirmed (1897), 166 U. S. 620; *St. Louis Smelting Co. v. Kemp*, 104 U. S. 649; *Zollars v. Evans*, 5 Fed. 172; *Noyes v. Clifford*, 94 P. 842.

"Veins," "Lodes," "Rock in Place"—Terms defined and statute construed. *Synnott v. Shaughnessy*, 2 Idaho, 127; *Blue Bird M. Co. v. Largey*, 49 Fed. 289; *Hays v. Lavagnino*, 17 Utah, 185; *Eureka Con. M. Co. v. Richmond M. Co.*, 4 Sawy. 302, affirmed, *Richmond M. Co. v. Eureka M. Co.*, 103 U. S. 839, 26 L. Ed. 557; *Gregory v. Pershbaker*, 73 Cal. 109, 14 P. 401; *Stevens v. Williams*, 1 *McCrary (U. S.)*, 480; *Hyman v. Wheeler*, 29 Fed. 347; *Iron Silver M. Co. v. Sullivan*, 16 Fed. 829; *Leadville M. Co. v. Fitzgerald*, 15 Fed. Cas. No. 8,158; *Tabor v. Dexter*, 23 Fed. Cas. No. 13,723; *Mt. Diablo M. Co. v. Callison*, Fed. Cas. No. 9,886, 5 Sawy. 439; *Stevens v. Gill*, Fed. Cas. No. 13,398; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522, 6 Sawy. 299; *Jupiter M. Co. v. Bodie Consol. M. Co.*, 11 Fed. 666, 7 Sawy. 96; *Iron Silver M. Co. v. Cheesman*, 8 Fed. 292, 2 *McCrary*, 191; *Book v. Justice M. Co.*, 58 Fed. 106; *Consol. Wyo. G. M. Co. v. Champion M. Co.*, 63 Fed. 540; *Burke v. McDonald*, 2 Idaho, 646, 33 P. 49; *Harrington v. Chambers*, 3 Utah, 94, 1 P. 362; *Buffalo Zinc & Copper Co. v. Crump*, 70 Ark. 525, 69 S. W. 572; *Seore v. Griffin*, 80 P. 331; *Grand Cent. M. Co. v. Mammoth M. Co.*, 29 Utah, 490, 83 P. 648; *Webb v. American Asphaltum M. Co.*, 157 Fed. 203; *Noyes v. Clifford*, 94 P. 842. See *Cent. Dig. vol. 34, title, Mines and Minerals*, sec. 22.

Requisites of title—Discovery and marking boundaries. *Erwin v. Peregó*, 93 Fed. 608; *Beals v. Cone*, 27 Colo. 484; *Pardee v. Murry*, 4 Mont. 234; *Enterprise M. Co. v. Rico Aspen Consol. M. Co.*, 167 U. S. 115; *Argentine M. Co. v. Terrible M. Co.*, 122 U. S. 484; *Shattuck v. Costello*, 68 P. 529; *Fox v. Mackay*, 1 Alaska, 329; *Unita Tunnel M. Co. v. Ajax G. M. Co.*, 141 Fed. 563; *Sharkey v. Candiani*, 85 P. 219; *Barnette v. Freeman*, 2 Alaska, 286; *Redden v. Harlan*, 2 Alaska, 402; *Bullette v. Dodge*, 2 Alaska, 427; *Charlton v. Kelly*, 2 Alaska, 532; *Steele v. Tanana M. Co.*, 148 Fed. 678; *Healy v. Rupp*, 37 Colo. 25, 86 P. 1015; *Fox v. Myers*, 29 Nev. 169, 86 P. 793.

Discovery must show "vein" or "lode in place." *King v. Amy M. Co.*, 152 U. S. 227; *Bueh v. Jones*, 70 P. 951; *Erhardt v. Boaro*,

113 U. S. 536; *Tuolumne Consol. M. Co. v. Maier*, 134 Cal. 585; *Ledoux v. Forester*, 94 Fed. 600; *Michael v. Mills*, 22 Colo. 439, 15 P. 429; *Guennell v. Swain*, 28 Mont. 331; *Upton v. Larkin*, 7 Mont. 449, 17 P. 728; *Lockhart v. Farrell*, 86 P. 1077; *New Eng. & Colinga Oil Co. v. Congdon*, 92 P. 180; *Biglow v. Conradt*, 159 Fed. 868; *Johnson v. White*, 160 Fed. 901; *Merced Oil M. Co. v. Patterson*, 96 P. 90; *Whiting v. Straup*, 95 P. 849, affirmed in 144 U. S. 19, 36 L. Ed. 330; *Shoshone M. Co. v. Rutter*, 87 Fed. 801, reversed on other points, 177 U. S. 505; *Gwillim v. Donnellan*, 115 U. S. 45, 29 L. Ed. 348; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522; *Jupiter M. Co. v. Bodie Consol. M. Co.* 11 Fed. 666; *Van Zandt v. Argentine M. Co.*, 8 Fed. 725; *Cheesman v. Shreeve*, 40 Fed. 787; *Waterloo M. Co. v. Doe*, 56 Fed. 685; *Book v. Justice M. Co.*, 58 Fed. 106; *Field v. Grey*, 1 Ariz. 404, 25 P. 793; *Wolfley v. Lebanon M. Co.*, 4 Colo. 112; *Armstrong v. Lower*, 6 Colo. 393; *Moyle v. Bullene*, 7 Colo. App. 308, 44 P. 69; *Atkins v. Hendree*, 1 Idaho, 95; *Burke v. McDonald*, 2 Idaho, 1022, 29 P. 98; *Wenner v. McNulty*, 7 Mont. 30, 14 P. 643; *Shreve v. Copper Bell M. Co.*, 11 Mont. 309, 28 P. 315; *McShane v. Kenkle*, 18 Mont. 208, 44 P. 979; *Overman S. M. Co. v. Corcoran*, 15 Nev. 147; *Creede & Cripple Cr. M. Co. v. Unita Tunnel M. Co.*, 119 Fed. 164, affirmed, 196 U. S. 337, 49 L. Ed. 501; *Sharkey v. Candiana*, 85 P. 219; *Secre v. Griffin*, 80 P. 331; *Remer v. Schroder*, 146 Cal. 411, 80 P. 517; *Sullivan v. Sharp*, 33 Colo. 346, 80 P. 1054; *Grand Cent. M. Co. v. Mammoth M. Co.*, 29 Utah, 490, 83 P. 648; *Barnett v. Freeman*, 2 Alaska, 286; *Redden v. Harlan*, 2 Alaska, 402; *Daggett v. Yreka M. Co.*, 149 Cal. 357, 86 P. 968; *Steele v. Tanana M. Co.*, 148 Fed. 678; *Lange v. Robinson*, 148 Fed. 799; *Fox v. Myers*, 29 Nev. 169, 86 P. 793; *New Eng. & Colinga Oil Co. v. Congdon*, 92 P. 180.

The vein or lode must contain mineral with a prospective commercial value. *McShane v. Kenkle*, 18 Mont. 208; *Bonner v. Meikle*, 82 Fed. 697; *Shreve v. Copper Bell M. Co.*, 11 Mont. 309; *Mont. Cent. R. Co. v. Migeon*, 68 Fed. 811, affirmed, 77 Fed. 249; *Book v. Justice M. Co.*, 58 Fed. 106; *Muldrick v. Brown*, 37 Ore. 185; *Nev. Sierra Oil Co. v. Home Oil Co.*, 98 Fed. 676; *King v. Amy M. Co.*, 152 U. S. 227; *Upton v. Larkin*, 7 Mont. 449, 17 P. 728; *Ormond v. Granite Mt. M. Co.*, 11 Mont. 303, 28 P. 289; *Davidson v. Bordeaux*, 15 Mont. 245, 38 P. 1075; *Walsh v. Mueller*, 16 Mont. 180, 401 P. 292; *Sou. Cross G. & S. M. Co. v. Europa M. Co.*, 15 Nev. 383; *Harrington v. Chambers*, 3 Utah,

94, 1 P. 362; Tuolumne Consol. M. Co. v. Maier, 134 Cal. 583, 66 P. 863; Pherson v. Julius, 95 N. W. 428; Moore v. Steelsmith, 1 Alaska, 121; McConaghy v. Doyle, 75 P. 419; Seore v. Griffin, 80 P. 331; Ambergris M. Co. v. Day, 85 P. 109; Lange v. Robinson, 148 Fed. 799; Cascaden v. Bartolis, 146 Fed. 739.

How the discovery may be made:

On the surface. See cases given under note entitled must show "vein" or "lode in place."

By shaft or cut. Zollars v. Evans, 5 Fed. 172; Strepey v. Stark, 7 Colo. 614, 5 P. 111; Gwillim v. Donnellan, 115 U. S. 45, 29 L. Ed. 348; Van Zandt v. Argentine M. Co., 8 Fed. 725; McGinnis v. Egbert, 8 Colo. 41, 5 P. 652; Electro-Magnetic M. Co. v. Van Auker, 9 Colo. 204, 11 P. 80; Little Pittsburg Con. M. Co. v. Amie M. Co., 17 Fed. 57; Gray v. Treabey, 6 Colo. 278; Armstrong v. Lower, 6 Colo. 393; Consol. Rep. Mt. M. Co. v. Lebanon M. Co., 9 Colo. 343, 12 P. 212; Upton v. Larkin, 5 Mont. 600, 6 P. 66; same case, 7 Mont. 449, 17 P. 728, affirmed in 144 U. S. 19, 36 L. Ed. 330; O'Donnell v. Glenn, 8 Mont. 248, 19 P. 302; Bonner v. Meikle, 82 Fed. 697; Hays v. Lavagnino, 17 Utah, 185; Zollars v. Evans, 5 Fed. 172; Biglow v. Conradt, 159 Fed. 868. See vol. 34 Cent. Dig. title, Mines and Minerals, sec. 25.

Discovery by tunnel. Rico Aspen Consol. M. Co. v. Enterprise M. Co., 53 Fed. 321; Ellet v. Campbell, 18 Colo. 510, 33 P. 521; Corning Tunnel Co. v. Pell, 4 Colo. 507; Back v. Sierra Nev. Consol. M. Co., 2 Idaho 386, 17 P. 83. See vol. 34 Cent. Dig. title, Mines and Minerals, sec. 26.

Discovery in placer ground. Gregory v. Pershbaker, 73 Cal. 109, 14 P. 401; Wheeler v. Smith, 5 Wash. 704, 32 P. 784; Freezer v. Sweeney, 8 Mont. 508, 21 P. 20; Barnette v. Freeman, 2 Alaska, 286; Redden v. Harlan, 2 Alaska, 402; Bulette v. Dodge, 2 Alaska, 427; Carlton v. Kelley, 2 Alaska, 532; Whiting v. Straup, 95 P. 849; Phillips v. Brill, 95 P. 856. See vol. 34 Cent. Dig. title, Mines and Minerals, sec. 27.

Subsequent discovery may validate previous location. Unita Tunnel M. Co. v. Creede M. Co., 119 Fed. 169; Nev. Sierra Oil Co. v. Home Oil Co., 98 Fed. 678; Tuolumne Consol. M. Co. v. Maier, 134 Cal. 583, 66 P.

863; Cedar Canyon Consol. M. Co. v. Yarwood, 67 P. 749; Treasury Tunnel M. Co. v. Boss, 74 P. 888; Sharkey v. Candiani, 85 P. 219; Thompson v. Burk, 2 Alaska, 249; New. Eng. & Colinga Oil Co. v. Congdon, 92 P. 180; Whiting v. Straup, 95 P. 849.

Locator has time to investigate discovery before completing location. Gregory v. Pershbaker, 73 Cal. 109, 14 P. 401; Murley v. Ennis, 2 Colo. 300; Erhardt v. Boaro, 113 U. S. 527, 28 L. Ed. 1113; O'Reilly v. Campbell, 116 U. S. 418, 29 L. Ed. 669; Doe v. Waterloo M. Co., 70 Fed. 455; Patterson v. Hitchcock, 3 Colo. 533; Pelican & Dives M. Co. v. Snodgrass, 9 Colo. 339, 12 P. 206; Omar v. Soper, 11 Colo. 380, 18 P. 443; Burke v. McDonald, 2 Idaho, 1022, 29 P. 98; Gleason v. Martin White M. Co., 13 Nev. 442; Patterson v. Tarbell, 26 Ore. 29, 37 P. 76; Tonopah & Salt Lake M. Co. v. Tonopah M. Co., 125 Fed. 408; Reiner v. Schroder, 146 Cal. 411, 80 P. 517. See vol. 34, Cent. Dig. title, Mines and Minerals, sec. 28.

Locator need not make original discovery—Agent may make. Hays v. Lavagnino, 17 Utah, 185; Zollars v. Evans, 5 Fed. 172; Russel v. Dufresne, 1 Alaska, 486; McCulloch v. Murphy, 125 Fed. 147.

Possession without discovery gives certain rights. Flaws v. Victoria Copper M. Co., 160 U. S. 303; English v. Johnson, 17 Cal. 108; Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4; Whiting v. Straup, 95 P. 849.

Same discovery point cannot be used for location of more than one claim. Reynolds v. Pascoe, 66 P. 1064. See Lindley on Mines, 2d ed., secs. 335-340, 361-365, 582; vol. 30 Cent. Dig. title, Mines and Minerals, secs. 21-29; Fed. Stats. Anntd. vol. 5, p. 14, notes and cases.

A mining claim located in good faith is not wholly void because excessive in area, but is void only as to the excess which the owner may reject from any part he may select, and, until he has had a reasonable opportunity to do so, another cannot acquire any rights by a location of any part thereof. Jones v. Wild Goose Mining and Trading Co. (C. C. A.), 177 Fed. 95.

Regarding location of excessive ground and noneontiguous fractions. Clark v. Mitchell, 34 Nev. —.

## 2379. Proof of citizenship.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

NOTE—See sec. 2, act of April 26, 1882, following sec. 2326, supra, for affidavit of citizenship required in above section.

G. & S. M. Co. v. Cable Consol. G. & S. M. Co., 12 Nev. 312; N. Nooday M. Co. v. Orient M. Co., 11 Fed. 125; Doe v. Waterloo M. Co., 70 Fed. 455; Thompson v.

Spray, 72 Cal. 528, 14 P. 182; Hammer v. Garfield M. Co., 130 U. S. 291, 32 L. Ed. 964; Garfield M. Co. v. Hammer, 6 Mont. 53, 8 P. 153; O'Reilly v. Campbell, 116 U. S.

418, 29 L. Ed. 669; Wood v. Aspen M. Co., 36 Fed. 23; Holp v. Treasury M. Co., 38 Wash. 619, 80 P. 817; Matlock v. Stone, 91 S. W. 553; Jackson v. White Cloud G. M.

Co., 85 P. 639. See Lindley on Mines, 2d ed., secs. 7, 227; vol. 34 Cent. Dig. title, Mines and Minerals, sec. 16; Fed. Stats. Anntd. vol. 5, p. 13, notes and cases.

### 2380. Locator's rights—Surface and veins apexing on claim.

**SEC. 2322.** The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

For the state law, see sec. 2425.

Cited, Golden Fleece Co. v. Cable Con. Co., 12 Nev. 331; South End M. Co. v. Tinney, 22 Nev. 43, 63; Gleeson v. Mining Co., 13 Nev. 453, 455, 457; Nash v. McNamara, 30 Nev. 114, 128, 132-135; Southern Nevada G. & S. M. Co. v. Holmes M. Co., 27 Nev. 107, 142.

Character of title of locator—The section construed—Rights in general. Gillis v. Downey, 85 Fed. 483; Noyes v. Mantle, 127 U. S. 351; Belk v. Meagher, 104 U. S. 284; Clipper M. Co. v. Eli M. Co., 194 U. S. 220, 48 L. Ed. 944; Cheesman v. Shreve, 37 Fed. 36; Union Consol. S. M. Co. v. Taylor, 100 U. S. 37; Fuller v. Harris, 29 Fed. 814; Teller v. U. S., 113 Fed. 273; Allen v. Dunlap, 24 Ore. 229; Manuel v. Wulff, 152 U. S. 510; Suessenback v. Deadwood First Nat. Bank, 5 Dak. 477; Black v. Elkhorn M. Co., 163 U. S. 449; Mt. Rose M. Co. v. Palmer, 26 Colo. 56; Hughes v. Develin, 23 Cal. 502; Roseville Alta M. Co. v. Iowa Gulch M. Co., 15 Colo. 29; Forbes v. Gracey, 94 U. S. 762; Merced M. Co. v. Fremont, 7 Cal. 317; Phoenix M. Co. v. Scott, 20 Wash. 48; Tyler Con. M. Co. v. Langstedt, 1 Alaska, 461; Glacier Mt. Silver M. Co. v. Willis, 127 U. S. 471; Duffy v. Mix, 24 Ore. 265; Harris v. Equator M. & S. Co., 8 Fed. 863; Oseamp v. Crystal River M. Co., 58 Fed. 293; Meritt v. Judd, 14 Cal. 59; Keeler v. Trueman, 15 Colo. 143, 25 P. 311; McFeters v. Pierson, 15 Colo. 201, 24 P. 1076; Atkins v. Hendree, 1 Idaho, 95; Bradford v. Morrison, 212 U. S. 389; Blach v. Elkhorn, 163 U. S. 445; Bay v. Okla. C. Gas M. Co., 13 Okla. 425, 73 P. 936; Empire State Idaho M. Co. v. Bunker Hill M. Co., 131 Fed. 591, 134 Fed. 268; Maloney

v. King, 76 P. 4; Porter v. Tonopah N. Star Co., 133 Fed. 756; U. S. M. Co. v. Lawson, 134 Fed. 769; Tyle Con. M. Co. v. Langstedt, 136 Fed. 124; Sou. Cal. Ry. Co. v. O'Donnell, 85 P. 932; Gurney v. Brown, 32 Colo. 472, 77 P. 357, affirmed, 201 U. S. 184, 50 L. Ed. 717; Ambergris M. Co. v. Day, 85 P. 109; Montagne v. Labay, 2 Alaska, 575; Dufresne v. North. Light M. Co., 2 Alaska, 592; Charlton v. Kelly, 2 Alaska, 532; Reed v. Munn, 148 Fed. 737 (Ibex M. Co. v. Lane, and Munn v. Ibex); Windmuller v. Clarkson, 2 Alaska, 298; Marks v. Gates, 2 Alaska, 519; Nash v. McNamara, 30 Nev. 114, 93 P. 405; Whiting v. Straup, 95 P. 849; Phillips v. Brill, 95 P. 856. See vol. 34, Cent. Dig., title Mines and Minerals, sec. 66.

#### Rights of locator:

Under a valid location. Belk v. Meagher, 104 U. S. 479, 26 L. Ed. 735; Chapman v. Toy Tong, Fed. Cas. No. 2,610; Fuller v. Harris, 29 Fed. 814; Jones v. Jackson, 9 Cal. 237; O'Keiffe v. Cunningham, 9 Cal. 589; Hughes v. Develin, 23 Cal. 501; Dougherty v. Creary, 30 Cal. 290; Melton v. Lambert, 51 Cal. 258; Pelican & Dives M. Co. v. Snodgrass M. Co., 9 Colo. 339, 12 P. 206; Seymour v. Fisher, 16 Colo. 188, 27 P. 240; Iron Silver M. Co. v. Campbell, 17 Colo. 267, 29 P. 513; Gold Hill Quartz M. Co. v. Ish, 5 Ore. 104; Robertson v. Smith, 1 Mont. 410; Gottschall v. Melsing, 2 Nev. 185; Hall v. Kearny, 18 Colo. 505, 33 P. 373; Creede and Cripple Cr. M. Co. v. Unita Tunnel M. Co., 196 U. S. 337, 49 L. Ed. 501; Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409; Grand Cent. M. Co. v. Mammoth M. Co., 83 P. 648 (same case 213 U. S. 72);

Nash v. McNamara, 93 P. 405; Lawson v. U. S. M. Co., 207 U. S. 1; Bevis v. Markland, 130 Fed. 226; Clipper M. Co. v. Eli M. Co., 194 U. S. 220, 48 L. Ed. 944; San Miguel Consol. M. Co. v. Bonner, 33 Colo. 207, 79 P. 1025; Phillips v. Brill, 95 P. 856.

Rights under defective location. McGarity v. Byington, 12 Cal. 426; Kinney v. Con. Virginia M. Co., Fed. Cas. No. 7,827; Rogers v. Cooney, 7 Nev. 213; Lebanon M. Co. v. Consol. Rep. M. Co., 6 Colo. 371; N. Noonday M. Co. v. Orient M. Co., 11 Fed. 125; Armstrong v. Lower, 6 Colo. 581; Van Valkenburg v. Huff, 1 Nev. 142. See Cent. Dig. vol. 34, title Mines and Minerals, sec. 69.

Illegal location on government reservation. Kendall v. San Juan S. M. Co., 9 Colo. 349, 12 P. 198, affirmed, 144 U. S. 658, 36 L. Ed. 583; Caledonia G. M. Co. v. Noonan, 3 Dak. 189, 14 N. W. 426, affirmed, 121 U. S. 393, 30 L. Ed. 1061; Behrend v. Goldsteen, 1 Alaska, 518; Walsh v. Ford, 1 Alaska, 146; Worthen v. Sedway, 71 Ark. 386, 79 S. W. 777.

What right has locator by mere occupancy without having made location. Faxon v. Barnard, 4 Fed. 702; Cowell v. Lammers, 21 Fed. 200; Noyes v. Black, 4 Mont. 527, 2 P. 769; Crossman v. Pendery, 8 Fed. 693; Brandt v. Wheaton, 52 Cal. 430; Horswell v. Ruiz, 67 Cal. 111, 7 P. 197; Hopkins v. Noyes, 4 Mont. 550, 2 P. 280; Doran v. Cent. Pac. R. R. Co., 24 Cal. 245; English v. Johnson, 17 Cal. 107; Rush v. French, 11 Ariz. 99, 25 P. 816; Boggs v. Merced M. Co., 14 Cal. 279; Attwood v. Fricot, 17 Cal. 37; Whiting v. Straup, 95 P. 849.

Locator need not be in actual possession to assert title. Belk v. Meagher, 104 U. S. 284; Patchen v. Keeley, 19 Nev. 413.

Transfer and legal disposition of rights in mining claim:

The right of transfer in general. Carson City G. & S. M. Co. v. N. Star M. Co., 73 Fed. 597; Poire v. Wells, 6 Colo. 406; Poire v. Leadville Improvement Co., 6 Colo. 413; Union Con. S. M. Co. v. Taylor, 100 U. S. 37; Kinney v. Con. Virg. M. Co., 4 Sawy. 383; but see Moore v. Hammerstag, 109 Cal. 122; Little Pittsburg Con. M. Co. v. Amie M. Co., 17 Fed. 57; Suessenbach v. First Nat. Bank, 5 Dak. 477, 41 N. W. 662; Conn v. Oberto, 76 P. 369; Worthen v. Sidway, 71 Ark. 386, 79 S. W. 777; Slothower v. Hunter, 88 P. 36.

How the transfer may be made—Instruments of transfer—Title acquired. Lockhart v. Rollins, 2 Idaho, 503, 21 P. 413; Moore v. Hammerstag, 109 Cal. 122, 41 P. 805; Carter v. Bacigalupi, 83 Cal. 187, 23 P. 361; Garthe v. Hart, 73 Cal. 541, 15 P. 93; Welton v. Lombard, 51 Cal. 258; Meyers v. Farquharson, 46 Cal. 190; Felger v. Coward, 35 Cal. 650; Blodgett v. Potosi G. & S. M. Co., 34 Cal. 227; King v. Randlett, 33 Cal. 318; Goller v. Felt, 30 Cal. 481; St. John v. Kidd, 26 Cal. 263; Copper Hill M. Co. v. Spencer, 25 Cal. 18; Richardson v. McNulty, 24 Cal. 339; Patterson v. Keystone M. Co., 23 Cal. 575; Draper v. Douglas, 23 Cal. 347; Gatewood v. McLaughlin, 23 Cal. 178;

Antoine Co. v. Ridge Co., 23 Cal. 219; Jackson v. Feather River & G. Water Co., 14 Cal. 18; Union Con. S. M. Co. v. Taylor, 100 U. S. 37, 25 L. Ed. 541; Doe v. Waterloo M. Co., 70 Fed. 445; Kinney v. Con. Virg. M. Co., Fed. Cas. No. 7,827; but see Moore v. Hammerstag, 109 Cal. 122; Harris v. Equator M. & Smelter Co., 8 Fed. 863; Black v. Elkhorn M. Co., 163 U. S. 450; Phoenix M. Co. v. Scott, 20 Wash. 48.

How transfer made—Instruments of transfer—Title acquired. Hitchens v. Nougues, 11 Cal. 28; Beem v. McKusick, 10 Cal. 538; Clark v. McElvy, 11 Cal. 154; Waring v. Crow, 11 Cal. 366; Table Mt. Tunnel Co. v. Stranahan, 31 Cal. 387; Weill v. Lucerne M. Co., 11 Nev. 200; McIntyre v. Buell, 10 N. Y. Supp. 332, affirmed under 32 N. Y. 192, 30 N. E. 396; Wasatch M. Co. v. Crescent M. Co., 7 Utah, 8, 24 P. 586.

Transfers made to aliens, or by aliens. Gorman M. Co. v. Alexander, 2 S. D. 557, 51 N. W. 346; same case, 3 S. D. 3, or 51 N. W. 349; but see Tibbitts v. Ah Tong, 4 Mont. 536, 2 P. 759; Ah Kle v. McLean, 32 P. 200; Wulff v. Manuel, 9 Mont. 276, 23 P. 723, reversed, Manuel v. Wulff, 152 U. S. 509, 38 L. Ed. 532; Lee v. Justice M. Co., 2 Colo. App. 112, 29 P. 1020; Billings v. Aspen M. & S. Co., 51 Fed. 338, affirmed, 52 Fed. 250; N. Noonday M. Co. v. Orient M. Co., 1 Fed. 522; Ferguson v. Neville, 61 Cal. 356.

Where one coowner transfers to another:

Rights gained by adverse possession. Hamilton v. S. Nev. G. & S. M. Co., 33 Fed. 562; Harris v. Equator M. & S. Co., 8 Fed. 863; 420 M. Co. v. Bullion M. Co., Fed. Cas. No. 4,989; Omaha & Grant Smelt. & Ref. Co. v. Tabor, 13 Colo. 41, 21 P. 925.

Veins, lodes, and ledges of every character included within the meaning of the statute. Gilpin v. Sierra Nev. Con. M. Co., 2 Idaho, 662; Calhoun G. M. Co. v. Ajax G. M. Co., 182 U. S. 508; Campbell v. Ellet, 167 U. S. 119; Cheesman v. Shreeve, 40 Fed. 791; Crown Point M. Co. v. Buek, 97 Fed. 465; Waterloo M. Co. v. Doe, 82 Fed. 45; Gwillim v. Donnellan, 115 U. S. 49; Walrath v. Champion M. Co., 171 U. S. 308; Iron Silver M. Co. v. Mike G. M. Co., 143 U. S. 400; Mt. Diablo Co. v. Callison, 5 Sawy. 439.

The apex—Defined. Stevens v. Williams, 1 McCrary (U. S.), 480; Bluebird M. Co. v. Largey, 49 Fed. 289; Bullion M. Co. v. Eureka Hill M. Co., 5 Utah, 3; St. Louis M. Co. v. Mont. M. Co., 104 Fed. 664; Waterloo M. Co. v. Doe, 82 Fed. 55; Iron Silver M. Co. v. Murphy, 3 Fed. 368; Grand Cent. M. Co. v. Mammoth M. Co., 29 Utah, 490, 83 P. 648.

Rights to veins having their apex within the claims—To follow vein on dip. Van Valkenburg v. Huff, 1 Nev. 142; Eilers v. Boatman, 3 Utah, 159, 2 P. 66; Armstrong v. Lower, 6 Colo. 393; Colo. Cent. Con. M. Co. v. Turck, 50 Fed. 888; N. Noonday M. Co. v. Orient M. Co., 1 Fed. 522; Jupiter M. Co. v. Bodie Con. M. Co., 11 Fed. 666; Iron Silver M. Co. v. Cheesman, 8 Fed. 297; Book v. Justice M. Co., 58 Fed. 106; Penn. Con. M. Co. v. Grass Valley Explor. Co., 117 Fed.

509; *Sou. Nev. G. & S. M. Co. v. Holmes M. Co.*, 73 P. 759; *St. Louis M. Co. v. Montana M. Co.*, 194 U. S. 235, 48 L. Ed. 953.

#### Extralateral rights:

In general. *Iron Silver M. Co. v. Elgin M. Co.*, 118 U. S. 196, affirming same case, 14 Fed. 377; *Delmonte M. Co. v. Last Chance M. Co.*, 171 U. S. 89; *Fitzgerald v. Clark*, 17 Mont. 100; *Carson City G. M. Co. v. N. Star M. Co.*, 83 Fed. 658; *Mont. Ore Pur. Co. v. Boston Con. Copper M. Co.*, 27 Mont. 536; *Amador-Median G. M. Co. v. S. Spring Hill G. M. Co.*, 56 Fed. 668; *Bullion, Beck & Champion M. Co. v. Eureka Hill M. Co.*, 5 Utah, 3, 11 P. 515; *McCormick v. Barnes*, 2 Utah, 355; *Pardee v. Murry*, 4 Mont. 234, 2 P. 16; *Gilpin v. Sierra Nev. Con. M. Co.*, 2 Idaho, 662, 23 P. 547, also, 1014; *Flagstaff S. M. Co. v. Tarbet*, 98 U. S. 463, 25 L. Ed. 253; *Richmond M. Co. v. Eureka Con. M. Co.*, 103 U. S. 839, 26 L. Ed. 557; *Walrath v. Champion M. Co.*, 63 Fed. 552, modified, 72 Fed. 978; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522; *Jupiter M. Co. v. Bodie Con. M. Co.*, 11 Fed. 666; *Iron Silver M. Co. v. Cheesman*, 8 Fed. 297; *Hyman v. Wheeler*, 29 Fed. 347; *Cheesman v. Shreeve*, 40 Fed. 787; *Mont. Co. v. Clark*, 42 Fed. 626; *Doe v. Waterloo M. Co.*, 54 Fed. 935; *Consol. Wyo. G. M. Co. v. Champion M. Co.*, 63 Fed. 540; *Tombstone M. & M. Co. v. Wayple M. Co.*, 1 Ariz. 426, 25 P. 794; *King v. Amy Con. M. Co.*, 9 Mont. 543, 24 P. 200, modified, 152 U. S. 222, 38 L. Ed. 419; *Davis v. Shepherd*, 31 Colo. 141, 72 P. 57; *Mont. Ore Pur. Co. v. Boston & M. Con. M. Co.*, 27 Mont. 536, 71 P. 1005; *St. Louis M. Co. v. Mont. M. Co.*, 194 U. S. 235, 48 L. Ed. 953; *Heinze v. Boston & M. Copper M. Co.*, 26 Mont. 265, 67 P. 1134, affirmed, 77 P. 421; *Bunker Hill M. Co. v. Empire State Idaho M. Co.*, 134 Fed. 268; *Cent. Eureka M. Co. v. E. Cent. Eureka M. Co.*, 79 P. 834; *U. S. M. Co. v. Lawson*, 134 Fed. 769, affirmed, 207 U. S. 1, 52 L. Ed. 65; *Hilkey v. Anaconda C. Co.*, 81 P. 806; *Grand Cent. M. Co. v. Mammoth M. Co.*, 29 Utah, 490, 83 P. 648.

Parallel and nonparallel end lines—Rights. *King v. Amy M. Co.*, 152 U. S. 222, 38 L. Ed. 419; *Parrot Silver M. Co. v. Heinze*, 25 Mont. 139; *Elgin M. Co. v. Iron Silver M. Co.*, 14 Fed. 626; also, see same case, 118 U. S. 196, 30 L. Ed. 98; *Flagstaff S. M. Co. v. Tarbet*, 98 U. S. 463; *Argonaut M. Co. v. Kennedy M. Co.*, 131 Cal. 15; *Doe v. Sanger*, 83 Cal. 203, 23 P. 365; *Cheesman v. Hart*, 42 Fed. 98; *Mont. Co. v. Clark*, 42 Fed. 626; *Bunker Hill & Sullivan M. Co. v. Empire State M. Co.*, 106 Fed. 471, reversed, 114 Fed. 417; see 121 Fed. 973; *Argonaut M. Co. v. Kennedy M. Co.*, 131 Cal. 15, 63 P. 148, affirmed, 189 U. S. 1, 47 L. Ed. 685; *Last Chance M. Co. v. Bunker Hill & S. M. Co.*, 131 Fed. 579; *Central Eureka M. Co. v. East Cent. Eureka M. Co.*, 146 Cal. 147, 79 P. 834, affirmed, 204 U. S. 266, 51 L. Ed. 476; *Hickey v. Anaconda C. M. Co.*, 81 P. 806.

When claim is located across the vein. *Flagstaff S. M. Co. v. Tarbet*, 98 U. S. 463, 25 L. Ed. 253; *Argentine M. Co. v. Terrible*

*M. Co.*, 122 U. S. 478, 30 L. Ed. 1140; *King v. Amy Con. M. Co.*, 152 U. S. 222, 38 L. Ed. 419, reversing 9 Mont. 543, 24 P. 200; *Last Chance M. Co. v. Tyler M. Co.*, 157 U. S. 683, 39 L. Ed. 859; *Tyler M. Co. v. Sweeney*, 54 Fed. 284; *Watervale M. Co. v. Leach*, 33 P. 418; *Empire M. Co. v. Tombstone M. Co.*, 131 Fed. 339; *Empire State Idaho M. Co. v. Bunker Hill M. Co.*, 131 Fed. 591.

When vein passes through end and side line. *Parrot S. M. Co. v. Heinze*, 25 Mont. 139; *Tyler M. Co. v. Last Chance M. Co.*, 71 Fed. 848; *Blue Bird M. Co. v. Largey*, 49 Fed. 289; *Con. Wyo. G. M. Co. v. Champion M. Co.*, 63 Fed. 540; *Tyler M. Co. v. Sweeney*, 54 Fed. 284; *Davis v. Shepherd*, 72 P. 57; *So. Nev. G. M. Co. v. Holmes M. Co.*, 73 P. 759; but see *Colo. Cent. Con. M. Co. v. Turck*, 54 Fed. 262; *King v. Amy M. Co.*, 152 U. S. 222; *Doe v. Sanger*, 83 Cal. 203; *Colo. Cent. Con. M. Co. v. Turck*, 54 Fed. 262; *Tyler M. Co. v. Sweeney*, 54 Fed. 284, approving *King v. Amy Con. M. Co.*, 9 Mont. 543, 24 P. 200; *Del Monte M. & M. Co. v. N. Y. & S. C. M. Co.*, 66 Fed. 212; *Fitzgerald v. Clark*, 17 Mont. 100, 42 P. 473, 30 L. R. A. 803, 52 Am. St. Rep. 665; *Sou. Nev. G. & S. M. Co. v. Holmes M. Co.*, 73 P. 759; *Grand Cent. M. Co. v. Mammoth M. Co.*, 29 Utah, 490, 83 P. 648.

Vein must be continuous. *Iron Silver M. Co. v. Cheesman*, 116 U. S. 529, 29 L. Ed. 712; *Fitzgerald v. Clark*, 17 Mont. 100, 42 P. 273, 52 Am. St. Rep. 665, 30 L. R. A. 803; *Leadville M. Co. v. Fitzgerald*, 15 Fed. Cas. No. 8,158; *Carson City G. & S. M. Co. v. N. Star M. Co.*, 73 Fed. 597; *Stevens v. Gill*, Fed. Cas. No. 13,398; *Stevens v. Williams*, Fed. Cas. No. 13,414; *Hyman v. Wheeler*, 29 Fed. 347; *Cheesman v. Shreeve*, 40 Fed. 787; *Doe v. Waterloo M. Co.*, 54 Fed. 935; *Tombstone M. & M. Co. v. Wayple M. Co.*, 1 Ariz. 426, 25 P. 794; *Penn. Con. M. Co. v. Grass Valley Ex. Co.*, 117 Fed. 509; *Mont. Ore Pur. Co. v. Boston & M. Con. Copper Co.*, 70 P. 1114.

Rights of secondary vein apexing within claim. *Ajax G. M. Co. v. Hilkey*, 31 Colo. 131, 72 P. 447; *Walrath v. Champion M. Co.*, 63 Fed. 552, affirmed, 171 U. S. 293; *Jefferson M. Co. v. Anchoria-Leland M. Co.*, 75 P. 1070, 64 L. R. A. 925.

How extralateral rights are affected by patent of claim. *Hawke v. Deffebach*, 4 Dak. 20; *Waterloo M. Co. v. Doe*, 82 Fed. 45 (see, also, 54 Fed. 935); *St. Louis M. Co. v. Montana M. Co.*, 194 U. S. 235 (but see *New Dunderberg M. Co. v. Old*, 79 Fed. 598); *Gwillim v. Donnellan*, 115 U. S. 45, 29 L. Ed. 348; *Colo. Cent. Con. M. Co. v. Turck*, 50 Fed. 888; *Amador Medean G. M. Co. v. S. Spring Hill G. M. Co.*, 36 Fed. 668; *Cheesman v. Hart*, 42 Fed. 98; *Con. Wyo. G. M. Co. v. Champion M. Co.*, 63 Fed. 540; *Del Monte M. Co. v. N. Y. & L. C. M. Co.*, 66 Fed. 212; *Carson City G. & S. M. Co. v. North Star M. Co.*, 73 Fed. 597; *Eclipse G. & S. M. Co. v. Spring*, 59 Cal. 304; *Duggan v. Davey*, 4 Dak. 110, 26 N. W. 87; *Blake v. Butte S. M. Co.*, 2 Utah, 54.

How extralateral rights are affected by

purchase. Carson City G. M. Co. v. North Star M. Co., 83 Fed. 658.

Party claiming ore by reason of extra-lateral rights must show apex on claim—Burden of proof. Carson City G. M. Co. v. North Star M. Co., 83 Fed. 658; Con. Wyo. G. M. Co. v. Champion M. Co., 63 Fed. 540.

Blanket ledges—Rights of locator. Golden v. Murphy, 31 Nev. 395, 75 P. 625 (rehearing denied, 76 P. 29).

Rights of prior locator. Tyler M. Co. v. Last Chance M. Co., 71 Fed. 848; Davis v. Shepherd, 31 Colo. 141; Jefferson M. Co. v.

Anchoria-Leland M. Co., 75 Pac. 1070, 64 L. R. A. 925; Montagne v. Labay, 2 Alaska, 575; Dufresne v. Northern L. M. Co., 2 Alaska, 592; Tyler M. Co. v. Sweeney, 54 Fed. 234.

Where strike of vein leaves claim by side line and is located by another—Rights of locator. Wolfley v. Lebanon M. Co., 4 Colo. 112; Johnson v. Buell, 4 Colo. 557. See Lindley on Mines, 2d ed., secs. 3, 548–553, 567, 572–574, 576, 582, 581–594, 598–600, 608–615; Cent. Dig. vol. 34, title, Mines and Minerals, secs. 67–86; Fed. Stats. Anntd. vol. 5, p. 17, cases and notes.

## 2381. Owners of tunnels, rights of.

**SEC. 2323.** Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

For the state law regarding the location of tunnels, see secs. 2440 to 2443.

Statute construed—Terms defined—"To the same extent," meaning of. Campbell v. Ellet, 167 U. S. 116; Enterprise M. Co. v. Rico-Aspen Con. M. Co., 167 U. S. 113.

Discovery of veins in tunnel—Rights of tunnel locator. Corning Tunnel Co. v. Pell, 4 Colo. 507; Back v. Sierra Nev. Con. M. Co., 2 Idaho, 386, 17 P. 83; Calhoun G. M. Co. v. Ajax G. M. Co., 182 U. S. 507; Hope M. Co. v. Brown, 7 Mont. 550, 19 P. 218; also, see same case, 11 Mont. 370, 28 P. 732; Iron Silver M. Co. v. Mike G. M. Co., 143 U. S. 405; Glacier Mt. S. M. Co. v. Willis, 127 U. S. 481; Creede & Cripple Creek M. Co. v. Unita Tunnel M. Co., 196 U. S. 337, 49 L. Ed. 501.

Purposes of location of tunnel claims. Fissure M. Co. v. Old Susan M. Co., 22 Utah, 438; Campbell v. Ellet, 167 U. S. 116; Enterprise M. Co. v. Rico Aspen Con.

M. Co., 167 U. S. 113; but see Corning Tunnel Co. v. Pell, 4 Colo. 507.

Tunnel claims, their dimensions. Glacier M. & M. Co. v. Willis, 127 U. S. 471, 32 L. Ed. 172; Enterprise M. Co. v. Rico Aspen Con. M. Co., 66 Fed. 200; see, also, 167 U. S. 113, same case; Rico Aspen Con. M. Co. v. Enterprise M. Co., 53 Fed. 321; Corning Tunnel Co. v. Pell, 4 Colo. 507; Ellet v. Campbell, 18 Colo. 510, 33 P. 521.

"Line" of tunnel—Meaning of statute. Corning Tunnel Co. v. Pell, 4 Colo. 507; Hope M. Co. v. Brown, 7 Mont. 550, 19 P. 732.

What distance from tunnel is open to other locators. Hope M. Co. v. Brown, 7 Mont. 550. See Lindley on Mines, 2d ed., secs. 467, 472, 473–476, 481–492; Cent. Dig. vol. 34, title Mines and Minerals, secs. 26, 34, 43, 80; Fed. Stats. Anntd. vol. 5, p. 23, case and notes.

## 2382. Money expended on tunnel considered expended on lode—Period for annual work.

**SEC. 2324.** The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements

made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his coowners who have made the required expenditures. *Act of Congress, May 10, 1872; c. 152, sec. 5.*

Where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act. *As amended, February 11, 1875; 18 Stat. 318.*

*Provided*, that the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two. *As amended, January 22, 1880, sec. 2.*

For requirements under the state law, see secs. 2423-2428, 2430-2432.

Refusing to adhere to a contrary doctrine announced in *Lavagnino v. Uhlig*, 198 U. S. 443, the court in *Nash v. McNamara*, 30 Nev. 114, held that the junior location made on ground covered by a valid existing senior location will not prevail over a relocation on the same ground made after failure to do the work on the senior location.

The later case of *Farrell v. Lockhart*, 210 U. S. 146, follows the decision in the Nevada case, instead of the one in *Lavagnino v. Uhlig*, so that it may now be considered as settled that located mining ground is not subject to relocation until after forfeiture or abandonment.

Regarding the amendment of 1875, see *Chambers v. Harrington*, 111 U. S. 355; *Book v. Justice M. Co.*, 58 Fed. 117.

See *Fed. Stat. Anntd. vol. 5*, p 21, notes and cases.

-Cited, *South End M. Co. v. Tinney*, 22 Nev. 47, 49; *Gleeson v. Mining Co.* 13 Nev. 458; *Nesbitt v. Delamar M. Co.*, 24 Nev. 280; *Patchen v. Keeley*, 19 Nev. 413; *Nash v. McNamara*, 30 Nev. 114, 128, 135-137, *Golden Fleece Co. v. Cable Con. Co.*, 12 Nev. 323, 324.

Statute construed in general. *Emerson v. McWhirter*, 133 Cal. 510; *Copper Globe M. Co. v. Allman*, 23 Utah, 410; *Doe v. Waterloo M. Co.*, 70 Fed. 459; *Sweet v. Webber*, 7 Colo. 443; *Morgan v. Tillotson*, 73 Cal. 520; *Carney v. Ariz. G. M. Co.*, 65 Cal. 40; *Priest v. McIntosh*, 1 Alaska, 286; *Worthen v. Sedway*, 71 Ark. 386, 79 S. W. 777; *Kern Oil Co. v. Crawford*, 143 Cal. 298, 76 P. 1111; *Zerres v. Vanina*, 134 Fed. 610; *Bonanza Con. M. Co. v. Golden Head M. Co.*, 80 P. 736; *Ware v. White*, 108 S. W. 831; *Bismark Mt. G. M. Co. v. N. Sunbeam G. Co.*, 95 P. 14; *Fredericks v. Klauser*, 96 P. 679.

Rules, regulations and customs of miners previous to act of 1866—Possession alone sufficient. *Hicks v. Bell*, 3 Cal. 219; *Crandall v. Woods*, 8 Cal. 136; *Attwood v. Fricot*, 17 Cal. 37, 76 Am. Dec. 567; *Richardson v. McNulty*, 24 Cal. 339; *Hess v. Winder*, 30 Cal. 349.

The validity and operation of miners' rules. *Gleeson v. Martin White M. Co.*, 13 Nev. 442; *Golden Fleece G. & S. M. Co. v. Cable Con. G. & S. M. Co.*, 12 Nev. 312; *Smith v. Amer. M. Co.*, 1 Nev. 423; *Gropper v. King*, 4 Mont. 367, 1 P. 755; *Orr v. Haskell*, 2 Mont. 225; *Roberston v. Smith*, 1 Mont. 410; *Boucher v. Mulverhill*, 1 Mont.

306; Riborado v. Quang Pang M. Co., 2 Idaho, 131, 6 P. 125; Sullivan v. Hense, 2 Colo. 424; Harvey v. Ryan, 42 Cal. 626; Table Mt. Tunnel Co. v. Stranahan, 31 Cal. 387; also, 20 Cal. 198; St. John v. Kidd, 26 Cal. 263; Gore v. McBrayer, 18 Cal. 582; Dutch Flat Water Co. v. Mooney, 12 Cal. 534; N. Noonday M. Co. v. Orient M. Co., 1 Fed. 522; Jupiter M. Co. v. Bodie Con. M. Co., 11 Fed. 666; Woodruff v. Bloomfield Gravel M. Co., 18 Fed. 753; Williams & Kellinger Orig. Co. v. Winthrop M. Co., 60 Cal. 631; Glacier Mt. S. M. Co. v. Willis, 127 U. S. 471, 32 L. Ed. 172; Loeser v. Gardiner, 1 Alaska, 641.

The location, how made: Location by agent. Moore v. Hammerstag, 109 Cal. 122, 41 P. 805; Dunlap v. Pattison, 42 P. 504; Book v. Justice M. Co., 58 Fed. 106; Schultz v. Kuler, 2 Idaho, 305, 13 P. 481; same case, 2 Idaho, 532, 21 P. 418; Lipscomb v. Nicholas, 3 Colo. 290; Rush v. French, 1 Ariz. 99, 25 P. 816; Murley v. Ennis, 2 Colo. 300; Boucher v. Mulverhill, 1 Mont. 306; McCulloch v. Murphy, 125 Fed. 147; Russel v. Dufresne, 1 Alaska, 486; Moore v. Steelsmith, 1 Alaska, 121; McMahon v. Meehan & Larson, 2 Alaska, 278; Whiting v. Straup, 95 P. 849.

When agent's location ratified by principal. Thompson v. Spray, 72 Cal. 528, 14 P. 182; Rush v. French, 1 Ariz. 99, 25 P. 816; Van Valkenburg v. Huff, 1 Nev. 142; Gore v. McBrayer, 18 Cal. 582; Morrison v. Regan, 67 P. 955.

When location is in excess of legal dimensions. McPherson v. Julius, 95 N. W. 428; Pratt v. United Alaska M. Co., 1 Alaska, 95.

When A. locates before subject of location—Claim then becomes open to location—B. locates before A. files amended location—Rights. Gurney v. Brown, 77 P. 357; Small v. Brown, Idem.

Marking the boundaries:

Size of the claim. St. Louis Smelt. and Ref. Co. v. Kemp, 104 U. S. 636, 26 L. Ed. 875; Prosser v. Parks, 18 Cal. 47; Table Mt. Tunnel Co. v. Stranahan, 20 Cal. 198; same case, 21 Cal. 387; Oregon King M. Co. v. Brown, 119 Fed. 48; Davis v. Shepherd, 31 Colo. 141, 72 P. 57; Whiting v. Straup, 95 P. 849.

Shape of the claim. Gleeson v. Martin White M. Co., 13 Nev. 442; Watervale M. Co. v. Leach, 33 P. 418; Tyler M. Co. v. Sweeney, 54 Fed. 284; Iron Silver M. Co. v. Elgin M. and S. Co., 118 U. S. 196, 30 L. Ed. 98, affirming Elgin M. and S. Co. v. Iron Silver M. Co., 14 Fed. 377; Horswell v. Ruiz, 67 Cal. 111, 7 P. 197; Davis v. Shepherd, 31 Colo. 141, 72 P. 57; Empire State Idaho M. Co. v. Bunker Hill M. Co., 131 Fed. 591.

How the boundaries are marked. Drummond v. Long, 9 Colo. 538; Willefred v. Bell, 49 P. 6; King v. Amy M. Co., 152 U. S. 227; O'Reilly v. Campbell, 116 U. S. 418; Oregon King M. Co. v. Brown, 119 Fed. 55; Funk v. Sterritt, 59 Cal. 613; Holland v. Mt. Auburn G. Quartz M. Co., 53 Cal. 149; Howeth v. Sullenger, 113 Cal. 550;

Haws v. Victoria Copper M. Co., 160 U. S. 318; Doe v. Waterloo M. Co., 70 Fed. 455; N. Noonday M. Co. v. Orient M. Co., 1 Fed. 522; Croesus M. & M. Co. v. Colo. Land & Mineral Co., 19 Fed. 78; Cheesman v. Shreeve, 40 Fed. 787; Book v. Justice M. Co., 58 Fed. 106; Live Yankee Co. v. Oregon Co., 7 Cal. 40; Gelcich v. Moriarty, 53 Cal. 217; Newbill v. Thurston, 65 Cal. 419, 4 P. 409; DuPrat v. James, 65 Cal. 555, 4 P. 562; Gregory v. Persnbaker, 73 Cal. 109, 14 P. 401; Pollard v. Shively, 5 Colo. 309; Becker v. Pugh, 9 Colo. 589, 13 P. 906; West Granite Mt. M. Co. v. Granite Mt. M. Co., 7 Mont. 356, 17 P. 547; Warnock v. DeWitt, 11 Utah, 324, 40 P. 205; Eilers v. Boatman, 3 Utah, 159, 2 P. 66; Roberts v. Wilson, 1 Utah, 292; Marshall v. Harney Peak Tin M. Co., 1 S. D. 350, 47 N. W. 290; Southern Cross G. & S. M. Co. v. Europa M. Co., 15 Nev. 383; Deeney v. Mineral Creek Milling Co., 67 P. 724; Oregon King M. Co. v. Brown, 119 Fed. 48; McIntosh v. Price, 121 Fed. 716; see 1 Alaska, 286; Tonopah and Salt Lake M. Co. v. Tonopah M. Co., 125 Fed. 400; Kern Oil Co. v. Crawford, 143 Cal. 298, 76 P. 1111; Bunker Hill M. Co. v. Empire State Idaho M. Co., 134 Fed. 268; Bonanza Con. M. Co. v. Golden Head M. Co., 80 P. 736; Treadwell v. Marrs, 83 P. 350; Charlton v. Kelly, 2 Alaska, 532, 156 Fed. 433; Daggett v. Yreka M. Co., 149 Cal. 357, 86 P. 968; Ware v. White, 108 S. W. 831.

When the boundaries may be marked. Union M. Co. v. Leitch, 24 Wash. 588; Erwin v. Perego, 93 Fed. 611; Doe v. Waterloo M. Co., 70 Fed. 455; Patterson v. Tarbell, 26 Ore. 36; Gleeson v. Martin White M. Co., 13 Nev. 442; Heman v. Griffith, 1 Alaska, 264; Brockbank v. Albion M. Co., 81 P. 863.

What is a sufficient marking of boundary. Walsh v. Erwin, 115 Fed. 531; Smith v. Newell, 86 Fed. 57; Du Prut v. James, 65 Cal. 555, 4 P. 562; Eaton v. Norris, 131 Cal. 564; Warnock v. De Witt, 11 Utah, 324, 40 P. 205; N. Noonday M. Co. v. Orient M. Co., 1 Fed. 533; Moore v. Settlesmith, 1 Alaska, 137; Walsh v. Erwin, 115 Fed. 531; Gleeson v. Martin White M. Co., 13 Nev. 442; Temescal Oil M. Co. v. Salcido, 69 P. 1010; McPherson v. Julius, 95 N. W. 428; Moore v. Steelsmith, 1 Alaska, 121; Stern v. Wild Goose M. Co., 1 Alaska, 255; Kern Oil Co. v. Crawford, 143 Cal. 298, 76 P. 1111; Bunker Hill M. Co. v. Empire State Idaho M. Co., 134 Fed. 268; Bonanza Con. M. Co. v. Golden Head M. Co., 80 P. 736; Brockbank v. Albion M. Co., 81 P. 863; Charlton v. Kelly, 2 Alaska, 532, 156 Fed. 433.

Whether boundaries are properly marked question of fact. Gleeson v. Martin White M. Co., 13 Nev. 442; Howeth v. Sullenger, 113 Cal. 547; Bennett v. Harkrader, 158 U. S. 441; McCarthy v. Phelan, 132 Cal. 404; Erhart v. Boaro, 113 U. S. 527; Hammer v. Garfield M. Co., 130 U. S. 291; Book v. Justice M. Co., 58 Fed. 106; Warnock v. De Witt, 11 Utah, 324, 40 P. 205; Eaton v. Norris, 131 Cal. 564; Golden Fleece

M. Co. v. Cable Con. G. M. Co., 12 Nev. 312; Russell v. Chumasero, 4 Mont. 309, 1 P. 713; Havin v. Mattingly, 8 Mont. 242, 19 P. 384; O'Donnell v. Glenn, 8 Mont. 248, 19 P. 302; Gamer v. Glenn, 8 Mont. 371, 20 P. 654; Brady v. Husby, 21 Nev. 453, 33 P. 801; Bonanza Con. M. Co. v. Golden Head M. Co., 80 P. 736.

What is insufficient marking of the boundaries. Ledoux v. Forester, 94 Fed. 602; Croesus M. Co. v. Colo. Land. Co., 19 Fed. 78; White v. Lee, 78 Cal. 593; Doe v. Waterloo M. Co., 70 Fed. 455; Oregon King M. Co. v. Brown, 119 Fed. 48; Hahn v. James, 29 Mont. 1, 73 P. 965; Moore v. Steelsmith, 1 Alaska, 121; Wright v. Lyons, 77 P. 87; Worthen v. Sidway, 71 Ark. 386, 79 S. W. 777; Ware v. White, 108 S. W. 831.

When boundaries have been altered or obliterated. Book v. Justice M. Co., 58 Fed. 106; Croesus M. Co. v. Colo. Land. Co., 19 Fed. 78; Jupiter M. Co. v. Bodie Con. M. Co., 11 Fed. 666; Pollard v. Shively, 5 Colo. 309; Golden Fleece G. and S. M. Co. v. Cable Con. G. and S. M. Co., 12 Nev. 312; Moore v. Steelsmith, 1 Alaska, 121.

How boundaries of second location should be marked. Conway v. Hart, 129 Cal. 483.

"Natural Object" and "Permanent Monument" defined—Statute construed. N. Noonday M. Co. v. Orient M. Co., 1 Fed. 533; Jackson v. Dines, 13 Colo. 90; Hammer v. Garfield M. Co., 130 U. S. 299; Bennett v. Harkrader, 158 U. S. 444; Mutchinor v. McCarty, 149 Cal. 603, 87 P. 85; Ford v. Campbell, 29 Nev. 578, 92 P. 206; Bismark Mt. G. M. Co. v. N. Sunbeam G. Co., 95 P. 14.

What may be "Natural Objects" and "Permanent Monuments." Allen v. Dunlap, 24 Ore. 236; Hansen v. Fletcher, 10 Utah, 271; Temescal Oil Co. v. Salecido, 137 Cal. 212; Credo M. Co. v. Highland M. Co., 95 Fed. Rep. 911; Buffalo Zinc Co. v. Crump, 70 Ark. 525; 69 S. W. 572; Hammer v. Garfield M. Co., 130 U. S. 291; Morrison v. Regan, 67 P. 955; Butler v. Good Enough M. Co., 1 Alaska, 246; Jackson v. Dines, 13 Colo. 90; Craig v. Thompson, 10 Colo. 525; Riste v. Morton, 20 Mont. 139; Dillon v. Bayliss, 11 Mont. 171; Talmadge v. St. John, 129 Cal. 436; Pollard v. Shively, 5 Colo. 318; Morrison v. Regan, 67 P. 955; Carlin v. Freeman, 75 P. 26; Mutchinor v. McCarty, 149 Cal. 603, 87 P. 85; Londerderry G. M. Co. v. U. S. G. M. Co., 88 P. 455; Smith v. Cascaden, 148 Fed. 792; Ford v. Campbell, 29 Nev. 578, 92 P. 206; Bismark Mt. G. M. Co. v. N. Sunbeam G. Co., 95 P. 14.

Testimony to show permanent character of monument. Metcalf v. Prescott, 10 Mont. 283, 25 P. 1037; Seidler v. Lafare, 4 New Mex. 369, 20 P. 789; Seidler v. Maxfield, 4 New Mex. 374, 20 P. 794.

The location notice in general. Duryea v. Boucher, 67 Cal. 141, 7 P. 421; Farrington G. M. Co. v. Rhyney G. M. Co., 20 Utah, 369; Brown v. Levan, 4 Idaho, 805; Walton v. Wild Goose M. Co., 123 Fed. 209; McCann

v. McMillan, 129 Cal. 350; Erhart v. Boaro, 113 U. S. 527, 28 L. Ed. 1113; Hawes v. Victoria Copper M. Co., 160 U. S. 303, 40 L. Ed. 436; Mt. Diablo M. Co. v. Callison, Fed. Cas. No. 9,886; Cheesman v. Shrieve, 40 Fed. 787; Book v. Justice M. Co., 58 Fed. 106; Gird v. Cal. Oil Co., 60 Fed. 531; Johnson v. Parks, 10 Cal. 446; Thompson v. Spray, 72 Cal. 528, 14 P. 182; Carter v. Bacigalupi, 83 Cal. 187, 23 P. 36; Donahue v. Meister, 88 Cal. 121, 25 P. 1096, 22 Am. St. Rep. 283; Kahn v. Old Telegraph M. Co., 2 Utah, 174; Phillipotts v. Bladell, 8 Nev. 61; Gleeson v. Martin White M. Co., 13 Nev. 442; Poujade v. Ryan, 21 Nev. 449, 33 P. 659; Brady v. Husby, 21 Nev. 453, 33 P. 801; Peters v. Tonopah M. Co., 120 Fed. 587; Butler v. Good Enough M. Co., 1 Alaska, 246; (see Webster v. Same); McMillen v. Ferrum M. Co., 74 P. 461; Kern Oil Co. v. Crawford, 143 Cal. 298, 76 P. 1111; Marrow v. Matthew, 79 P. 196; Brockbank v. Albion M. Co., 81 P. 863; Cunningham v. Pirrung, 80 P. 329; Sierra Blanco M. Co. v. Winchell, 83 P. 628; Daggett v. Yreka M. Co., 149 Cal. 357, 86 P. 968; Fox v. Myers, 86 P. 793; Helena G. and S. M. Co. v. Baggaley, 87 P. 455; Upton v. Santa Rita M. Co., 89 P. 275; Kinney v. Lundy, 89 P. 496; Ford v. Campbell, 29 Nev. 578, 92 P. 206; Ware v. White, 108 S. W. 831; Bismark Mt. G. M. Co. v. N. Sunbeam G. Co., 95 P. 14; Moorehead v. Erie M. Co., 96 P. 253.

When notice has been amended, altered or added to. Doe v. Waterloo M. Co., 70 Fed. 455; Omar v. Soper, 11 Colo. 380, 18 P. 443; Thompson v. Spray, 72 Cal. 528, 14 P. 182; Gleeson v. Martin White M. Co., 13 Nev. 442; Van Valkenburg v. Huff, 1 Nev. 142; Morrison v. Regan, 67 P. 955; Tonopah and Salt Lake M. Co. v. Tonopah M. Co., 125 Fed. 389; Gurney v. Brown, 77 P. 357; Field v. Tanner, 75 P. 916; Butte Con. M. Co. v. Barker, 89 P. 302, affirmed, 90 P. 177; Bismark Mt. G. M. Co. v. N. Sunbeam G. Co., 95 P. 14; Ware v. White, 108 U. S. 831; Milwaukee G. Ex. Co. v. Gordon, 95 P. 995.

Local statutes control requirements of notice. Carter v. Bacigalupi, 83 Cal. 187; Haws v. Victoria Copper M. Co., 160 U. S. 318; Sanders v. Noble, 22 Mont. 210; Deeney v. Mineral Cr. Mill Co., 67 P. 724; Van Buren v. McKinley, 66 P. 936; Baker v. Butte City Water Co., 28 Mont. 222, 72 P. 617, affirmed, 196 U. S. 119, 49 L. Ed. 409; Anderson v. Caughey, 84 P. 223; Upton v. Santa Rita M. Co., 89 P. 275.

Where notice differs from ground markings. Hansen v. Fletcher, 10 Utah, 266, 37 P. 480; Book v. Justice M. Co., 58 Fed. 106; Steen v. Wild Goose M. Co., 1 Alaska, 255; Treadwell v. Marrs, 83 P. 350.

What is a sufficient location notice. McKinley Cr. M. Co. v. Alaska United M. Co., 183 U. S. 563, 46 L. Ed. 331; Credo M. Co. v. Highland M. Co., 95 Fed. 913; Eilers v. Boatman, 111 U. S. 356; Dillon v. Bayliss, 11 Mont. 171; Drummond v. Long, 9 Colo. 538; Gilpin M. Co. v. Drake,

8 Colo. 586; Morrison v. Regan, 67 P. 955; Deeney v. Mineral Creek Milling Co., 67 P. 724; Kern Oil Co. v. Crawford, 143 Cal. 298, 76 P. 1111; Zerres v. Vanina, 134 Fed. 610; Columbia Copper M. Co. v. Duchess M. and M. Co., 79 P. 385; Vogel v. Warsing, 146 Fed. 949; Kinney v. Lundy, 89 P. 496.

What is insufficient location notice. Faxon v. Barnard, 4 Fed. 702; Deeney v. Mineral Cr. Mill Co., 67 P. 724; Darger v. Le Sieur, 8 Utah, 160, 30 P. 363; Fuller v. Harris, 29 Fed. 814; Drummond v. Long, 9 Colo. 538, 13 P. 543; McBurney v. Berry, 5 Mont. 300, 5 P. 867; Baxter Mt. G. M. Co. v. Patterson, 3 N. Mex. 269, 3 P. 741; Malececk v. Tinsley, 85 S. W. 81; Hickey v. Anaconda C. M. Co., 81 P. 806; Dolan v. Passmore, 85 P. 1034; Sharkey v. Candiani, 85 P. 219; Matko v. Daley, 85 P. 721; Mutchinor v. McCarty, 149 Cal. 603, 87 P. 85; Ford v. Campbell, 29 Nev. 578, 92 P. 206.

Courses and distances must be stated on notices. McEvoy v. Hyman, 25 Fed. 596; Brown v. Levan, 4 Idaho, 805.

How location notices affected by the act of May 7, 1884. Bennett v. Harkrader, 158 U. S. 444.

Recording of the notice of location subject to state and local regulation. Haws v. Victoria Copper M. Co., 160 U. S. 303, 40 L. Ed. 436; N. Noonday M. Co. v. Orient M. Co., 1 Fed. 522; Juniper M. Co. v. Bodie Con. M. Co., 11 Fed. 666; Fuller v. Harris, 29 Fed. 814; Kern Co. v. Lee, 129 Cal. 361; Allen v. Dunlap, 24 Cal. 236; Kendall v. San Juan S. M. Co., 144 U. S. 658; Willeford v. Bell, 49 P. 6; Hoyt v. Russell, 117 U. S. 401; In re Monk, 16 Utah, 103; Campbell v. Rankin, 99 U. S. 261; Souther v. Maguire, 78 Cal. 543, 21 P. 183; Anthony v. Jillison, 83 Cal. 296, 23 P. 419; Sweet v. Webber, 7 Colo. 443, 4 P. 752; Golden Fleece G. and S. M. Co. v. Cable Con. G. and S. M. Co., 12 Nev. 312; Southern Cross G. and S. M. Co. v. Europa M. Co., 15 Nev. 383; Van Buren v. McKinley, 66 P. 936; Peters v. Tonopah M. Co., 120 Fed. 587; Hahn v. James, 29 Mont. 1, 73 P. 965; McCulloch v. Murphy, 125 Fed. 147; Baker v. Butte City Water Co., 28 Mont. 222, 72 P. 617, affirmed, 196 U. S. 119, 49 L. Ed. 409; Porter v. Tonopah N. Star Co., 133 Fed. 756; Zerres v. Vanina, 134 Fed. 610; Hickey v. Anaconda C. M. Co., 81 P. 806; Anderson v. Caughey, 84 P. 223; Barnette v. Freeman, 2 Alaska, 286; Redden v. Harlan, 2 Alaska, 402; Bulette v. Dodge, 2 Alaska, 427; Charlton v. Kelly, 2 Alaska, 532, 156 Fed. 433; Slothower v. Hunter, 88 P. 36; Ford v. Campbell, 29 Nev. 578, 92 P. 206; Wailes v. Davies, 158 Fed. 667, affirmed, 164 Fed. 397.

Requisites and sufficiency of notice. Brady v. Husby, 21 Nev. 453, 33 P. 801; Southern Cross G. and S. M. Co. v. Europa M. Co., 15 Nev. 383; Gleesen v. Martin White M. Co., 13 Nev. 442; Carter v. Bacigalupi, 83 Cal. 187, 23 P. 361; Myers v. Spooner, 55 Cal. 257; Hammer v. Garfield M. and M. Co., 130 U. S. 291, 32 L. Ed.

964, affirming Garfield M. and M. Co. v. Hammer, 6 Mont. 53, 8 P. 153; Preston v. Hunter, 67 Fed. 996; Faxon v. Barnard, 4 Fed. 702; N. Noonday M. Co. v. Orient M. Co., 1 Fed. 522; Fuller v. Harris, 29 Fed. 814; Cheesman v. Shreeve, 40 Fed. 787; Book v. Justice M. Co., 58 Fed. 106; Gird v. Cal. Oil Co., 60 Fed. 531; Johnson v. McLaughlin, 1 Ariz. 493, 4 P. 130; Weese v. Barker, 7 Colo. 178, 2 P. 919; Stripey v. Stark, 7 Colo. 614, 5 P. 111; Quimby v. Boyd, 8 Colo. 194, 6 P. 462; Gilpin Co. M. Co. v. Drake, 8 Colo. 586, 9 P. 787; Drummond v. Long, 9 Colo. 538, 13 P. 543; Craig v. Thompson, 10 Colo. 517, 16 P. 24; Dunlap v. Patterson, 42 P. 504; Berg v. Koegel, 16 Mont. 266, 40 P. 605; McCowan v. Maclay, 16 Mont. 234, 40 P. 602; Mattingly v. Lewisohn, 13 Mont. 508, 35 P. 111; Dillon v. Bayliss, 11 Mont. 171, 27 P. 725; Metcalf v. Prescott, 10 Mont. 283, 25 P. 1037; O'Donnell v. Glenn, 9 Mont. 452, 23 P. 1018; Gamer v. Glenn, 8 Mont. 371, 20 P. 654; Upton v. Larkin, 7 Mont. 449, 17 P. 728; Wenner v. McNulty, 7 Mont. 30, 14 P. 643; McBurney v. Berry, 5 Mont. 300, 5 P. 867; Russell v. Chumasero, 4 Mont. 309, 1 P. 713; Conner v. McPhee, 1 Mont. 73; Baxter Mt. G. M. Co. v. Patterson, 3 N. Mex. 269, 3 P. 741; Hansen v. Fletcher, 10 Utah, 266, 37 P. 480; Darger v. Le Sieur, 8 Utah, 160, 30 P. 363; Gurney v. Brown, 77 P. 357; Mares v. Dillon, 75 P. 963; Porter v. Tonopah N. Star Co., 133 Fed. 756; Webb v. Carlon, 83 P. 998; Anderson v. Caughey, 84 P. 223; Sharkey v. Candiani, 85 P. 219; Kinney v. Lundy, 89 Pac. 496.

Recording of amended, altered or additional certificates. Gleeson v. Martin White M. Co., 13 Nev. 442; McEvoy v. Hyman, 25 Fed. 596; Moile v. Bullene, 7 Colo. App. 308, 44 P. 69; Johnson v. Young, 18 Colo. 625, 34 P. 173; Craig v. Thompson, 10 Colo. 517, 16 P. 24; McGinnis v. Egbert, 8 Colo. 41, 5 P. 652; Strepey v. Stark, 7 Colo. 614, 5 P. 111; Tonopah & Salt Lake M. Co. v. Tonopah M. Co., 125 Fed. 389; Wilson v. Freeman, 75 P. 84; Porter v. Tonopah N. Star Co., 133 Fed. 756; Milwaukee G. Ex. Co. v. Gordon, 95 P. 995.

The recorded notice used as evidence. Brady v. Husby, 21 Nev. 453, 33 P. 801; Campbell v. Rankin, 99 U. S. 261, 25 L. Ed. 435; Bennett v. Harkrader, 158 U. S. 441, 39 L. Ed. 1046; Cheesman v. Shreeve, 40 Fed. 787; Cheesman v. Hart, 42 Fed. 98; Coleman v. Davis, 13 Colo. 98, 21 P. 1018; Strepey v. Stark, 7 Colo. 614, 5 P. 111; Patterson v. Hitchcock, 3 Colo. 533; Jantzen v. Ariz. Copper Co., 20 P. 93; Kramer v. Settle, 1 Idaho, 485; Dillon v. Bayliss, 11 Mont. 171, 27 P. 725; Tunnel M. Co. v. Creede & Cripple Creek M. Co., 119 Fed. 164; Walker v. Pennington, 27 Mont. 369, 71 P. 156; McCulloch v. Murphy, 125 Fed. 147; Webb v. Carlon, 83 P. 998; Fox v. Myers, 86 P. 793; Mutchinor v. McCarty, 149 Cal. 603, 87 P. 185; Butte Con. M. Co., v. Barker, 89 P. 302, affirmed, 90 P. 177; Bismark Mt. G. M. Co., v. N. Sunbeam G. Co., 95 P. 14.

Delay in recording notice. *Preston v. Hunter*, 67 Fed. 996; *Kendall v. San Juan S. M. Co.*, 144 U. S. 658, 36 L. Ed. 583, affirming, 9 Colo. 349, 12 P. 198; *Faxon v. Barnard*, 4 Fed. 702; *Buffalo Zinc & Copper Co. v. Crump*, 70 Ark. 525, 69 S. W. 572; *Last Chance M. Co. v. Bunker Hill M. Co.*, 131 Fed. 579; *Zerres v. Vanina*, 134 Fed. 610; *Columbia Copper Co. v. Duchess M. Co.*, 79 P. 385; *Lockhart v. Leeds*, 63 P. 48, reversed, 195 U. S. 427, 49 L. Ed. 263.

When record varies from boundaries marked on claim. *Pollard v. Shively*, 5 Colo. 309; *Russell v. Chumasonero*, 4 Mont. 309, 1 P. 713; *Oregon King M. Co. v. Brown*, 119 Fed. 48; *Mitchell v. Hutchinson*, 142 Cal. 404, 76 P. 55.

Annual labor and development work, in general.

Previous to the act of 1872. *Little Gunnell Co. v. Kimber*, Fed. Cas. No. 8,402; *Bradley v. Lee*, 38 Cal. 362; *Gottschall v. Melsing*, 2 Nev. 185; *Leet v. John Dare S. M. Co.*, 6 Nev. 218; *Temescal Oil M. Co. v. Saleido*, 69 P. 1010.

The statute construed—Terms defined—Object.

Lode claims. *Mills v. Fletcher*, 100 Cal. 142, 34 P. 637; *Utah M. Co. v. Dickert & Myers Sulphur Co.*, 6 Utah, 183, 21 P. 1002; 5 L. R. A. 259; *Sweet v. Webber*, 7 Colo. 443, 4 P. 752; *Con. Rep. Mt. M. Co. v. Lebanon M. Co.*, 9 Colo. 343, 12 P. 212; *Emerson v. McWhirter*, 133 Cal. 510; *Cooper Globe M. Co. v. Allman*, 23 Utah, 410; *Doe v. Waterloo M. Co.*, 70 Fed. 459; *McCulloch v. Murphy*, 125 Fed. 147; *Argentine M. Co. v. Benedict*, 18 Utah, 183; *Penn v. Oldhauber*, 24 Mont. 287; *Power v. Sla*, 24 Mont. 243; *Northmore v. Simmons*, 97 Fed. 386; *Original Co. v. Winthrop M. Co.*, 60 Cal. 631; *McCulloch v. Murphy*, 125 Fed. 147; *Godfrey v. Faust*, 101 N. W. 718; *Malone v. Jackson*, 137 Fed. 878; *Goldberg v. Brusehi*, 146 Cal. 708, 81 P. 23; *Hain v. Mattes*, 83 P. 127; *Godfrey v. Faust*, 105 N. W. 460; *McKay v. Neussler*, 148 Fed. 86; *Butte Con. M. Co. v. Barker*, 89 P. 302, affirmed, 90 P. 177; *Upton v. Santa Rita M. Co.*, 89 P. 275; *Ford v. Campbell*, 29 Nev. 578, 92 P. 206; *Ingemarson v. Coffey*, 92 P. 908; *Warles v. Davies*, 158 Fed. 667, affirmed, 164 Fed. 397.

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Proof of the performance and value of annual labors. *Whalen Con. Copper M. Co. v. Whalen*, 127 Fed. 611 (Nev.); *Woody v. Bernard*, 69 Ark. 579; *Penn v. Oldhauber*, 24 Mont. 287; *Right v. Killian*, 132 Cal. 56; *McCulloch v. Murphy*, 152 Fed. 147; *Du Prat v. James*, 65 Cal. 555; *Fee v. Durham*, 121 Fed. 468; *Bishop v. Baisley*, 28 Ore. 119; *Lockhart v. Rollins*, 2 Idaho, 540; *Hirschler v. McKendricks*, 16 Mont. 211; *Woody v. Barnard*, 69 Ark. 579, 65 S. W. 100; *Murry Hill M. Co. v. Havenor*, 66 P. 762; *Wagner v. Dorris*, 73 P. 318; *McCulloch v. Murphy*,

125 Fed. 147; *Callahan v. James*, 141 Cal. 291, 74 P. 853 (reversing 71 P. 104); *McCormick v. Parriott*, 33 Colo. 382, 80 P. 1044; *Stolp v. Treasury G. M. Co.*, 38 Wash. 619, 80 P. 817; *Anderson v. Caughey*, 84 P. 223; *Smith v. Mt. Gulch M. Co.*, 85 P. 918; *McKay v. Neussler*, 148 Fed. 86; *Gear v. Ford*, 88 P. 600; *First Nat. G. M. Co. v. Altvater*, 149 Fed. 393; *Upton v. Santa Rita M. Co.*, 89 P. 275.

Annual work done for benefit of group and claims owned in common. *St. Louis Co. v. Kemp*, 104 U. S. 636, 26 L. Ed. 875; *Jackson v. Roby*, 109 U. S. 440, 27 L. Ed. 990; *Chambers v. Harrington*, 111 U. S. 550, 28 L. Ed. 452; *Mt. Diablo M. Co. v. Callison*, Fed. Cas. No. 9,886; *Jupiter M. Co. v. Bodie Con. M. Co.*, 11 Fed. 666; *Gird v. Cal. Oil Co.*, 60 Fed. 531; *Eberle v. Carmichael*, 8 N. Mex. 169, 42 P. 95; *Little Dorrit G. M. Co. v. Arapahoe G. M. Co.*, 30 Colo. 431, 71 P. 289; *Fissure M. Co. v. Old Susan M. Co.*, 22 Utah, 444; *Saunders v. Mackey*, 5 Mont. 525; *Justice M. Co. v. Barclay*, 82 Fed. 554; *Royston v. Miller*, 76 Fed. 52; *Power v. Sla*, 24 Mont. 243; *Altoona Quick S. M. Co. v. Integral Q. S. M. Co.*, 114 Cal. 100; *Ham v. Mattes*, 83 P. 127; *Upton v. Santa Rita M. Co.*, 89 P. 275; *Fredricks v. Klausner*, 96 P. 697.

What may be and what not considered as annual labor sufficient to satisfy statutory requirement. *Mt. Diablo M. Co. v. Callison*, Fed. Cas. No. 9,886; *Book v. Justice M. Co.*, 58 Fed. 106; *Packer v. Heaton*, 9 Cal. 568; *Du Prat v. James*, 65 Cal. 555, 4 P. 562; *Bryan v. McCaig*, 10 Colo. 309, 15 P. 413; *Douherty v. Morris*, 17 Colo. 105, 28 P. 85; *Lockhart v. Rollins*, 2 Idaho, 503, 21 P. 413; *Remington v. Baudit*, 6 Mont. 138, 9 P. 819; *Coleman v. Curtis*, 12 Mont. 301, 30 P. 266; *Bishop v. Baisley*, 28 Ore. 119, 41 P. 936; *Haugh v. Hunt*, 138 Cal. 142, 70 P. 1059; *Malone v. Jackson*, 137 Fed. 878; *Anderson v. Caughey*, 84 P. 223; *McKay v. Neussler*, 148 Fed. 86; *Gear v. Ford*, 88 P. 600; *First Nat. G. M. Co. v. Altvater*, 149 Fed. 393; *Kinsley v. New Vulture M. Co.*, 90 P. 438; *Ingemarson v. Coffey*, 92 P. 908; *Warles v. Davies*, 158 Fed. 667 (affirmed, 164 Fed. 397); *Fredricks v. Klausner*, 96 P. 679; *Ware v. White*, 108 S. W. 831.

Work done outside the limits of the claim. *Mt. Diablo M. Co. v. Callison*, Fed. Cas. No. 9,886; *Book v. Justice M. Co.*, 58 Fed. 106; *Hall v. Kearny*, 18 Colo. 505, 33 P. 373; *Harrington v. Chambers*, 3 Utah, 94, 1 P. 362; *Power v. Sla*, 24 Mont. 243; *Little Dorrit G. M. Co. v. Arapahoe G. M. Co.*, 71 P. 389; *Wagner v. Dorris*, 73 P. 318; *Treasury Tunnel M. Co. v. Boss*, 74 P. 888; *Warles v. Davies*, 158 Fed. 667 (affirmed, 164 Fed. 397).

Time of performance of annual work. *Aurora Hill Con. M. Co. v. Eighty-Five M. Co.*, 34 Fed. 515; *Slavonian M. Co. v. Perasich*, 7 Fed. 331; *Mills v. Fletcher*, 100 Cal. 142, 34 P. 637; *Hall v. Hale*, 8 Colo. 351, 8 P. 580; *Atkins v. Hendree*, 1 Idaho, 95; *Belk v. Meagher*, 3 Mont. 65; *Thompson v. Jacobs*, 3 Utah, 246, 2 P. 714.

Necessity for work after application for patent. *Deno v. Griffin*, 20 Nev. 249, 20 P. 308; *Benson M. Co. v. Alta M. Co.*, 145 U. S. 428, 36 L. Ed. 762 (affirming *Alta M. Co. v. Benson M. Co.*, 16 P. 665); *Aurora Hill Con. M. Co. v. Eighty-Five M. Co.*, 34 Fed. 515; *Murry v. Polglase*, 23 Mont. 401; *Gillis v. Downey*, 85 Fed. 483.

Failure to do assessment work—Effect of. *South End M. Co. v. Tinney*, 22 Nev. 19, 35 P. 89; *Morgan v. Tillottson*, 73 Cal. 520, 15 P. 88; *Du Prat v. James*, 65 Cal. 555, 4 P. 562; *Deputy v. Williams*, 26 Cal. 309; *Kramer v. Settle*, 1 Idaho, 485; *King v. Edwards*, 1 Mont. 235; *Belk v. Meagher*, 3 Mont. 65; *Wilson v. Freeman*, 75 P. 84; *Faubel v. McFarland*, 144 Cal. 717, 78 P. 261; *Moorehead v. Erie M. Co.*, 96 P. 253.

Where work is resumed after default—Effect of. *McCormick v. Baldwin*, 104 Cal. 227, 37 P. 903; *Pharis v. Muldoon*, 75 Cal. 284, 17 P. 70; *Russell v. Brosslau*, 65 Cal. 605, 4 P. 643; *Du Prat v. James*, 65 Cal. 555, 4 P. 562; *Belcher Con. M. Co. v. Deferrari*, 62 Cal. 160; *Lakin v. Sierra Buttes M. Co.*, 25 Fed. 337; *Slavonian M. Co. v. Perasich*, 7 Fed. 331; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522; *Jupiter M. Co. v. Bodie Con. M. Co.*, 11 Fed. 666; *Little Gunnell Co. v. Kimber*, Fed. Cas. No. 8,402; *Hirscheler v. McKendricks*, 16 Mont. 211, 40 P. 290; *Honaker v. Martin*, 11 Mont. 91, 27 P. 397; *Gorin v. Russell*, 3 Mont. 358; *Lacey v. Woodward*, 5 N. Mex. 583, 25 P. 785; *Bishop v. Baisley*, 28 Ore. 119, 41 P. 936; *Emerson v. McWhirter*, 133 Cal. 510; *Field v. Tanner*, 75 P. 919; *Warnock v. De Witt*, 11 Utah, 328; *Buffalo Zinc Co. v. Crump*, 70 Ark. 539; *Temescal Oil M. Co. v. Saleido*, 69 P. 1010; *Little Dorrit M. Co. v. Arapahoe M. Co.*, 71 P. 389; *Field v. Tanner*, 75 P. 916; *Worthen v. Sidway*, 71 Ark. 386, 79 S. W. 777; *Peoria M. Co. v. Turner*, 79 P. 915.

Failure to perform annual work by reason of default of cotenants or copartners. *Mallet v. Uncle Sam G. and S. M. Co.*, 1 Nev. 188, 90 Am. Dec. 484; *Strang v. Ryan*, 46 Cal. 33; *Brundage v. Adams*, 41 Cal. 619; *Wiseman v. McNulty*, 25 Cal. 230; *Warring v. Crow*, 11 Cal. 366; *Turner v. Sawyer*, 150 U. S. 578, 38 L. Ed. 1189; *Brundy v. Mayfield*, 15 Mont. 201, 38 P. 1067; *Saunders v. Mackey*, 5 Mont. 523, 6 P. 361; *Doherty v. Morris*, 11 Colo. 12, 16 P. 911; *Yarwood v. Johnson*, 29 Wash. 643, 70 P. 123; *Faubel v. McFarland*, 144 Cal. 717, 78 P. 261.

When annual labor done by persons other than owners. *Jupiter M. Co. v. Bodie Con. M. Co.*, 11 Fed. 677; *Whalen Con. M. Co. v. Whalen*, 127 Fed. 611; *Nesbitt v. Delamar's Nev. G. M. Co.*, 24 Nev. 283; *Godfrey v. Faust*, 101 N. W. 718.

Annual work performed in tunnel. *Hain v. Mattes*, 83 P. 127; *Godfrey v. Faust*, 105 N. W. 460.

Failure to perform annual labor—Forfeiture—Burden of proof. *Whalen Con. M. Co. v. Whalen*, 127 Fed. 611; *Hammer v. Garfield M. Co.*, 130 U. S. 292; *McCulloch v. Murphy*, 125 Fed. 147; *Quigley v. Gillett*, 101 Cal. 462; *Haynes v. Briscoe*, 29 Colo.

140; *Beals v. Cone*, 27 Colo. 501; *Johnson v. Young*, 18 Colo. 629; *Axiom M. Co. v. White*, 10 S. D. 198; *Dibble v. Castle Chief G. M. Co.*, 9 S. D. 618; *Little Dorrit G. M. Co. v. Arapahoe G. M. Co.*, 71 P. 389; *Goldberg v. Bruschi*, 146 Cal. 708, 81 P. 23; *Cunningham v. Pirrung*, 80 P. 329.

Failure to perform annual labor—When claim in wrongful possession of trespasser. *Field v. Tanner*, 75 P. 916.

Proof necessary to establish forfeiture for failure to perform annual labor. *Hammer v. Garfield M. Co.*, 130 U. S. 291; *Justice M. Co. v. Barclay*, 82 Fed. 559; *Buffalo Zinc Co. v. Crump*, 70 Ark. 525; *Walton v. Wild Goose M. Co.*, 123 Fed. 209; *McCulloch v. Murphy*, 125 Fed. 147; *Loeser v. Gardiner*, 1 Alaska, 641; *Thompson v. Allen*, 1 Alaska, 636; *Goldberg v. Bruschi*, 146 Cal. 708, 81 P. 23; *Holmes v. Salamanca G. M. Co.*, 91 P. 160.

Forfeiture and relocation and abandonment—When claims considered abandoned or forfeited. *Weill v. Lucerne M. Co.*, 11 Nev. 200; *Oreamuno v. Uncle Sam G. and S. M. Co.*, 1 Nev. 215; *Mallett v. Uncle Sam G. and S. M. Co.*, 1 Nev. 188; *Black v. Elkhorn M. Co.*, 163 U. S. 455, 41 L. Ed. 221; *Tyler M. Co. v. Sweeney*, 54 Fed. 284; *Tresaskis v. Peard*, 111 Cal. 599, 44 P. 246; *Stone v. Geyser Quicksilver M. Co.*, 52 Cal. 315; *Morenhaut v. Wilson*, 52 Cal. 263; *Laird v. Waterford*, 50 Cal. 315; *Bell v. Bedrock Tunnel M. Co.*, 36 Cal. 214; *St. John v. Kidd*, 26 Cal. 263; *Colman v. Clements*, 23 Cal. 245; *Waring v. Crow*, 11 Cal. 366; *Davis v. Butler*, 6 Cal. 510; *Rush v. French*, 1 Ariz. 99, 25 P. 816; *Girard v. Carson*, 22 Colo. 345, 44 P. 508; *Miller v. Girard*, 3 Colo. App. 278, 33 P. 69; *Derry v. Ross*, 5 Colo. 295; *Atkins v. Hendree*, 1 Idaho, 95; *Buffalo Zinc and Copper Co. v. Crump*, 70 Ark. 525, 69 S. W. 572; *Miller v. Hawley*, 31 Colo. 495, 74 P. 980; *Holmes v. Salamanca G. M. Co.*, 91 P. 160; *Ford v. Campbell*, 29 Nev. 578, 92 P. 206; *Dye v. Crary*, 85 P. 1038, 9 L. R. A. 1136, affirmed, 208 U. S. 515, 52 L. Ed. 595; *Hanson v. Craig*, 161 Fed. 861; *Ware v. White*, 108 S. W. 831; *Moorehead v. Erie M. Co.*, 96 P. 253; *Badger G. M. Co. v. Stockton G. and C. M. Co.*, 139 Fed. 838; *Gurney v. Brown*, 32 Colo. 472, 77 P. 357, affirmed, 201 U. S. 184, 50 L. Ed. 717; *Oberto v. Smith*, 86 P. 86; *Sharkey v. Candiani*, 85 P. 219; *Davis v. Dennis*, 85 P. 1079; *Charlton v. Kelly*, 2 Alaska, 532; *Delmoe v. Long*, 88 P. 778; *Paragon M. Co. v. Stevens Co. Exp. Co.*, 87 P. 1068; see, also, *Kerr v. Same, Id.*; *Slothower v. Hunter*, 88 P. 36; *Gear v. Ford*, 88 P. 600; *Wolfskill v. Smith*, 89 P. 1001; *Upton v. Santa Rita M. Co.*, 89 P. 275; *Empire State-Idaho M. Co. v. Bunker Hill M. Co.*, 131 Fed. 591; *Conn v. Oberto*, 76 P. 369; *Willett v. Baker*, 133 Fed. 937; *Lavagnino v. Uhlig*, 26 Utah, 1, 71 P. 1046, 198 U. S. 443, 49 L. Ed. 1119; see 68 L. R. A. 833; *Murley v. Ennis*, 2 Colo. 300.

To perfect forfeiture—What sufficient notice. *Brundy v. Mayfield*, 15 Mont. 201; *Elder v. Horseshoe M. Co.*, 9 S. D. 636, 15

S. D. 124, 87 N. W. 586, affirmed in 194 U. S. 248, 48 L. Ed. 960; Haynes v. Briscoe, 29 Colo. 137, 67 P. 156; Turner v. Sawyer, 150 U. S. 585; Becher v. Pugh, 17 Colo. 243; Conn v. Oberto, 76 P. 369; Badger G. & C. M. Co. v. Stockton G. & C. M. Co., 139 Fed. 838; Ballard v. Golob, 83 P. 376; McKay v. Neussler, 148 Fed. 86; Delmoe v. Long, 35 Mont. 38, 88 P. 778.

Temporary suspension of notice to coowner by act November 3, 1893. Royston v. Miller, 76 Fed. 50.

#### Relocation.

In general. S. End M. Co. v. Tinney, 22 Nev. 19; Russell v. Brosseau, 65 Cal. 605; Del Monte M. Co. v. Last Chance M. Co., 171 U. S. 77; Girard v. Carson, 22 Colo. 345, 44 P. 508; Temescal Oil M. Co. v. Salcido, 69 P. 1010; Rebecca G. M. Co. v. Bryant, 31 Colo. 119, 71 P. 1110; Bonner v. Rio Grande S. R. Co., 72 P. 1065; Garvey v. Elder, 109 N. W. 508; McPherson v. Julius, 95 N. W. 428; Conn v. Oberto, 76 P. 369; Field v. Tanner, 75 P. 916; Zerres v. Vanina, 134 Fed. 610 (Nev.), affirmed, 150 Fed. 564; Lauman v. Hooper, 79 P. 953.

Relocation by person who abandoned. Cheesman v. Shreeve, 40 Fed. 787; Fuller v. Harris, 29 Fed. 814; Johnson v. Young, 18 Colo. 625, 34 P. 173; Pelican & Dives M. Co. v. Snodgrass, 9 Colo. 329, 12 P. 206; Warnock v. De Witt, 11 Utah, 324, 40 P. 205; Shattuck v. Costello, 68 P. 529; McPherson v. Julius, 95 N. W. 428; Lockhart v. Ferrell, 31 Utah, 155, 86 P. 1077, reversed, 210 U. S. 142, 52 L. Ed. 994; Paragon M. Co. v. Stevens Co. Exp. Co., 87 P. 1068; see, also, Kerr v. Lane, Idem; Emerson v. Yosemite G. M. Co., 149 Cal. 50, 85 P. 122, affirmed, 208 U. S. 25, 52 L. Ed. 374; New Eng. & Colinga Oil Co. v. Congdon, 92 P. 180; Nash v. McNanara, 30 Nev. 114, 93 P. 405; Lavignino v. Uhlig, 26 Utah, 1, 71 P. 1046, 198 U. S. 443, 49 L. Ed. 1119; Malone v. Jackson, 137 Fed. 878; Cunningham v. Pirrung, 80 P. 329; Moffatt v. Blue River G. Ex. Co., 33 Colo. 142, 80 P. 139; Gurney v. Brown, 32 Colo. 472, 77 P. 357, affirmed, 201 U. S. 184, 50 L. Ed. 717; Matko v. Daley, 85 P. 721; McKay v. Neussler, 148 Fed. 86.

Relocation by cotenant or former agent. Van Valkenburg v. Huff, 1 Nev. 142; Morton v. Solambo M. Co., 26 Cal. 527; Strang v. Ryan, 46 Cal. 33; Argentine M. Co. v. Benedict, 18 Utah, 183; McCarthy v. Speed, 11 S. D. 362 (affirmed, 181 U. S. 269); Worthen v. Sidway, 71 Ark. 386, 79 S. W. 777; Stevens v. Grand Cent. M. Co., 133 Fed. 28.

Relocation cannot be made until claim abandoned or forfeited. Golden Fleece M. Co. v. Cable Con. M. Co., 12 Nev. 312; Renshaw v. Switzer, 6 Mont. 464, 13 P. 127; Lockhart v. Rollins, 2 Idaho, 503, 21 P. 413; Mills v. Blain, 4 N. Mex. 378, 20 P. 798.

Relocation cannot be initiated by trespass. Slavonian M. Co. v. Perasich, 7 Fed. 331; Gwillim v. Donnellan, 115 U. S. 45, 29 L. Ed. 348; Aurora Hill Con. M. Co. v. Eighty-Five M. Co., 34 Fed. 515; Book v. Justice M. Co., 58 Fed. 106; Lebanon M. Co. v. Con. Rep. M. Co., 6 Colo. 371; Weese v.

Barker, 7 Colo. 178, 2 P. 919; Gemmel v. Swain, 28 Mont. 331, 72 P. 662; Fee v. Durham, 121 Fed. 468; McIntosh v. Price, 121 Fed. 716; Field v. Tanner, 75 P. 916; Walsh v. Henry, 88 P. 449; Garvey v. Elder, 109 N. W. 508; Lockhart v. Farrell, 86 P. 1077 (Reversed 210 U. S. 142, 52 L. Ed. 994); Phillips v. Brill, 95 P. 856; Clipper M. Co. v. Eli M. Co., 194 U. S. 220, 48 L. Ed. 944; Willitt v. Baker, 133 Fed. 937; Peoria M. Co. v. Turner, 79 P. 915; but see Goldberg v. Bruschi, 146 Cal. 708, 81 P. 23; Moffatt v. Blue River G. M. Co., 33 Colo. 142, 80 P. 139; Oberto v. Smith, 86 P. 86; Stewart v. Westlake, 148 Fed. 349.

Relocation cannot be made until after end of the year. Belk v. Meagher, 104 U. S. 279, 26 L. Ed. 735; Slavonian M. Co. v. Perasich, 7 Fed. 331; Oscamp v. Crystal River M. Co., 58 Fed. 295; Preston v. Hunter, 67 Fed. 996; Gonu v. Russell, 3 Mont. 358; Fee v. Durham, 121 Fed. 468; Pharis v. Muldoon, 75 Cal. 284.

Entry for relocation while labor being performed. Murrv Hill M. Co. v. Havenor, 24 Utah, 73; Willitt v. Baker, 133 Fed. 937.

Relocation cannot be made after entry in land office. Neilson v. Champaigne M. Co., 111 Fed. 655; Sou. Cross G. M. Co. v. Sexton, 147 Cal. 758, 82 P. 423.

Relocator may adopt boundaries and shaft of abandoned claim. Armstrong v. Lower, 6 Colo. 393; Miller v. Taylor, 6 Colo. 41; Carlin v. Freeman, 75 P. 26; Wilson v. Freeman, 75 P. 84; Brockbank v. Albion M. Co., 81 P. 863. See Lindley on Mines, 2d ed., secs. 270, 371-375, 379-392, 623-638, 642-647, 651-654; see vol. 30 Cent. Dig. title, Mines and Minerals, secs. 18-20, 29-64; see Fed. Stats. Anntd. vol. 5, pp. 19-31, cases and notes.

A part owner of a mining claim who holds an option to purchase the interest of a coowner has the right to tender the contribution of the latter to the cost of assessment work to avoid a forfeiture. Knickerbocker v. Halla (C. C. A.), 177 Fed. 172.

The provisions of Rev. Stats. sec. 2324 (U. S. Comp. Stats. 1901, p. 1426), for the extinguishment of the interest of a coowner in a mining claim for his failure to contribute to the assessment work required thereby, is constitutional and valid. Van Sice v. Ixex Mining Co. (C. C. A.), 173 Fed. 895.

Where stakes were set to mark the boundaries of a mining claim and proper notices posted, it was sufficient marking upon the ground, even though the corner stakes were not inscribed with the name of the claim. Bingham Amalgamated Copper Co. v. Ute Copper Co. (C. C.), 181 Fed. 748.

A failure to perform the annual assessment work on a mining claim does not in and of itself work a forfeiture, but only permits a relocation, and cannot aid an adverse location which was made prior to the year in which the failure occurred. Idem.

Where several mining claims are held in common and are contiguous, the assessment

work may be done on any one of them or on adjacent patented land or on public land, if it tends to develop them, but mining

claims which touch only at a common corner held not contiguous. *Anvil Hydraulic & Drainage Co. v. Code* (C. C. A.), 182 Fed. 205.

### 2383. Patents for mineral lands, how obtained.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter; *provided*, that where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits; *and provided*, that this section shall apply to all applications now pending for patents to mineral lands.

For regulations of the secretary of the interior regarding mining claims and procedure for obtaining patents, see sec. 2421.

Proceedings for patent.

Work required to obtain patent. U. S. v. Iron Silver M. Co., 24 Fed. 568.

Assessment work unnecessary after receiver's receipt issued. *Deno v. Griffin*, 20 Nev. 249, 20 P. 308; *Alta M. and S. Co. v. Benson M. & S. Co.*, 16 P. 565 (affirmed, 145 U. S. 428, 36 L. Ed. 762).

Effect of issuance of receiver's receipt.

*Rebecca G. M. Co. v. Bryant*, 31 Colo. 119, 71 P. 1110.

The application—Statute construed. *Ham-burg M. Co. v. Stephenson*, 17 Nev. 449, 30 P. 1088; *Brandt v. Wheaton*, 52 Cal. 430; *Freezer v. Sweeney*, 8 Mont. 508, 21 P. 20; *Clipper M. Co. v. Eli M. Co.*, 29 Colo. 377, 68 P. 286; *McConaghy v. Doyle*, 75 P. 419; *Gurney v. Brown*, 77 P. 357; *Peoria M. Co.*

v. Turner, 79 P. 915; Davidson v. Fraser, 84 P. 695.

The adverse claim:

In general—Necessity for filing—What may be included within adverse claims—The statute construed. Steel v. Gold Lead G. and S. M. Co., 18 Nev. 80, 1 P. 448; Rose v. Richmond M. Co., 17 Nev. 25, 27 P. 1105; Eclipse G. and S. M. Co. v. Spring, 59 Cal. 304; Enterprise M. Co. v. Rico Aspen Con. M. Co., 66 Fed. 200; Turner v. Sawyer, 150 U. S. 578, 37 L. Ed. 1189; Dahl v. Raunheim, 132 U. S. 260, 33 L. Ed. 324, affirming Raunheim v. Dahl, 6 Mont. 167, 9 P. 892; Iron Silver M. Co. v. Campbell, 135 U. S. 286, 34 L. Ed. 155; Richmond M. Co. v. Eureka Con. M. Co., 103 U. S. 839, 26 L. Ed. 557; Wight v. Du Bois, 21 Fed. 693; Kannaugh v. Quartette M. Co., 16 Colo. 341, 27 P. 245; Seymour v. Fisher, 16 Colo. 188, 27 P. 240; Hunt v. Eureka Gulch M. Co., 14 Colo. 451, 24 P. 550; Lee v. Stahl, 13 Colo. 174, 22 P. 436; overruled, Calhoun G. M. Co. v. Ajax G. M. Co., 27 Colo. 1, 59 P. 607; 50 L. R. A. 209; Doherty v. Morris, 11 Colo. 12, 16 P. 911; Butte Hardware Co. v. Cobban, 13 Mont. 351, 34 P. 24; Butte City Smoke House Lode Case, 6 Mont. 397, 12 P. 858; Mantle v. Noves, 5 Mont. 274, 5 P. 856; Back v. Sierra Nev. Con. M. Co., 2 Idaho, 386, 17 P. 83; Suessenbach v. First Nat. Bank, 5 Dak. 477, 41 N. W. 662; Griffin v. Amer. G. M. Co., 114 Fed. 887; Larned v. Jenkins, 113 Fed. 634; Stevens v. Grand Cent. M. Co., 133 Fed. 28; Mineral Farm M. Co. v. Barriek, 33 Colo. 410, 80 P. 1055.

When adverse claim must be filed. Hamilton v. S. Mt. G. and S. Co., 33 Fed. 562; Hunt v. Eureka Gulch M. Co., 14 Colo. 451, 24 P. 550; McCowan v. McLay, 16 Mont. 234, 40 P. 602; Neilson v. Champagne M. Co., 119 Fed. 123; Lavagnino v. Uhlrig, 26 Utah, 1, 71 P. 1046, 198 U. S. 443; Lily M. Co. v. Kellogg, 74 P. 518; Healey v. Rupp, 86 P. 1015.

Effect of filing adverse claim. Last Chance M. Co. v. Tyler M. Co., 157 U. S. 683, 39 L. Ed. 859; see same case, 61 Fed. 557; Richmond M. Co. v. Rose, 114 U. S. 576, 29 L. Ed. 273; Davidson v. Fraser, 84 P. 695; Lockhart v. Farrell, 86 P. 1077.

Effect of failure to file adverse claim. Nesbitt v. Delamar's Nev. G. M. Co., 24 Nev. 273; Lee v. Stahl, 9 Colo. 208; Lily M. Co. v. Kellogg, 74 P. 518; Lavagnino v. Uhlrig, 26 Utah, 1, affirmed, 198 U. S. 443, 49 L. Ed. 1119; Iron S. Co. v. Campbell, 135 U. S. 298; Hamilton v. S. Nev. G. M. Co., 33 Fed. 562; Mineral Farm M. Co. v. Barriek, 33 Colo. 410, 80 P. 1055.

When patent application made subsequent application need not be adverse. Steel v. Gold Lead M. Co., 18 Nev. 80, 1 P. 448.

Failure to file adverse does not prevent assertion trust relationship. Turner v. Sawyer, 150 U. S. 587; Ducie v. Ford, 138 U. S. 587; Fisher v. Seymour, 23 Colo. 542; see, also, 16 Colo. 188, 27 P. 240; Hunt v. Patchen, 35 Fed. 816; Suessenbach v. First Nat. Bank, 5 Dak. 477, 41 N. W. 662; State v. Dist. Court, 96 P. 206; Stevens v. Grand

Cent. M. Co., 133 Fed. 28; Morrow v. Matthew, 79 P. 196; Ballord v. Golob, 83 P. 376; Stewart v. Westlake, 148 Fed. 349; Thompson v. Burke, 2 Alaska, 249.

When patent application has lain dormant—Sixty days' limitation. Gillis v. Downey, 85 Fed. 483; Hunt v. Eureka Gulch M. Co., 14 Colo. 456.

Publication of notice—Effect of. Wight v. Du Bois, 21 Fed. 693; N. P. R. Co. v. Cannon, 54 Fed. 253; Jefferson M. Co. v. Ancheria Leland M. Co., 75 P. 1070, 64 L. R. A. 925; Healey v. Rupp, 86 P. 1015.

Adverse filed by placer claimant against lode claimant. N. P. R. Co. v. Cannon, 54 Fed. 253; Clipper M. Co. v. Elh M. Co., 194 U. S. 233.

Adverse by town lot owner against lode claimant. Young v. Goldstein, 97 Fed. 303; Bonner v. Meikle, 82 Fed. 697; Contra, see Behrends v. Goldstein, 1 Alaska, 518.

Adverse by tunnel site owner against lode claimant. Unity Tunnel M. Co. v. Creede M. Co., 119 Fed. 164, affirmed, 196 U. S. 337, 49 L. Ed. 501; Enterprise M. Co. v. Rico Aspen Con. M. Co., 167 U. S. 115; Ellet v. Campbell, 18 Colo. 510.

The patent:

In general—Validity of patents. Rose v. Richmond M. Co., 17 Nev. 25, 27 P. 1105; Richmond M. Co. v. Eureka Con. M. Co., 103 U. S. 839, 26 L. Ed. 557; Freezer v. Sweeney, 8 Mont. 508, 21 P. 20; Kahn v. Old Telegraph M. Co., 2 Utah, 174; Colquitt-Tigner M. Co. v. Rogan, 68 S. W. 154; Bash v. Cascade M. Co., 69 P. 402; see, also, 70 P. 487; Gurney v. Brown, 77 P. 357.

Number of claims which may be included in patent—No limit. Paire v. Wells, 6 Colo. 406; Paire v. Leadville Imp. Co., 6 Colo. 413; Carson City G. and S. M. Co. v. N. Star M. Co., 73 Fed. 597; Lakin v. Dolly, 53 Fed. 333, affirmed, 54 Fed. 461; St. Louis Smelt. and Ref. Co. v. Kemp, 104 U. S. 636, 26 L. Ed. 875; St. Louis Smelt. and Ref. Co. v. Ray, 104 U. S. 657 (note), 26 L. Ed. 884 (note); Tucker v. Masser, 113 U. S. 203, 28 L. Ed. 979; Little Dorrit G. M. Co. v. Arapahoe G. M. Co., 71 P. 389.

No exceptions or reservations to surface ground in patent. Wiebbold v. Davis, 7 Mont. 107, 14 P. 865; (reversed, 139 U. S. 507, 35 L. Ed. 238); Hawke v. Deffebach, 4 Dak. 20, 22 N. W. 480 (affirmed, 115 U. S. 392, 29 L. Ed. 423); Clary v. Hazlett, 67 Cal. 286, 7 P. 701; Butte City Smoke House Lode Cases, 6 Mont. 397, 12 P. 858; King v. Thomas, 6 Mont. 409, 12 P. 865; Talbott v. King, 6 Mont. 76, 9 P. 434.

Patent takes effect as of date of location. Talbott v. King, 6 Mont. 76, 9 P. 434; Silver Bow M. Co. v. Clark, 5 Mont. 378, 5 P. 570; Kahn v. Old Telegraph M. Co., 2 Utah, 174; Black v. Elkhorn M. Co., 49 Fed. 549.

Issuance of patent is conclusive as to the matters within the proper determination of land department. St. Louis S. Co. v. Kemp, 104 U. S. 646; Bunker Hill M. Co. v. Empire State Idaho M. Co., 114 Fed. 420; Aurora Hill Con. M. Co. v. Eighty-Five M. Co., 34 Fed. 515; New Dunderberg M. Co. v. Old,

79 Fed. 598; Golden Reward M. Co. v. Burton M. Co., 79 Fed. 868; N. P. R. R. Co. v. Cannon, 54 Fed. 252; Fox v. Mackey, 1 Alaska, 332; Hunt v. Eureka Gulch M. Co., 14 Colo. 454; Poire v. Wells, 6 Colo. 409; German Ins. Co. v. Hayden, 21 Colo. 137; South End M. Co. v. Tinney, 22 Nev. 19; Uinta Tunnel M. Co. v. Creede and Cripple C. M. Co., 119 Fed. 164; Davis v. Shepherd, 31 Colo. 141, 72 P. 57; Alaska G. M. Co. v. Barbridge, 1 Alaska, 311; Last Chance M. Co. v. Bunker Hill M. Co., 131 Fed. 579; Galbrath v. Shasta Iron Co., 143 Cal. 94, 76 Pac. 901, 76 Pac. 1127; U. S. M. Co. v. Lawson, 134 Fed. 769, affirmed, 207 U. S. 1, 52 L. Ed. 65; Hickey v. Anaconda C. M. Co., 81 P. 806; Uinta Tunnel M. Co. v. Ajax G. M. Co., 141 Fed. 563; Sharkey v. Candiani, 85 Pac. 219.

When patent not subject to collateral attack. St. Louis S. Co. v. Kemp, 104 U. S. 636, 26 L. Ed. 875; Mont. Cent. R. R. Co. v. Migeon, 68 Fed. 811; Hamilton v. S. Nev. M. Co., 33 Fed. 562; Wight v. Du Bois, 21 Fed. 693; Iron Silver M. Co. v. Campbell, 135 U. S. 286, 34 L. Ed. 155; Parley's Park S. M. Co. v. Kerr, 130 U. S. 256, 32 L. Ed. 906; Steel v. St. Louis S. Co., 106 U. S. 447, 27 L. Ed. 226; Lee v. Justice M. Co., 2 Colo. App. 112, 29 P. 1020 (reversed, 21 Colo. 260, 40 P. 444); The Tombstone Townsite cases, 15 P. 26; Butte City Smoke House Lode Cases, 6 Mont. 397, 12 P. 858; Chambers v. Jones, 17 Mont. 156, 42 P. 758; Cowell v. Lamers, 21 Fed. 200; New Dunderberg M. Co. v. Old, 79 Fed. 598; Pac. Coast. M. Co. v. Spargo, 16 Fed. 348; Waterloo M. Co. v. Doe, 82 Fed. 45; U. S. v. Marshall M. Co., 129 U. S. 589; Aurora Hill M. Co. v. Eighty-Five M. Co., 34 Fed. 515; Gurney v. Brown, 77 P. 357; see Small v. Brown, Id.; Quinn v. Baldwin Star Coal Co., 76 P. 552.

When patent may be attacked—Fraud—Statute not complied with. S. End M. Co. v. Tinney, 22 Nev. 19, 35 P. 89; Rose v.

Richmond M. Co., 17 Nev. 61; Mantle v. Noyes, 5 Mont. 274, 5 P. 856, affirmed, 127 U. S. 348, 32 L. Ed. 168; Francoeur v. Newhouse, 40 Fed. 618; U. S. v. Iron Silver M. Co., 128 U. S. 676; U. S. v. King, 83 Fed. 188; Chicago Quartz M. Co. v. Oliver, 75 Cal. 194; Poire v. Wells, 6 Colo. 409; Welzstein v. Largey, 27 Mont. 212, 70 P. 717.

Cancelation and annulment of patent. San Pedro and Canyon Del Agua Co. v. U. S., 146 U. S. 120, 36 L. Ed. 911; U. S. v. Trinidad Coal and Coking Co., 137 U. S. 160, 34 L. Ed. 640; U. S. v. Marshall S. M. Co., 129 U. S. 579, 32 L. Ed. 734; U. S. v. Iron Silver M. Co., 128 U. S. 673, 32 L. Ed. 571, affirming 24 Fed. 568; see same case, 16 Fed. 810; Mitchell v. Cline, 84 Cal. 409, 24 P. 164; Justice M. Co. v. Lee, 21 Colo. 260, 40 P. 444, reversing Lee v. Justice M. Co., 2 Colo. App. 112, 29 P. 1020; U. S. v. King, 9 Mont. 75, 22 P. 498; see, also, 83 Fed. 188.

What interest derived by patent. Blake v. Butte S. M. Co., 2 Utah, 61; New Dunderberg M. Co. v. Old, 79 Fed. 598; Hamilton v. S. Nev. G. and S. M. Co., 33 Fed. 562; St. Louis M. Co. v. Mont. M. Co., 113 Fed. 900; Talbot v. King, 6 Mont. 76.

Rights of copartners in patent—Failure of one copartner to assert right. Patterson v. Hewitt, 66 P. 552, 55 L. R. A. 658 (affirmed, 195 U. S. 309, 49 L. Ed. 214).

Boundaries—Proof of work performed. Golden Reward M. Co. v. Buxton M. Co., 79 Fed. 868; U. S. v. Iron Silver M. Co., 128 U. S. 685; U. S. v. King, 83 Fed. 188.

Conflict between two patent holders—Proof of superior title. Iron Silver M. Co. v. Campbell, 135 U. S. 292; Hall v. Equator M. and S. Co., Fed. Cas. No. 5,931; see Lindley on Mines, 2d ed., secs. 670-672, 677-695, 699-701; vol. 34, Cent. Dig., title, Mines and Minerals, secs. 114-133; Fed. Stat. Anntd., vol. 5, pp. 31-35, cases and notes.

## 2384. Adverse claim—Proceedings on—Affidavits of citizenship or of applicant out of district.

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall

be certified by the register to the commissioner of the general land office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the commissioner of the general land office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever. *Act of Congress of May 10, 1872, c. 152, sec. 7.*

If, in any action brought pursuant to section 2326 of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title. *As amended, March 3, 1881, 21 Stat. L. 505.*

The adverse claim required by section 2326 of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the state or territory where the adverse claimant may then be, or before any notary public of such state or territory.

**SEC. 2.** That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any state or territory. *As amended, April 26, 1882, 22 Stat. L. 49.*

Cited, *Golden Fleece Co. v. Cable Con. M. Co.*, 12 Nev. 312, 320; *South End M. Co. v. Tinney*, 22 Nev. 38 (35 P. 89); *Fox v. Myers*, 29 Nev. 506, 512; *Nash v. McNamara*, 30 Nev. 114, 132-137; *Iowa M. Co. v. Bonanza M. Co.*, 16 Nev. 68; *Rose v. Richmond M. Co.*, 17 Nev. 25.

See next section regarding affidavits of citizenship or of applicant taken out of district.

Purpose of suit under sec. 2326—Statute construed. *Lavagnino v. Uhlig*, 26 Utah, 1, 71 P. 1046, 198 U. S. 443, 49 L. Ed. 1119; *Lily M. Co. v. Kellogg*, 74 P. 518; *Kepler v. Becker*, 80 P. 334; *Wright v. Town of Hartville*, 81 P. 649; *Healey v. Rupp*, 86 P. 1015; *Nash v. McNamara*, 30 Nev. 114, 93 P. 405; *Bernard v. Parmelee*, 92 P. 658; *Meyers v. Parmelee*, 92 P. 662.

Actions to determine rights of adverse claimants.

The parties. *Nesbitt v. Delamar's Nev. G. M. Co.*, 24 Nev. 273; *Van Valkenburg v. Huff*, 1 Nev. 142; *Mt. Blanc Con. Gravel M. Co. v. De Bour*, 61 Cal. 364; *Wolverton v. Nichols*, 119 U. S. 485; *People v. Dist. Ct.*, 19 Colo. 347; *Back v. Sierra Nev. Con. M. Co.*, 2 Idaho, 420.

Proceedings to be commenced within thirty days. *Rader v. Allen*, 27 Ore. 344, 41 P. 154; *Mars v. Orofino M. Co.*, 7 S. D. 605, 65 N. W. 19; *Stevens v. Carson*, 42 Fed. 821; *Richmond M. Co. v. Rose*, 114 U. S. 576, 29 L. Ed. 273; *Penn. M. Co. v. Boles*, 70 P. 444; *Hopkins v. Butte Copper Co.*, 29 Mont. 390, 74 P. 1081; *Woody v. Hinds*,

76 P. 1; *Kepler v. Becker*, 80 P. 334; *Hain v. Mattes*, 83 P. 127; *Harris v. Helena G. M. Co.*, 29 Nev. 506, 92 P. 1.

Jurisdiction of action. *Golden Fleece G. and S. M. Co. v. Cable Con. G. and S. M. Co.*, 12 Nev. 312; *Four Twenty M. Co. v. Bullion M. Co.*, 9 Nev. 240; *Parego v. Dodge*, 163 U. S. 160, 41 L. Ed. 113; *Doe v. Waterloo M. Co.*, 43 Fed. 219; *Watts v. White*, 13 Cal. 321; *Bullion Beck and Champion M. Co. v. Eureka Hill M. Co.*, 5 Utah, 3, 11 P. 515; *Hutz v. Gisborn*, 1 Utah, 173; *Nome-Smook Co. v. Simpson*, 1 Alaska, 578; *Gruwell v. Rocco*, 141 Cal. 417, 74 P. 1028; *Wilson v. Freeman*, 75 P. 84; *Mares v. Dillon*, 75 P. 969; *Wright v. Town of Hartville*, 81 P. 649; *Kibby v. Higgins*, 85 P. 275; *Bernard v. Parmelee*, 92 P. 658; *Meyers v. Parmelee*, 92 P. 662; *Harris v. Helena G. M. Co.*, 29 Nev. 506, 92 P. 1.

Suit under sec. 2326 does not confer jurisdiction on federal courts regardless of citizenship. *Mt. View M. Co. v. McFadden*, 180 U. S. 534; *Delamar's Nev. G. M. Co. v. Nesbitt*, 177 U. S. 523; *Shoshone M. Co. v. Sutter*, 177 U. S. 505; *Blackburn v. Port-*

land G. M. Co., 175 U. S. 579; Beals v. Cone, 188 U. S. 186; Bushnell v. Crooke M. Co., 148 U. S. 682; Chambers v. Harrington, 101 U. S. 351; Larned v. Jenkins, 109 Fed. 100; Cal. Oil Co. v. Miner, 97 Fed. 12; contra, see Burke v. Bunker Hill M. Co., 46 Fed. 644; Yellow Aster M. Co. v. Winchell, 95 Fed. 213; Strasburger v. Beecher, 44 Fed. 209.

Form of the action not provided by statute—Circumstances and state statutes determined. *Perego v. Dodge*, 163 U. S. 165; *Dahl v. Roumheim*, 132 U. S. 260; *Tonopah Fraction M. Co. v. Douglas*, 123 Fed. 936; *Young v. Goldstein*, 97 Fed. 303; *Allen v. Myers*, 1 Alaska, 114; *Contra*, see *Davidson v. Calkins*, 92 Fed. 230; *Shoshone M. Co. v. Sutter*, 87 Fed. 801; *Dergan v. Redding*, 103 Fed. 914; *Doe v. Waterloo M. Co.*, 43 Fed. 219; *Hunter v. Russell*, 59 Fed. 967; *Grunwell v. Rocca*, 114 Cal. 417; *Mares v. Dillon*, 75 P. 967; *Lily M. Co. v. Kellogg*, 74 P. 518; *Denny v. Mineral Cr. M. Co.*, 67 P. 724; *Wolverton v. Nichols*, 5 Mont. 89; *Iba v. Cent. Assn.*, 5 Wyo. 360; *Jones v. Pac. Dredging Co.*, 72 P. 956; *Kirby v. Higgins*, 85 P. 275; *Upton v. Santa Rita M. Co.*, 89 P. 245; *Santa Rita v. Upton, Id.*; *Bernard v. Parmelee*, 92 P. 658; *Meyers v. Parmelee*, 92 P. 662; *Friend v. Oggshaw*, 3 Wyo. 59.

Land office cannot issue receiver's receipt while adverse action pending. *Deeney v. Mineral Creek M. Co.*, 67 P. 724; *Fox v. Mackay*, 1 Alaska, 329.

The complaint or bill in equity—What same must allege.

In general. *Rose v. Richmond M. Co.*, 17 Nev. 25, 27 P. 1105; *Steel v. Gold Lead M. Co.*, 18 Nev. 80; *Hyman v. Wheeler*, 33 Fed. 629; *Parley's Park S. M. Co. v. Kerr*, 130 U. S. 256, 32 L. Ed. 906, reversing 3 Utah, 235, 2 P. 709; *Rough v. Simmons*, 65 Cal. 227, 3 P. 804; *Rough v. Booth*, 3 P. 805; *Pralus v. Pac. G. and S. M. Co.*, 35 Cal. 30; *Coleman v. Clements*, 23 Cal. 245; *Jackson v. Dines*, 13 Colo. 90, 21 P. 918; *Marshall S. M. Co. v. Kirtley*, 12 Colo. 410, 21 P. 492; *Hope M. Co. v. Brown*, 7 Mont. 550, 19 P. 218; *Zeckendorf v. Hutchison*, 1 N. M. 476; *Ton. Fraction M. Co. v. Douglas*, 123 Fed. 936; *McMillen v. Ferrum*, 74 P. 461; *Last Chance M. Co. v. Bunker Hill M. Co.*, 131 Fed. 579; *Mares v. Dillon*, 75 P. 963; *Woody v. Hinds*, 76 P. 1; *Kepler v. Becker*, 80 P. 334; *Hain v. Mattes*, 83 P. 127; *Helbert v. Tatem*, 85 P. 733; *Jackson v. McFall*, 85 P. 638; *Thornton v. Kaufman*, 88 P. 796; *Smith v. Imperial C. Co.*, 89 P. 510, 512; *Holmes v. Salamanca G. M. Co.*, 91 P. 160; *Safford v. Fleming*, 89 P. 827; *Upton v. Santa Rita M. Co.*, 89 P. 275; see *Santa Rita v. Upton, Id.*; *Phillips v. Smith*, 95 P. 91; *Ware v. White*, 108 S. W. 831.

Allegations of citizenship. *Thompson v. Spray*, 72 Cal. 528, 14 P. 182; *Lee Doon v. Tesh*, 68 Cal. 43, 6 P. 97, 8 P. 621; *McFeters v. Pierson*, 15 Colo. 201, 24 P. 1076; *Keeler v. Trueman*, 15 Colo. 143, 25 P. 313; *Thomas v. Chisholm*, 13 Colo. 105, 21 P.

1019; *Bohanon v. Howe*, 2 Idaho, 417, 17 P. 583; *Rosenthal v. Ives*, 2 Idaho, 244, 12 P. 904; *Anthony v. Jillison*, 83 Cal. 300; *Schultz v. Allyn*, 48 P. 960; *Buckley v. Fox*, 67 P. 659; *Stolp v. Treasury M. Co.*, 38 Wash. 619, 80 P. 817; *Matlock v. Stone*, 91 S. W. 553; *Jackson v. White Cloud M. Co.*, 85 P. 639.

Complaint must allege ownership and possession. *Glacier Mt. S. M. Co. v. Willis*, 127 U. S. 471, 32 L. Ed. 142; *Souter v. Maguire*, 78 Cal. 543, 21 P. 183; *McFeters v. Pierson*, 15 Colo. 201, 24 P. 1076; *Bushnell v. Crooke M. and S. Co.*, 12 Colo. 247, 21 P. 931; *Rader v. Allen*, 27 Ore. 344, 41 P. 154; *Lavagnino v. Uhlig*, 26 Utah, 1, 71 P. 1046, 198 U. S. 443, 49 L. Ed. 1119; *Kepler v. Becker*, 80 P. 334; *Combs v. Virginia Iron, Coal and Coke Co.*, 106 S. W. 815; *Ware v. White*, 108 S. W. 831.

Complaint must allege that land is mineral land subject to location. *Kepler v. Becker*, 80 P. 334.

Complaint should describe the property embraced within the claim. *Glacier Mt. S. M. Co. v. Willis*, 127 U. S. 471, 32 L. Ed. 172; *Chapman v. Toy Long*, Fed. Cas. No. 2,610; *Grady v. Early*, 18 Cal. 108; *Hoffman v. Beecher*, 12 Mont. 489, 31 P. 92; *Cronin v. Bear Cr. G. M. Co.*, 3 Idaho, 619, 32 P. 204; *Bullion Beck and Champion M. Co. v. Eureka Hill M. Co.*, 5 Utah, 3, 11 P. 515; *Smith v. Imperial Copper Co.*, 89 P. 510, 512; *Phillips v. Smjth*, 95 P. 91.

Forfeiture or abandonment must be specially alleged. *Steel v. Gold Lead M. Co.*, 18 Nev. 80; *Trevaskis v. Peard*, 111 Cal. 599, 44 P. 246; *Bryan v. McCaig*, 10 Colo. 309, 15 P. 413; *Campbell v. Taylor*, 3 Utah, 325, 3 P. 445.

Complaint should show whether lode or placer claim. *Yellow Aster M. Co. v. Winchell*, 95 Fed. 213; *Kepler v. Becker*, 80 P. 334.

Complaint should show adverse claim filed within sixty days. *Cronin v. Bear Cr. G. M. Co.*, 3 Idaho, 619, 32 P. 204; *Hopkins v. Butte Copper Co.*, 74 P. 1081; *Penn. M. Co. v. Boles*, 70 P. 444; *Lavagnino v. Uhlig*, 26 Utah, 1, 71 P. 1046, 198 U. S. 443, 49 L. Ed. 1119; but see *Rawlings v. Casey*, 73 P. 1090; *Thornton v. Kaufman*, 88 P. 796; *Upton v. Santa Rita M. Co.*, 89 P. 275.

Amended or supplemental complaint. *Marshall S. M. Co. v. Kirtley*, 12 Colo. 417; *Woody v. Hinds*, 76 P. 1.

The answer, cross complaint or plea.

In general. *Jones v. Prospect Mt. Tunnel Co.*, 21 Nev. 339, 31 P. 642; *Anthony v. Jillison*, 83 Cal. 296, 23 P. 419; *Sullivan v. Iron Silver M. Co.*, 109 U. S. 550, 27 L. Ed. 1028, reversing 16 Fed. 829; *O'Keefe v. Cannon*, 52 Fed. 898; *Pike v. Sutton*, 21 Colo. 84, 39 P. 1084; *Marshall S. M. Co. v. Kirtley*, 12 Colo. 410, 21 P. 492; *Perego v. Dodge*, 9 Utah, 3, 33 P. 221; *Bullion Beck Champion M. Co. v. Eureka Hill M. Co.*, 5 Utah, 3, 11 P. 515; *Iba v. Cent. Assn.*, 5 Wyo. 355, 40 P. 527, 42 P. 20; *McConaghy v. Doyle*, 75 P. 419; *Hoban v. Boyer*, 85 P. 837; *Ware v. White*, 108 S. W. 831.

Pleading abandonment or forfeiture of plaintiff's rights. *Steel v. Gold Lead G. and S. M. Co.*, 18 Nev. 80, 1 P. 448; *Bell v. Bed Rock I. and M. Tunnel M. Co.*, 36 Cal. 214; *Pralus v. Pac. G. and S. M. Co.*, 35 Cal. 30; *Dutch Flat Water Co. v. Mooney*, 12 Cal. 534; *Wulf v. Manuel*, 9 Mont. 276, 23 P. 723; *Bishop v. Baisley*, 28 Ore. 119, 41 P. 936.

Injunction pendente lite. *Safford v. Fleming*, 89 P. 827.

The proof.

The burden of proof. *Jones v. Prospect Mt. Tunnel Co.*, 21 Nev. 339, 31 P. 642; *Golden Fleece G. and S. M. Co. v. Cable Con. G. and S. M. Co.*, 12 Nev. 312; *Quigley v. Gillett*, 101 Cal. 462, 35 P. 1040; *English v. Johnson*, 17 Cal. 107, 76 Am. Dec. 574; *Cheesman v. Shreeve*, 37 Fed. 36; *Bay State S. M. Co. v. Brown*, 21 Fed. 167; *Harris v. Equator M. and S. Co.*, 8 Fed. 863; *Jupiter M. Co. v. Bodie Con. M. Co.*, 11 Fed. 666; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522; *Johnson v. Young*, 18 Colo. 625, 34 P. 173; *Hall v. Kearney*, 18 Colo. 505, 33 P. 373; *Iron S. M. Co. v. Campbell*, 17 Colo. 267, 29 P. 513; *Bell v. Skillieorn*, 6 N. Mex. 399, 28 P. 768; *McKinstry v. Clark*, 4 Mont. 370, 1 P. 759; *Bevis v. Markland*, 130 Fed. 226; *Heinze v. Boston and M. Con. Copper Co.*, 26 Mont. 265, 67 P. 1134 (affirmed, 77 Pac. 421); *Porter v. Tonopah N. Star Co.*, 133 Fed. 756 (affirmed, 146 Fed. 285); *Willett v. Baker*, 133 Fed. 937; *Moffatt v. Blue River G. Ex. Co.*, 33 Colo. 142, 80 P. 139; *Upton v. Santa Rita M. Co.*, 89 P. 275; *Warles v. Davies (Nev.)* 158 Fed. 667 (affirmed, 164 Fed. 397); *Fredericks v. Klausner*, 96 P. 679.

Evidence.

In general. *Lone Star Co. v. West Pt. Co.*, 5 Cal. 447; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522; *Chapman v. Toy Long*, Fed. Cas. No. 2,610; *Rose v. Richmond M. Co.*, 17 Nev. 25, 27 P. 1105; see same case, 114 U. S. 576, 29 L. Ed. 273; *Omar v. Soper*, 11 Colo. 380, 18 P. 443; *Rockwell v. Graham*, 9 Colo. 36, 10 P. 284; *Zekendorf v. Hutchison*, 1 N. M. 476; *McWilliams v. Winslow*, 82 P. 538; *Treadwell v. Marrs*, 83 P. 350; *Lozar v. Neill*, 96 P. 343.

Evidence of discovery on claim—What is sufficient. *S. Cross G. and S. M. Co. v. Europa M. Co.*, 15 Nev. 383; *Walsh v. Mueller*, 16 Mont. 180, 40 P. 292; *Davidson v. Bordeaux*, 15 Mont. 245, 38 P. 1075; *Ormond v. Granite Mt. M. Co.*, 11 Mont. 303, 28 P. 289; *Upton v. Larkin*, 7 Mont. 449, 17 P. 728; *Harrington v. Chambers*, 3 Utah. 94, 1 P. 362; *Sierra Blanca M. Co. v. Winchell*, 83 P. 628; *Lockhart v. Farrell*, 86 P. 1077 (reversed, 210 U. S. 142, 52 L. Ed. 994).

Evidence of ownership and possession. *Patchen v. Keeley*, 19 Nev. 404, 14 P. 347; *Golden Fleece G. and S. M. Co. v. Cable Con. G. and S. M. Co.*, 12 Nev. 312; *Pralus v. Jefferson G. and S. M. Co.*, 34 Cal. 558; *Iron S. M. Co. v. Reynolds*, 124 U. S. 374, 31 L. Ed. 466; *Lakin v. Dolly*, 53 Fed. 333; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522; *Manning v. Strehlow*, 11 Colo. 451, 18

P. 625; *Lebanon M. Co. v. Con. Rep. M. Co.*, 6 Colo. 371; *Sullivan v. Heuse*, 2 Colo. 424; *Boardman v. Thompson*, 3 Mont. 387; *Eberle v. Carmichael*, 8 N. M. 169, 42 P. 95; *Donahue v. Johnson*, 9 Wash. 187, 37 P. 322; *Combs v. Virginia Coal, Iron and Coke Co.*, 106 S. W. 815; *Ware v. White*, 108 S. W. 831.

Evidence of the boundaries—Monuments. *Newhill v. Whitfield*, 63 Cal. 81; *Becker v. Pugh*, 17 Colo. 243, 29 P. 173; *Stem-Winder M. Co. v. Emma and Last Chance Con. M. Co.*, 2 Idaho, 421, 21 P. 1040; *Metcalf v. Prescott*, 10 Mont. 283, 25 P. 1037; *Seidler v. Lafare*, 4 N. M. 369, 20 P. 789; *Seidler v. Maxfield*, 4 N. M. 374, 20 P. 794; *Sierra Blanca M. Co. v. Winchell*, 83 P. 628; *Doe v. Waterloo M. Co.*, 55 Fed. 11.

Evidence to show nature of claim, position of vein. *Roach v. Gray*, 16 Cal. 383; *Morgenson v. Middlesex M. and M. Co.*, 11 Colo. 176, 17 P. 513; *Armstrong v. Lower*, 6 Colo. 393; see, also, same case, 6 Colo. 581; *Driscoll v. Dunwoody*, 7 Mont. 394, 16 P. 726; *Fitzgerald v. Clark*, 17 Mont. 100, 42 P. 273, 30 L. R. A. 803; *Ill. S. M. and M. Co. v. Raff*, 7 N. M. 336, 34 P. 544; *Gilpin v. Sierra Nev. Con. M. Co.*, 2 Idaho, 662, 23 P. 547, 1014; *McWilliams v. Winslow*, 82 P. 538; *Hoban v. Boyer*, 85 P. 837.

Evidence of work done on claims. *De Noon v. Morrison*, 83 Cal. 163, 23 P. 374; *Draper v. Douglass*, 23 Cal. 347; *Haws v. Victoria Copper M. Co.*, 160 U. S. 303, 40 L. Ed. 436; *McGrath v. Bassiek*, 11 Colo. 528, 19 P. 462; *Hirschler v. McKendricks*, 16 Mont. 211, 40 P. 290; *Kramer v. Settle*, 1 Idaho, 485; *State v. Dist. Court*, 28 Mont. 528, 73 P. 230; *Willitt v. Baker*, 133 Fed. 937; *Bismark Mt. G. M. Co. v. N. Sunbeam G. Co.*, 95 P. 14.

Evidence of abandonment and forfeiture. *Mallett v. Uncle Sam G. and S. M. Co.*, 1 Nev. 188, 90 Am. Dec. 484; *Nevebaumer v. Woodman*, 89 Cal. 310, 26 P. 900; *Carter v. Bacigalupi*, 83 Cal. 187, 23 P. 361; *Richards v. Dower*, 81 Cal. 44, 22 P. 304, 307; *Seymour v. Wood*, 53 Cal. 303; *Bell v. Bedrock Tunnel and M. Co.*, 36 Cal. 214; *Doherty v. Morris*, 17 Colo. 105, 28 P. 85; *Gear v. Ford*, 88 P. 600; *Upton v. Santa Rita M. Co.*, 89 P. 275; *Ford v. Campbell*, 29 Nev. 578, 92 P. 206; *Fredricks v. Klausner*, 96 P. 679.

Parties must base their action and proof on strength of their title, not weakness of opponent's. *Jackson v. Roby*, 109 U. S. 445; *Gwillim v. Donnellan*, 115 U. S. 45; *Bay State M. Co. v. Brown*, 21 Fed. 167; *Conway v. Hart*, 129 Cal. 480; *Anthony v. Jillson*, 83 Cal. 300; *Becker v. Pugh*, 9 Colo. 589; *Murry Hill M. Co. v. Havenor*, 24 Utah, 78, 66 P. 762; *Weed v. Snook*, 144 Cal. 439, 77 P. 1023; *Lockhart v. Farrell*, 86 P. 1077 (reversed, 210 U. S. 142, 52 L. Ed. 994); *Slothower v. Hunter*, 88 P. 36; *Upton v. Santa Rita M. Co.*, 89 P. 275; *Phillips v. Brill*, 95 P. 856.

The trial.

Question for the court. *Fairbanks v. Woodhouse*, 6 Cal. 433.

Questions for the jury. *Brady v. Husby*, 21 Nev. 453, 33 P. 801; *Golden Fleece G. and S. M. Co. v. Cable Con. G. and S. M. Co.*, 12 Nev. 312; *Weill v. Lucerne M. Co.*, 11 Nev. 200; *Taylor v. Middleton*, 67 Cal. 656, 8 P. 594; *Harvey v. Ryan*, 42 Cal. 626; *N. Noonday M. Co. v. Orient M. Co.*, 1 Fed. 522; *Jupiter M. Co. v. Bodie Con. M. Co.*, 11 Fed. 666; *Gamer v. Glenn*, 8 Mont. 371, 20 P. 654; *O'Donnell v. Glenn*, 8 Mont. 248, 19 P. 302; *Flavin v. Mattingly*, 8 Mont. 242, 19 P. 384; *Russell v. Chumasero*, 4 Mont. 309, 7 P. 713; *Marshall v. Harney Peak Tin M. M. Co.*, 1 S. D. 350, 47 N. W. 290; *Noyes v. Clifford*, 94 P. 842.

Abandonment—Mixed question of fact and law. *Oreamuno v. Uncle Sam G. and S. M. Co.*, 1 Nev. 215.

Instructions for the jury. *Overman S. M. Co. v. American M. Co.*, 7 Nev. 312; *Garthe v. Hart*, 73 Cal. 541, 15 P. 93; *Anderson v. Black*, 70 Cal. 226, 11 P. 700; *Davis v. Butler*, 6 Cal. 510; *Hammer v. Garfield M. & M. Co.*, 130 U. S. 291, 32 L. Ed. 964, affirming, 6 Mont. 53, 8 P. 153; *Coleman v. Davis*, 13 Colo. 98, 21 P. 1018; *Bushnell v. Croke M. & S. Co.*, 12 Colo. 247, 21 P. 931; *Craig v. Thompson*, 10 Colo. 517, 16 P. 24; *Bryan v. McCaig*, 10 Colo. 309, 15 P. 413; *Rush v. French*, 1 Ariz. 99, 25 P. 816; *Stem Winder M. Co. v. Emma and Last Chance M. Co.*, 2 Idaho 421, 21 P. 1040; *Mattingly v. Lewisohn*, 13 Mont. 508, 35 P. 111; *Flick v. Gold Hill & L. M. M. Co.*, 8 Mont. 298, 20 P. 807; *Darger v. Le Sieur*, 6 Utah, 160, 30 P. 363; *Wills v. Blain*, 4 N. M. 378, 20 P. 798.

Inspection of the premises. *Wilson v. Harnette*, 75 P. 395; *State v. District Court*, 29 Mont. 205, 74 P. 132, 76 P. 206.

Decision of court or jury. *Anthony v. Jillson*, 83 Cal. 296, 23 P. 419; *Souter v. Maguire*, 78 Cal. 543, 21 P. 183; *Bennett v. Harkrader*, 158 U. S. 441, 39 L. Ed. 1046; *Larkin v. Upton*, 144 U. S. 19, 36 L. Ed. 330, affirming, 7 Mont. 449, 17 P. 728; *Bushnell v. Croke M. & S. Co.*, 12 Colo. 247, 21 P. 931; *Manning v. Strehlow*, 11 Colo. 451, 18 P. 625; *McGinnis v. Egbert*, 8 Colo. 41, 5 P. 652; *Burke v. McDonald*, 2 Idaho, 646; 33 P. 49; *Rosenthal v. Ives*, 2 Idaho, 244; 12 P. 904; *McWilliams v. Winslow*, 82 P. 538; *Upton v. Santa Rita M. Co.*, 89 P. 275.

The judgment.

In general. *Bullion M. Co. v. Croesus G.*

& S. M. Co., 2 Nev. 168, 90 Am. Dec. 526; *Bay State Silver M. Co., v. Brown*, 21 Fed. 167; *Wyendorf v. Frohner*, 3 Mont. 282; *Mont. Ore Pur. Co. v. Boston & M. Con. M. Co.*, 27 Mont. 288, 70 P. 1114 (modified, 71 P. 1005); *Smith v. Imperial Copper Co.*, 89 P. 510, 512.

Judgment may be given for neither party—Statute construed. *Jackson v. Roby*, 109 U. S. 440, 27 L. Ed. 990; *Perego v. Dodge*, 163 U. S. 160, 41 L. Ed. 113; *Manning v. Strehlow*, 11 Colo. 451, 18 P. 625; *Thomas v. Chisholm*, 13 Colo. 105, 21 P. 1019; *Bay State S. M. Co. v. Brown*, 21 Fed. 167; *Becker v. Pugh*, 17 Colo. 243, 29 P. 173; *Bryan v. McCaig*, 10 Colo. 309, 15 P. 413; *Rosenthal v. Ives*, 2 Idaho, 244, 12 P. 904; *Connaly v. Hughes*, 71 P. 681; *Wilson v. Freeman*, 75 P. 84; *McWilliams v. Winslow*, 82 P. 538; *Helena G. & I. M. Co., v. Baggaley*, 87 P. 455; *Phillips v. Brill*, 95 P. 856.

Appeal from decision of court or jury—What considered. *Quigley v. Gillett*, 101 Cal. 462, 35 P. 1040; *Champion M. Co. v. Con. Wyo. G. M. Co.*, 75 Cal. 78, 16 P. 513; *Little Josephine M. Co. v. Fullerton*, 58 Fed. 521; *Iron Silver M. Co. v. Mike G. & S. M. Co.*, 143 U. S. 394, 36 L. Ed. 201; *Jackson v. Dines*, 13 Colo. 90, 21 P. 918; *Bushnell v. Croke M. & S. Co.*, 12 Colo. 247, 21 P. 931. See *Lindley on Mines*, 2d ed., secs. 717-730, 734-742, 746-766; *Cent. Dig. vol. 34*, title, *Mines and Minerals*, secs. 87½ to 114; *Fed. Stats. Anntd. vol. 5*, pp. 35-41, notes and cases.

Regarding amendment of 1881, see: *Manning v. Strehlow*, 11 Colo. 454; *McGinnis v. Egbert*, 8 Colo. 41; *Thomas v. Chisholm*, 13 Colo. 107; *Bryan v. McCaig*, 10 Colo. 309; *Becker v. Pugh*, 9 Colo. 590; *Seymour v. Fisher*, 16 Colo. 195; *Connaly v. Hughes*, 71 P. 681; *Carnahan v. Connolly*, 68 P. 836; *Kirk v. Meldrum*, 28 Colo. 459; *Burke v. Bunker Hill M. Co.*, 46 Fed. 647; *Doe v. Waterloo M. Co.*, 70 Fed. 462; *Back v. Sierra Nev. Con. M. Co.*, 2 Idaho, 420; *Rosenthal v. Ives*, 2 Idaho, 265; *Burke v. McDonald*, 2 Idaho, 339; *Lalonde v. McDonald*, 2 Idaho, 307; *Providence G. M. Co. v. Burke*, 57 P. 644; *Perego v. Dodge*, 163 U. S. 160; *Mares v. Dillon*, 75 P. 963; *Tonopah Fraction M. Co., v. Douglas*, 123 Fed. 936. See *Fed. Stats. Anntd. vol. 5*, pp. 36, 37, cases and notes.

## 2385. Description of vein or claims on surveyed and unsurveyed lands—Monuments on patented claims control.

SEC. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the

official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

For authorities and cases concerning this section, see annotations to secs. 2325 and 2326, ante.

### 2386. Pending applications—Existing rights.

SEC. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the general land office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

The statute construed. *New Dunderberg M. Co. v. Old*, 79 Fed. Rep. 604; *Blake v. Butte S. M. Co.*, 2 Utah, 61; *Carson City G. & S. M. Co. v. N. Star M. Co.*, 73 Fed. 597.

See *Lindley on Mines*, 2d ed., secs. 572-577, 598-604; *Fed. Stats. Anntd.*, vol. 5, pp. 41-42, cases and notes.

### 2387. Placers subject to entry similarly to lodes—Conformity of to surveys—Limits of.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

See sec. 2434.

"Placer Claim" defined. *U. S. v. Iron Silver M. Co.*, 128 U. S. 679; *Gregory v. Pershbaker*, 73 Cal. 109, 14 P. 401; *Cranes Gulch M. Co. v. Sherrer*, 134 Cal. 35, 66 P. 487; *Whiting v. Straup*, 95 P. 849.

Placer location—Rights incident thereto. *Mt. Rose M. Co. v. Palmer*, 26 Colo. 59; *Cranes Gulch M. Co. v. Sherrer*, 134 Cal. 350, 66 P. 487.

The statute construed—Conditions for entry to lode claims apply to placer claims. *Carney v. Ariz. G. M. Co.*, 65 Cal. 40; *White v. Lee*, 78 Cal. 595; *Freezer v. Sweeney*, 8 Mont. 508, 21 P. 20; *Worthen v. Sidway*,

71 Ark. 386, 79 S. W. 777; *Mitchell v. Hutchinson*, 142 Cal. 404, 76 P. 55; *Kern Oil Co. v. Crawford*, 143 Cal. 298, 76 P. 1111.

Provisions governing size and extent of lode claims do not apply to placer. *Price v. McIntosh*, 1 Alaska, 291. See *Lindley on Mines*, 2d ed., secs. 419-428, 672, 673, 699-703; *Cent. Dig.*, vol. 34, title, *Mines and Minerals*, secs. 23, 27, 33, 42, 129; *Fed. Stats. Anntd.*, vol. 5, p. 42, cases and notes.

Location of gold placer claim does not operate as appropriation of water to beneficial uses. *Snyder v. Colorado Gold Dredging Co. (C. C. A.)*, 181 Fed. 62.

### 2388. Subdivisions of ten-acre tracts; maximum of placer locations—Preemption and homestead claims not impaired.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Patent for single claim cannot exceed 160 acres. *St. Louis S. Co. v. Kemp*, 21 Fed. Cas. No. 12,239a; *Kern Oil Co. v. Crawford*, 143 Cal. 298, 76 P. 1111.

Void as to excess of 160 acres for one location. *Price v. McIntosh*, 1 Alaska, 291; *Gohres v. Ill. and J. Gravel M. Co.*, 67 P. 666; *Whiting v. Straup*, 95 P. 849; *Zimmerman v. Funchion*, 161 Fed. 859. See, also, *Cent. Dig.*, vol. 34, title, *Mines and Minerals*, sec. 35.

Joint location of contiguous claims. *Chapman v. Toy Long*, 4 *Sawy*. 28.

Patent of contiguous claims. *St. Louis S. Smelt. Co. v. Kemp*, Fed. Cas. No. 12,239a; see, also, 104 U. S. 651; *St. Louis Smelt. Co. v. Ray*, Fed. Cas. No. 12,239b.

Discovery necessary on claim. *Miller v. Chrisman*, 140 Cal. 440.

Work necessary on each claim. *McDonald v. Mont. Wood Co.*, 14 *Mont.* 88.

Association may convey to individuals. *Miller v. Chrisman*, 140 Cal. 440. See *Lindley on Mines*, 2d ed., secs. 447-450; *Cent. Dig.*, vol. 34, title, *Mines and Minerals*, secs. 23, 27, 33, 42, 129; *Fed. Stats. Anntd.*, vol. 5, pp. 42, 43, cases and notes.

### 2389. Conformity of placer claims to surveys—Limitation of claim.

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

See sec. 2434.

The section construed. *Durant v. Corbin*, 94 Fed. 383; *Gird v. Cal. Oil Co.*, 60 Fed. 531; *Mitchell v. Cline*, 84 Cal. 415; *Worthen v. Sidway*, 71 Ark. 386, 79 S. W. 777; *Mitchell v. Hutchinson*, 142 Cal. 404, 76 P. 55; *Kern Oil Co. v. Crawford*, 143 Cal. 298, 76 P. 1111.

No form specified for twenty-acre claim. *Price v. McIntosh*, 1 Alaska, 300.

Section does not refer to marking boundaries, but to survey or plat. *White v. Lee*, 78 Cal. 596. See *Lindley on Mines*, 2d ed., secs. 16, 672, 700; *Cent. Dig.*, vol. 34, title, *Mines and Minerals*, secs. 23, 27, 33, 42, 129; *Fed. Stats. Anntd.*, vol. 5, pp. 43, 44, cases and notes.

### 2390. What evidence of possession to establish right to patent—Statute limitations—Lien not impaired by patent.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

For state statutes regarding limitations, see secs. 4949-4966.

Statute construed—Object of sec. 2332. *McCowan v. Maclay*, 16 *Mont.* 234; *Cleary v. Skiffieh*, 28 *Colo.* 364; *Altuna Gulch S. M. Co. v. Integral Gulch S. M. Co.*, 114 Cal. 105; *Harris v. Equator M. Co.*, 8 Fed. 863; *Belk v. Meagher*, 104 U. S. 279; 420 M. Co. v. *Bullion M. Co.*, 9 *Nev.* 240; *Upton v. Santa Rita M. Co.*, 89 P. 275.

When state statute makes possessory right "real estate," then state statute limitation

governing real property applies. *Lavagnino v. Uhlig*, 26 *Utah* 1, 198 U. S. 443, 71 P. 1046.

Even if possession is sufficient, claimant must be citizen or must have declared intention. *Anthony v. Jillson*, 83 Cal. 296.

Section 2332 applies to lode claims. *Lavagnino v. Uhlig*, 198 U. S. 443, 26 *Utah*, 1, 49 L. Ed. 119. See *Lindley on Mines*, 2d ed., secs. 699, 704; *Fed. Stats. Anntd.*, vol. 5, pp. 44, 45, cases and notes.

### 2391. Proceedings for patent for placer claims containing lode.

**SEC. 2333.** Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section 2320, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Cited, *Fox v. Meyers*, 29 Nev. 183.

Classes of cases included under section 2333. *Reynolds v. Iron Silver M. Co.*, 116 U. S. 696; *Noyes v. Clifford*, 94 P. 842.

Exception of known lodes from placer patents. *Sullivan v. Iron Silver M. Co.*, 143 U. S. 431; *Iron Silver M. Co. v. Sullivan*, 16 Fed. 829, 36 L. Ed. 214; *Iron Silver M. Co. v. Mike G. & S. M. Co.*, 143 U. S. 394, 36 L. Ed. 201; *Iron Silver M. Co. v. Campbell*, 135 U. S. 286, 34 L. Ed. 155; *Dahl v. Raunheim*, 132 U. S. 260, 33 L. Ed. 324; U. S. v. *Iron Silver M. Co.*, 128 U. S. 673, 32 L. Ed. 571, affirming 24 Fed. 568; *Noyes v. Mantle*, 127 U. S. 348, 32 L. Ed. 169, affirming *Mantle v. Noyes*, 5 Mont. 274, 5 P. 856; *Iron Silver M. Co. v. Reynolds*, 124 U. S. 374, 31 L. Ed. 466; *Reynolds v. Iron Silver M. Co.*, 116 U. S. 687, 29 L. Ed. 774; *Butte & B. M. Co. v. Sloan*, 16 Mont. 97, 40 P. 217; *Brownfield v. Bier*, 15 Mont. 403, 39 P. 461; *Raunheim v. Dahl*, 6 Mont. 167, 9 P. 892; *Mont. Copper Co. v. Dahl*, 6 Mont. 131, 9 P. 894; *Mont. Cent. R. R. Co. v. Migeon*, 68 Fed. 811; same case, 77 Fed. 256; *Mt. Rosa M. Co. v. Palmer*, 26 Colo. 60; see *Clary v. Hazlitt*, 67 Cal. 286; *Clipper M. Co. v. Eli M. Co.*, 29 Colo. 377, 68 P. 286; *McConaghy v. Doyle*, 75 P. 419; *Mutchinor v. McCarty*, 149 Cal. 603, 87 P. 85; *Noyes v. Clifford*, 94 P. 842.

Party complying with proceedings for issuance of patent is equitable owner and can maintain quiet title action. *Dahl v. Raunheim*, 132 U. S. 262.

Width of lode claim as stated in section—Statute construed. *Mt. Rosa M. Co. v. Palmer*, 26 Colo. 60.

"Known Lodes" or "veins"—Defined. U. S. v. *Iron Silver M. Co.*, 128 U. S. 673, 32 L. Ed. 571; *McConaghy v. Doyle*, 75 P. 420; *Butte M. Co. v. Sloan*, 16 Mont. 97; *Iron*

*Silver M. Co. v. Reynolds*, 124 U. S. 374, 31 L. Ed. 466; *Migeon v. Mont. Cent. R. R. Co.*, 77 Fed. 256; see, also, 68 Fed. 811; *Casey v. Thieviege*, 19 Mont. 341; *McConaghy v. Doyle*, 75 P. 420; *Brownfield v. Bier*, 15 Mont. 403, 39 P. 461.

Abandoned lode taking mineral no evidence of "Known Lode" in placer patent. *McConaghy v. Doyle*, 75 P. 420.

Where no known lode in limits of claim and no contest—Land department need determine only placer character of ground. *Cranes Gulch M. Co. v. Sherrer*, 134 Cal. 350.

Known lode to be excepted from patent—Existence must be known at time of application. *Iron Silver M. Co. v. Mike G. and S. M. Co.*, 143 U. S. 394, 36 L. Ed. 201; U. S. v. *Iron S. M. Co.*, 128 U. S. 673, 32 L. Ed. 571, affirming 24 Fed. 568; *Sullivan v. Iron S. M. Co.*, 143 U. S. 431, 36 L. Ed. 214.

Existence of known lode at date of patent application question of fact. *Iron S. M. Co. v. Mike G. and S. M. Co.*, 143 U. S. 394, 36 L. Ed. 201; *Cleary v. Skiffich*, 28 Colo. 368.

Conflict between lode and placer patents. *Iron S. M. Co. v. Campbell*, 135 U. S. 286, 34 L. Ed. 155; *Cleary v. Skiffich*, 28 Colo. 368.

In conflict between subsequent lode and placer claimants burden of proof upon lode claimant—Must show "Known Lodes." *McConaghy v. Doyle*, 75 P. 420; *Casey v. Thieviege*, 19 Mont. 341.

Trespasser cannot locate lodes on placer claim. *Clipper M. Co. v. Eli M. Co.*, 29 Colo. 377, 194 U. S. 229, 68 P. 286; See *Lindley on Mines*, 2d ed., secs. 413-416, 704, 781; *Cent. Dig.*, vol. 34, title, *Mines and Minerals*, sec. 129; *Fed. Stats. Annotd.*, vol. 5, pp. 45-49, cases and notes.

### 2392. Mining claims extended to saline lands.

All unoccupied public lands of the United States containing salt springs,

or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer mining claims; *provided*, that the same person shall not locate or enter more than one claim hereunder. *Act approved January 31, 1901, 31 Stat. 745.*

For state law relating to the location of saline lands, see secs. 2447 to 2450.

See Cent. Dig., vol. 34, title, Mines and Minerals, sec. 87; Lindley on Mines, 2d ed., secs. 12, 36, 97, 513-516.

### 2393. Entry of lands chiefly valuable for building stone under the placer mining laws.

Any person authorized to enter lands, under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims; *provided*, that lands reserved for the benefit of the public schools or donated to any state shall not be subject to entry under this act. *Act approved August 4, 1892, 27 Stat. 348.*

See U. P. R. Co. v. Soderberg, 188 U. S. 533; Sullivan v. Schultz, 22 Mont. 541; Lindley on Mines, 2d ed., sec. 421; Fed. Stats. Anntd., vol. 5, p. 47, case and notes.

### 2394. Entry and patenting of lands containing petroleum and other mineral oils under placer mining laws.

Any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims; *provided*, that lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof. *Act approved February 11, 1897, 29 Stat. 526.*

Cates v. Producers Oil Co., 96 Fed. 7; Dewey M. Co. v. Miller, 96 Fed. 1; Cal. Oil Co., v. Miller, 96 Fed. 12; Nev. Sierra Oil Co. v. Miller, 97 Fed. 681; Exploration Co. v. Great Eagle Oil Co., 112 Fed. 14; Lanyon Zinc Co. v. Freeman, 75 P. 995; Weed v. Snook, 144 Cal. 439, 77 P. 1023; Miller v. Chrisman, 140 Cal. 440, 73 P. 1083, 74 P. 444 (affirmed, 197 U. S. 313, 49 L. Ed. 770); Richmond Nat. Gas Co. v. Davenport,

76 N. E. 525; Wolfskill v. Smith, 89 P. 1001; New Eng. & Colinga Oil Co. v. Congdon, 92 P. 180; Merced Oil M. Co. v. Patterson, 96 P. 90; Phillips v. Brill, 95 P. 856; Louisville Gas Co. v. Ky. Heating Co., 111 S. W. 374. See Fed. Stats. Anntd., vol. 5, p. 48, notes and cases; Lindley on Mines, 2d ed., sec. 422.

For cases on construction and operation of lease of oil land, see Cent. Dig., vol. 34, title, Mines and Minerals, secs. 200-212.

See Fed. Stats. Anntd., vol. 5, p. 48, notes and cases; Lindley on Mines, 2d ed., sec. 422.

### 2395. Annual labor may be done on one for not over five contiguous oil claims.

Where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all; *provided*, that said labor will tend to the development or to determine the oil-bearing character of such contiguous claims, *Act approved February 12, 1903, 32 Stat. 825.*

## ADDITIONAL SECTIONS OF UNITED STATES REVISED STATUTES

### 2396. Surveyor-general to appoint surveyors of mining claims—Fixing and sworn statement of charges.

SEC. 2334. The surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey

of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The commissioner of the general land office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and to the end that the commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the commissioner of the general land office.

See note under sec. 2377 regarding right of deputy surveyor to make location.

Cited, *Fox v. Myers*, 29 Nev. 518, 531, 535.

See *Lindley on Mines*, 2d ed., secs. 659, 693.

### 2397. Verification of affidavits—Contest and proofs as to character of land.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such person cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

What officers have authority to verify affidavits under sec. 2335. *U. S. v. Manion*, 44 Fed. 800.

"Personal notice"—Meaning of the term

as used in the statute. *N. P. R. R. Co. v. Cannon*, 54 Fed. 252; see *Fed. Stats. Anntd.*, vol. 5, pp. 49, 50, notes and cases; *Lindley on Mines*, 2d ed., secs. 689, 702.

### 2398. Where veins intersect—Right of way.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior locations shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

The right to ore in common territory of "Cross" or "Intersecting" veins. *Wilhelm v. Sylvester*, 101 Cal. 358, 35 P. 997; *Brown v. Quartz M. Co.*, 15 Cal. 152, 76 Am. Dec. 468; *Van Zandt v. Argentine M. Co.*, 8 Fed. 725; *Hall v. Equator M. and S. Co.*, Fed. Cas. No. 5,931; (note—Rule laid down in this case repudiated, *Calhoun G. M. Co. v. Ajax G. M. Co.*, 27 Colo. 1, 59 P. 607, 50 L. R. A. 209), affirmed, 182 U. S. 505; *Branagan v. Dulaney*, 8 Colo. 408, 8 P. 669; *Lee v. Stahl*, 9 Colo. 208, 11 P. 77; *Morganson v. Middlesex M. Co.*, 11 Colo. 176, 17 P. 513; *Lee v. Stahl*, 13 Colo. 174, 22 P. 436, over-

ruled, *Calhoun G. M. Co. v. Ajax G. M. Co.*, 27 Colo. 1, 58 P. 607, 50 L. R. A. 209; *Water-vale M. Co. v. Leach*, 33 P. 418; *Atkins v. Hendree*, 1 Idaho, 95; *Pardee v. Murry*, 4 Mont. 234, 2 P. 16.

Intersecting and cross veins defined—Statute construed. *Wilhelm v. Sylvester*, 101 Cal. 358, 35 P. 997; *Calhoun G. M. Co. v. Ajax G. M. Co.*, 27 Colo. 1, 59 P. 607, 50 L. R. A. 209; see, also, 182 U. S. 505.

Section 2336 supplemental to and not in conflict with sec. 2322. *Calhoun G. M. Co. v. Ajax G. M. Co.*, 27 Colo. 1; same case, 182 U. S. 505; *Book v. Justice M. Co.*, 58

Fed. 128; *Con. Wyo. G. M. Co. v. Champion M. Co.*, 63 Fed. 546; *Wilhelm v. Sylvester*, 101 Cal. 358, 35 P. 997; *Watervale M. Co. v. Leach*, 33 P. 418; *Branagan v. Dulaney*, 8 Colo. 428; *Lee v. Stahl*, 9 Colo. 208; *Pardee v. Murry*, 4 Mont. 234, 2 P. 16.

"Below the point of union"—Phrase defined—Statute construed. *Lee v. Stahl*, 13 Colo. 174, 22 P. 436.

Rights of junior locator. *Pardee v. Murry*, 4 Mont. 234, 2 P. 16; *Calhoun G. M. Co. v. Ajax G. M. Co.*, 27 Colo. 1, 59 P. 607; *50 L. R. A. 209*; *Lee v. Stahl*, 9 Colo. 208, 11 P. 77; same case, 13 Colo. 174, 22 P. 436, overruled, 27 Colo. 1, 59 P. 607; *Morganson v. Middlesex M. Co.*, 11 Colo. 176, 17 P. 513.

Size of the vein in first location immaterial. *Stinchfield v. Gillis*, 96 Cal. 37.

Where three veins unite—Rule for determining priority. *Little Josephine M. Co. v. Fullerton*, 58 Fed. 521.

Vein—Sec. 2336 does not apply. *Omar v. Soper*, 11 Colo. 380, 18 P. 443.

"When two or more veins unite"—Rights of locators—Statute construed. *Champion M. Co. v. Con. Wyo. M. Co.*, 75 Cal. 78, 16 P. 513; see same case, 63 Fed. 540; *Colo. Cent. Con. M. Co. v. Turek*, 50 Fed. 888; *Lee v. Stahl*, 13 Colo. 174, 22 P. 436; See *Lindley on Mines*, 2d ed., secs. 557–560, 614; *Cent. Dig.*, vol. 34, title, *Mines and Minerals*, secs. 78, 79; *Fed. Stats. Anntd.*, vol. 5, pp. 50, 51, cases and notes.

## 2399. Patents for nonmineral lands for millsites.

SEC. 2337. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his millsite, as provided in this section.

For state laws regarding location of millsites, see secs. 2436 to 2439, inclusive.

Cited; *Hamburg M. Co. v. Stephenson*, 17 Nev. 460.

When may patents to millsites be obtained—Statute construed. *Hartman v. Smith*, 7 Mont. 27.

"Mining and milling purposes"—Statute construed. *Silver Peak M. Co. v. Valcaldia*, 79 Fed. 890; *Hartman v. Smith*, 7 Mont. 27.

Entry must be made on nonmineral land

only. *Burns v. Clark*, 133 Cal. 637; *Cleary v. Skiffich*, 28 Colo. 367. See *Lindley on Mines*, 2d ed., secs. 519–524, 708; *Cent. Dig.*, vol. 34, title, *Mines and Minerals*, sec. 44; *Fed. Stats. Anntd.*, vol. 5, p. 52, notes and cases.

## 2400. Conditions may be made by local legislature.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any state or territory may provide rules for working mines, involving easements, drainage and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

See sec. 2422, et seq.

Section applies to rules for working mines only—Does not apply to regulation of navigable waters to carry off debris. *Woodruff v. N. Bloomfield Gravel M. Co.*, 18 Fed. 753; *N. Bloomfield Gravel Co. v. U. S.*, 88 Fed. 664.

Section has no reference to discovery tunnels. *Calhoun G. M. Co. v. Ajax G. M. Co.*, 182 U. S. 505, affirming 27 Colo. 1.

This section does not reserve right of way

over patented claim. *Amador Queen M. Co. v. De Witt*, 73 Cal. 484.

What use of water intended by section. *Jacob v. Day*, 111 Cal. 577.

Congress cannot ignore state constitution in delegating authority to state legislatures. *People v. Dist. Court*, 11 Colo. 153. See *Lindley on Mines*, 2d ed., secs. 249–264, 529–531; *Fed. Stats. Anntd.*, vol. 5, pp. 52, 53, notes and cases.

## 2401. Vested rights of water—Rights of way for canals.

SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way

for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage. *Act of Congress of July 26, 1866.*

See secs. 3123, 3149, 3182; *Ennor v. Raine*, 27 Nev. 178.

Cited, *Jones v. Adams*, 19 Nev. 81, 85.

NOTE—This subject is covered with notes and cases in the general subject of "Waters," Fed. Stats. Annd., vol. 7, title, Waters, pp. 1090-1101.

See, also, Fed. Stats. Annd., vol. 10, title, Waters, pp. 433-435.

See, also, Cent. Dig., vol. 48, title, Waters, and annuals under same title.

See Lindley on Mines, 2d ed., sec. 530.

## 2402. Patents, preemptions, and homesteads subject to vested and accrued water rights.

SEC. 2340. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

NOTE—This subject is covered with notes and cases in the general subject of "Waters," in Fed. Stats. Annd., vol. 7, pp. 1090-1101, and vol. 10, pp. 432-435.

See, also, "Waters," Cent. Dig., vol. 48, and annuals under same title.

See Lindley on Mines, 2d ed., sec. 531.

Water rights and ditch rights acquired on Snyder v. Colorado Gold Dredging Co. public lands held not affected by disposition (C. C. A), 181 Fed. 62. of the lands under the public land laws.

## 2403. Mineral lands on which no valuable mines are discovered open to homesteads.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of preemption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter 5 of this title, relating to "Homesteads."

See Lindley on Mines, 2d ed., secs. 107, 202-212, 717.

## 2404. When lands may be set apart as agricultural lands.

SEC. 2342. Upon the survey of the lands described in the preceding section, the secretary of the interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

## 2405. Additional land districts and officers—Power of president to provide.

SEC. 2343. The president is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

## 2406. Provisions of this chapter not to affect acquired rights or Sutro Tunnel.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to

A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

The statute construed. *Lee v. Stahl*, 9 Colo. 208, 11 P. 77; same case, 13 Colo. 174, 22 P. 463; *Cranes Gulch M. Co. v. Sherrer*, 134 Cal. 350; *Lee Doon v. Tesh*, 68 Cal. 49; see *Lindley on Mines*, 2d ed., secs. 53, 64; *Fed. Stats. Anntd.*, vol. 5, pp. 53, 54.

#### 2407. Grant of lands to states or corporations not to include mineral lands.

SEC. 2346. No act passed at the first session of the thirty-eighth Congress, granting lands to states or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

See sec. 2457.

Statute construed. *Barden v. U. P. R. R. Co.*, 154 U. S. 312; *Chicago Quartz M. Co. v. Oliver*, 75 Cal. 194. See *Fed. Stats. Anntd.*, vol. 5, p. 55, cases and notes.

### COAL-LAND LAWS

#### 2408. Entry of coal lands.

SEC. 2437. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Under *Rev. Stats. sec. 2347 (U. S. Comp. Stats. 1901, p. 1440)*, persons cannot lawfully associate themselves together to enter coal lands in severalty in tracts of 160 acres

each, to be held for the joint benefit of all. *United States v. Portland Coal and Coke Co. (C. C.)*, 173 Fed. 566.

#### 2409. Persons in possession making improvements have preference of entry.

SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved; *provided*, that when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

#### 2410. Time for filing claims.

SEC. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within

sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

**2411. Only one entry allowed—Time for proof and payment.**

**SEC. 2350.** The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section 2348 shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

**2412. Conflicting claim—Preference—Commissioner may make rules.**

**SEC. 2351.** In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include as near as may be, the valuable improvements of the respective parties. The commissioner of the general land office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

**2413. Prior rights not impaired—Mines of gold, silver or copper excluded.**

**SEC. 2352.** Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

Cases construing coal laws: Wash v. United States, 123 U.S. 307; Durango Land Hastings, 20 Colo. 243, 38 P. 324; Johnson Co. v. Evans, 80 Fed. 425; 80 Fed. 433. See v. Harrington, 5 Wash. 73, 31 P. 316; Lipcomb v. Nichols, 6 Colo. 290; U. S. v. Trinidad Coal Co., 137 U. S. 160; Colo. Coal Co. and cases; Cent. Dig., vol. 34, title, Mines and Minerals, sec. 87.

**ACTS OF CONGRESS PASSED SUBSEQUENT TO THE REVISED STATUTES, AND APPLICABLE TO THE STATE OF NEVADA**

*An Act authorizing the citizens of Colorado, Nevada, and the territories to fell and remove timber on the public domain for mining and domestic purposes.*

Approved June 3, 1878, 20 Stat. L. 88

**2414. Timber may be felled, subject to regulations of secretary of interior.**

All citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic

purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the secretary of the interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes; *provided*, the provisions of this act shall not extend to railroad corporations.

**2415. Register and receiver to ascertain if timber is being cut for unauthorized purposes.**

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and if so, they shall immediately notify the commissioner of the general land office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

**2416. Penalty for violation.**

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the secretary of the interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

*An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes.*

Approved August 30, 1890, 26 Stat. L. 371

**2417. Entry under all land laws restricted to 320 acres—Reservations in patents for right of way for ditches and canals.**

No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act; *provided*, that in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

Modified by sec. 2419, so as to allow the acquiring of mines in addition to 320 acres of other land.

*An Act to repeal the timber-culture laws, and for other purposes.*

Approved March 3, 1891, 26 Stat. L. 1095

**2418. Townsites on mineral lands authorized—Possessors of veins protected.**

SEC. 16. That townsite entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead,

or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto; *provided*, that no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

Regarding townsites on mineral lands and exemption of veins, see secs. 1960, 1965 and 1978, note.

**2419. Lands entered under the mineral laws not included in restriction to 320 acres.**

SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs, and that the provisions of "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not include lands entered or sought to be entered under mineral land laws.

See Cent. Dig., vol. 41, title, Public Lands, B-11, sec. 85, and subsequent annuals under same title.

*An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes.*

Approved June, 4, 1897, 30 Stat. L. 34, 35, 36

**2420. Forest reservations, when to be established—Valuable mineral lands not to be included—Use of timber and stone by settlers and miners—Egress and ingress of settlers within reservations—Restoration of mineral or agricultural lands to public domain.**

All public lands heretofore designated and reserved by the president of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is

not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

The secretary of the interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the state or territory, respectively, where such reservations may be located.

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the secretary of the interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof; *provided*, that such persons comply with the rules and regulations covering such forest reservations.

Upon the recommendation of the secretary of the interior, with the approval of the president, after sixty days' notice thereof, published in two papers of general circulation in the state or territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the secretary of the interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

Under act of Congress of June 4, 1897, c. 2, 30 Stats. 34 (U. S. Comp. Stats. 1901, p. 1538), authorizing the location of mining claims within a forest reserve, the rights of a locator of a mining claim on a forest reserve are substantially the same as those conferred by Rev. Stats., sec. 2322 (U. S. Comp. Stats. 1901, p. 1425), on a locator on the public domain; but it was held that the locator having acquired a possessory right only, was not entitled to erect and maintain a saloon on the mining claim located in the

forest reserve without a permit from the secretary of agriculture.

The act of June 4, 1897, c. 2, 30 Stats. 34 (U. S. Comp. Stats. 1901, p. 1538), conferring on the secretary of the interior power, subsequently transferred to the secretary of agriculture, to make rules for the regulation and government of forest reserves, subject to specific provisions, was not unconstitutional as attempting to delegate legislative power to an executive officer. *United States v. Rizzinelli* (D. C.), 182 Fed. 675.

### *An Act for relief of applicants for mineral surveys.*

Approved February 24, 1909, 36 Stat. L. —, Pub. No. 257

#### **2421. Repayment of deposits for mineral surveys.**

That the secretary of the treasury be, and he is hereby, authorized and directed to pay, out of the moneys heretofore or hereafter covered into the treasury from deposits made by individuals to cover cost of work performed and to be performed in the offices of the United States surveyors-general in connection with the survey of mineral lands, any excess in the amount deposited over and above the actual cost of the work performed, including all expenses incident thereto for which the deposits were severally made or the whole of any unused deposit; and such sums, as the several

cases may be, shall be deemed to be annually and permanently appropriated for that purpose. Such repayments shall be made to the person or persons who made the several deposits, or to his or their legal representatives, after the completion or abandonment of the work for which the deposits were made, and upon an account certified by the surveyor-general of the district in which the mineral land surveyed, or sought to be surveyed is situated and approved by the commissioner of the general land office.

**NOTE**—As the rules and regulations of the interior department, as far as authorized by various acts of Congress, have the force and effect of laws so long as they remain unchanged, they are given below.

## REGULATIONS

### NATURE AND EXTENT OF MINING CLAIMS

1. Mining claims are of two distinct classes: Lode claims and placers.

#### Lode Claims

2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, *other* than the one named in the original location, to such as were not *adversely claimed on May 10, 1872*, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after the 10th day of May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of *fifteen hundred feet*, but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed three hundred feet on each side of the middle of the vein at the surface*, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond three hundred feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th of May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or state or territorial laws in force in the several mining districts; and that no such local regulations or state or territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. Locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located, by reference to some natural object or permanent monument, as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of *bona fide* prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

9. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible,

the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

10. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of said discovery point.

11. The location notice must be filed for record in all respects as required by the state or territorial laws and local rules and regulations, if there be any.

12. In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that *ten dollars* shall be expended annually in labor or improvements for each *one hundred feet* in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several coowners to contribute his proportion of the required expenditures, the coowners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent coowner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his coowners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent coowner failed to contribute his proper proportion within the period fixed by the statute.

#### TUNNELS

16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to

locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

#### Placer Claims

19. But one discovery of mineral is required to support a placer location, whether it be of twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

20. The act of August 4, 1892, extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands. Registers and receivers should make a reference to said act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any state are not subject to entry under said act.

21. The act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.

22. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

23. [Omitted.]

24. A ten-acre subdivision may be described, for instance if situated in the extreme north-east of the section, as the "NE.  $\frac{1}{4}$  of the NE.  $\frac{1}{4}$  of the NE.  $\frac{1}{4}$ " of the section, or, in like manner, by appropriate terms, wherever situated; but, in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

25. The proof of improvements must show their value to be not less than *five hundred dollars* and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two or more disinterested witnesses. The annual expenditure to the amount of \$100, required by section 2324, Revised Statutes, must be made upon placer as well as lode locations.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim, made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than twenty acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein; that is, a location by two persons can not exceed forty acres, and one by three persons cannot exceed sixty acres.

30. The regulations hereinbefore given as to the manner of marking locations on the

ground, and placing the same on record; must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

Conformity to the public land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

Where a placer location by one or two persons can be entirely included within a square forty-acre tract, by three or four persons within two square forty-acre tracts placed end to end, by five or six persons within three square forty-acre tracts and by seven or eight persons within four square forty-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L. D. 250.)

#### REGULATIONS UNDER SALINE ACT

31. Under the act approved January 31, 1901, extending the mining laws to saline lands, the provisions of the law relating to placer mining claims are extended to all states and territories and the district of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name; *provided*, he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

33. In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the notice of location presented for record and the application for patent must each contain a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. Assignments made by persons who are not severally qualified as herein stated will not be recognized.

### PROCEDURE TO OBTAIN PATENT TO MINERAL LANDS

#### Lode Claims

34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor-general of the state or territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field notes in each case will be prepared by the surveyor-general; one plat and the original field notes to be retained in the office of the surveyor-general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor-general to the register of the proper land district, to be retained on his files for future reference. As there is no resident surveyor-general for the State of Arkansas, applications for the survey of mineral claims in said state should be made to the commissioner of this office, who, under the law, is *ex officio* the U. S. surveyor-general.

35. The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the state or territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a United States mineral surveyor such location survey cannot be substituted for that required by the statute, as above indicated.

36. The surveyor-general should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the

lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than *two miles* in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the mineral surveyor at the time of his making the particular survey and be made a part thereof.

37. (a) Promptly upon the approval of a mineral survey the surveyor-general will advise both this office and the appropriate local land office, by letter (Form 4-286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey, with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the *locus* of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but hereafter no segregation of any such claim upon the official township survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by this office.

(b) Upon application to make agricultural entry of the residue of any original lot or legal subdivision of forty acres, reduced by mining claims for which patent applications have been filed and which residue has already been reallocated in accordance therewith, the local officers will accept and approve the application as usual, if found to be regular. When such an application is filed for any such original lot or subdivision, reduced in available area by duly asserted mining claims but not yet relotted accordingly, the local officers will promptly advise this office thereof; and will also report and identify any pending application for mineral patent affecting such subdivision which the agricultural applicant does not desire to contest. The surveyor-general will thereupon be advised by this office of such mining claims, or portions thereof, as are proper to be segregated, and directed to at once prepare, upon the usual drawing-paper township blank, diagram of amended township survey of such original lot or legal forty-acre subdivision so made fractional by such mineral segregation, designating the agricultural portion by appropriate lot number, beginning with No. 1 in each section and giving the area of each lot, and will forthwith transmit one approved copy to the local land office and one to this office. In the meantime the local officers will accept the agricultural application (if no other objection appears), suspend it with reservation of all rights of the applicant if continuously asserted by him, and upon receipt of amended township diagram will approve the application (if then otherwise satisfactory) as of the date of filing, corrected to describe the tract as designated in the amended survey.

(c) The register and receiver will allow no agricultural claim for any portion of an original lot or legal forty-acre subdivision, where the reduced area is made to appear by reason of approved surveys of mining claims and for which applications for patent have not been filed, until there is submitted by such agricultural applicant a satisfactory showing that such surveyed claims are in fact mineral in character; and applications to have lands asserted to be mineral, or mining locations, segregated by survey, with the view to agricultural appropriation of the remainder, will be made to the register and receiver for submission to the commissioner of the general land office, for his consideration and direction, and must be supported by the affidavit of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required in any case, that the lands sought to be segregated *as mineral* are in fact mineral in character; otherwise, in the absence of satisfactory showing in any such case, such original lot or legal subdivision will be subject to agricultural appropriation only. When any such showing shall be found to be satisfactory and the necessary survey is had, amended township diagram will be required and made as prescribed in the preceding section.

38. The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim; the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim.....	10.50
Area in conflict with survey No. 302.....	1.56
Area in conflict with survey No. 948.....	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed.....	1.48

It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

39. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey. Too much care cannot be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

40. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat and the field notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the *notice* so posted to be attached to and form a part of said affidavit.

41. Accompanying the field notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, state, or territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession and the basis of his claim to a patent. The vein or lode must be fully described, the description to include a statement as to the kind and character of mineral, the extent thereof, whether ore has been extracted and of what amount and value and such other facts as will support the applicant's allegation that the claim contains a valuable mineral deposit.

42. This sworn statement must be supported by a copy of each location notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim, completed to the date of filing said statement and certified by the legal custodian of the records of transfers, or by a duly authorized abstracter of titles. The certificate must state that no conveyances affecting the title to the claim or claims appear of record other than those set forth.

Abstracters will be required to attach to each abstract certified by them a certificate stating that they have filed in the office of the commissioner of the general land office a certified copy of the existing statute by which they are authorized to compile abstracts of title, and evidence in the form of a certificate by the proper state, territorial, or county officer that they have complied with the requirements of such statute.

43. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

44. Before receiving and filing an application for mineral patent local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any lands embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that a mineral application should not, for these or other reasons, be accepted and filed, they should formally reject the same, giving the reasons therefor, and allow the applicant thirty days for appeal to this office under the rules of practice.

Local officers will give prompt and appropriate notice to the railroad grantee of the filing of every application for mineral patent which embraces any portion of an odd-numbered section of surveyed lands within the primary limits of a railroad land grant, and of *every* such application embracing *any* portion of unsurveyed lands within such limits (except as to any such application which embraces a portion or portions of those ascertained or prospective odd-numbered sections only, within the limits of the grant in Montana and Idaho to the Northern Pacific Railroad company, which have been classified as mineral under the act of February 26, 1895, without protest by the company within the time limited by the statute or the mineral classification whereof has been approved).

Should the railroad grantee file protest and apply for a hearing to determine the character of the land involved in any such application for mineral patent, proceedings thereunder will be had in the usual manner.

Any application for mineral patent, however, which embraces lands previously listed or selected by a railroad company will be disposed of as provided by the first section of this paragraph, and the applicant afforded opportunity to protest and apply for a hearing or to appeal.

Notice should be given to the duly authorized representative of the railroad grantee, in

accordance with rule 17 of practice. When the claims applied for are upon unsurveyed land, the burden of proving that they are situate within prospective odd-numbered sections will rest upon the railroad.

Evidence of service of notice should be filed with the record in each case.

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a *weekly* newspaper, nine consecutive insertions are necessary; when in a *daily* newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

47. The register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

48. The claimant at the time of filing the application for patent, or at any time within the sixty days of publication, is required to file with the register a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to five hundred dollars for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof; *provided*, that as to all applications for patents made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of five hundred dollars, upon the group will be sufficient, and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

49. The surveyor-general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who makes the actual survey and examination upon the premises, and such mineral surveyor should specify with particularity and full detail the character and extent of such improvements, but further or other evidence may be required in any case.

50. It will be convenient to have this certificate indorsed by the surveyor-general, both upon the plat and field notes of survey filed by the claimant as aforesaid.

51. After the sixty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

52. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of five dollars for each acre and five dollars for each fractional part of an acre, except as otherwise provided by law, the receiver issuing the usual receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land office, after which the complete record will be forwarded to the commissioner of the general land office and a patent issued thereon if found regular.

53. At any time prior to the issuance of patent protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a coowner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes. (See *Turner v. Sawyer*, 150 U. S. 578-586.)

54. Any party applying for patent as *trustee* must disclose fully the nature of the trust and

the name of the *cestui que trust*; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

55. The annual expenditure of one hundred dollars in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes, is solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

56. The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

57. The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

### Placer Claims

58. The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

59. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; the price of placer claims being fixed, however, at two dollars and fifty cents per acre or fractional part of an acre.

60. In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber, but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

While this data is required as a part of the mineral surveyor's report under paragraph 167, in case of placers taken by special survey, it is proper that the application for patent incorporate these facts under the oath of the claimant.

Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

As prescribed by paragraph 25, this statement as to the description and value of the improvements must be corroborated by the affidavits of two disinterested witnesses.

Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

Local land officers are instructed that if the proofs submitted in placer applications under this paragraph are not satisfactory as showing the land as a whole to be placer in character, or if the claims impinge upon or embrace water courses or bodies of water, and thus raise a doubt as to the *bona fides* of the location and application, or the character and extent of the

deposit claimed thereunder, to call for further evidence, or if deemed necessary, request the specific attention of the chief of field service thereto in connection with the usual notification to him under the circular instructions of April 24, 1907, and suspend further action on the application until a report thereon is received from the field officer.

### MILLSITES

61. Land entered as a millsite must be shown to be nonmineral. Millsites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of millsites, is embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous millsite, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a millsite if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a millsite the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the millsite as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the millsite to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the millsite as well as upon the vein or lode claim for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the millsite, but the whole area of both lode and millsite will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and millsite claim.

64. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his millsite at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a millsite is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

### CITIZENSHIP

66. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

67. In case of an individual or an association of individuals who do not appear by their duly authorized agent, the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

68. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

69. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the land districts; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any state or territory.

70. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

71. No entry will be allowed until the register has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

72. The mineral entries will be given the current serial numbers according to the provisions of the circular of June 10, 1908, whether the same are of lode or of placer claims or of millsites.

73. In sending up the papers in a case the register must not omit certifying, to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued. The schedule of papers, form 4-252f, should accompany the returns with all mineral applications and entries allowed.

### POSSESSORY RIGHT

74. The provisions of section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

75. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the state or territory; together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim; and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

76. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the state or territory as aforesaid other than that which has been finally decided in favor of the claimant.

77. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

### ADVERSE CLAIMS

78. An adverse claim must be filed with the register and receiver of the land office where the application for patent is filed or with the register and receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated.

79. Where an agent or attorney in fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

80. The agent or attorney in fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

81. The adverse claim so filed must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

82. In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict; *provided, however*, that if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions, it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor, and its correctness officially certified thereon by him.

83. Upon the foregoing being filed within the sixty days' period of publication, the register, or in his absence the receiver, will immediately give notice in writing to *the parties* that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

84. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued

thereon; and thereafter all proceedings on the application for patent will be stayed, with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the register a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes.

86. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

87. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

88. Where an adverse claim has been filed, but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the state court having jurisdiction in the case, and also by the clerk of the circuit court of the United States for the district in which the claim is situated, will be required.

#### **APPOINTMENT OF SURVEYORS FOR SURVEY OF MINING CLAIMS AND CHARGES**

89. Section 2334 provides for the appointment of surveyors to survey mining claims, and authorizes the commissioner of the general land office to establish the rates to be charged for surveys and for newspaper publications. Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

(1) Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as a medium of publication five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body type used for advertisements.

(2) For the publication of citations in contests or hearings involving the character of lands the charges shall not exceed eight dollars for five publications in weekly newspapers or ten dollars for publications in daily newspapers for thirty days.

90. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The statute provides that the claimant shall also be at liberty to employ any United States mineral surveyor to make the survey. Each surveyor appointed to survey mining claims before entering upon the duties of his office or appointment shall be required to enter into a bond of not less than \$5,000 for the faithful performance of his duties.

91. With regard to the platting of the claim and other office work in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

92. The surveyors-general will endeavor to appoint surveyors to survey mining claims so that one or more may be located in each mining district for the greater convenience of miners.

93. The usual oaths will be required of these surveyors and their assistants as to the correctness of each survey executed by them.

The duty of the surveyor ceases when he has executed the survey and returned the field notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim.

The surveyors-general and local land officers are expected to report any infringement of this regulation to this office.

94. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with a view of correcting the abuse.

#### **FEEES OF REGISTERS AND RECEIVERS**

95. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent

at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim. (Sec. 2238, R. S., par. 9.)

[Paragraphs 96, 97, and 98 are superseded by the general circular instructions of June 10, 1908.]

#### HEARINGS TO DETERMINE CHARACTER OF LANDS

99. The rules of practice in cases before the United States district land offices, the general land office, and the department of the interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

100. Public land returned by the surveyor-general as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome by testimony taken in the manner hereinafter described.

101. Hearings to determine the character of lands:

(1) Lands returned as mineral by the surveyor-general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is *not* required, notice thereof must first be given by publication for sixty days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

[Paragraphs 102 to 104, inclusive, are superseded by appropriate instructions relative to nonmineral proofs in railroad, state, and forest lieu selections contained in separate circulars.]

105. At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—Whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

106. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

107. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

108. When the case comes before this office, such decision will be made as the law and the facts may justify. In cases where a survey is necessary to set apart the mineral from the agricultural land, the proper party, *at his own expense*, will be required to have the work done by a reliable and competent surveyor to be designated by the surveyor-general. Application therefor must be made to the register and receiver, accompanied by description of the land to be segregated and the evidence of service upon the opposite party of notice of his intention to have such segregation made. The register and receiver will forward the same to this office, when the necessary instructions for the survey will be given. The survey in such case, where the claims to be segregated are vein or lode claims, must be executed in such manner as will conform to the requirements in section 2320, Revised Statutes, as to length and width and parallel end lines.

109. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, United States commissioner, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

110. Upon the filing of the plat and field notes of such survey with the register and receiver, duly sworn to as aforesaid, they will transmit the same to the surveyor-general for his verification and approval, who, if he finds the work correctly performed, will furnish authenticated copies of such plat and description both to the proper local land office and to this office, made upon the usual drawing-paper township blank.

The copy of plat furnished the local office and this office must be a diagram verified by the surveyor-general, showing the claim or claims segregated, and designating the separate fractional agricultural tracts in each forty-acre legal subdivision by the proper lot number, beginning with No. 1 in each section, and giving the area in each lot, the same as provided in paragraph 37 in the survey of mining claims on surveyed lands.

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the general land office.

[Rules 112 and 113 relate to the district of Alaska.]

### MINERAL LANDS WITHIN NATIONAL FORESTS

114. The act of June 4, 1897, provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

The act also provides that "the secretary of the interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by *bona fide* settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the state or territory, respectively, where such reservations may be located."

### Transfer of National Forests

Act of February 1, 1905 (33 Stat. 628)

The secretary of the department of agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section 24 of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

(For further information see Use Book—Forest Service.)

### SURVEYS OF MINING CLAIMS

#### General Provisions

115. Under section 2334, Revised Statutes, the U. S. surveyor-general "may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims."

116. Persons desiring such appointment should therefore file their applications with the surveyor-general for the district wherein appointment is asked, who will furnish all information necessary.

117. All appointments of mineral surveyors must be submitted to the commissioner of the general land office for approval.

118. The surveyors-general have authority to suspend or revoke the commissions of mineral surveyors for cause. Before final action, however, the matter should be submitted to the commissioner of the general land office for approval.

119. Such surveyors will be allowed the right of appeal from the action of the surveyor-general in the usual manner. Such appeal should be filed with the surveyor-general, who will at once transmit the same, with a full report, to the general land office.

120. Neither the surveyor-general nor the commissioner of the general land office has jurisdiction to settle differences, relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, *i. e.*, in the local courts. The department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

121. The surveyors-general should appoint as many competent mineral surveyors as apply for appointment, in order that claimants may have a choice of surveyors, and be enabled to have their work done on the most advantageous terms.

122. The schedule of charges for office work should be as low as is possible. No additional charges should be made for orders for amended surveys, unless the necessity therefor is clearly the fault of the claimant, or considerable additional office work results therefrom.

123. [Omitted.]

124. Mineral surveyors will address all official communications to the surveyor-general. They will, when a mining claim is the subject of correspondence, give the name and survey number. In replying to letters they will give the subject-matter and date of the letter. They will promptly notify the surveyor-general of any change in postoffice address.

125. Mineral surveyors should keep a complete record of each survey made by them and the facts coming to their knowledge at the time, as well as copies of all their field notes, reports, and official correspondence, in order that such evidence may be readily produced when called for at any future time. Field notes and other reports must be written in a clear and legible hand or typewritten in noncopying ink, and upon the proper blanks furnished gratuitously by the surveyor-general's office upon application therefor. No interlineations or erasures will be allowed.

126. No return by a mineral surveyor will be recognized as official unless it is over his signature as a United States mineral surveyor, and made in pursuance of a special order from the surveyor-general's office. After he has received an order for survey he is required to make the survey and return correct field notes thereof to the surveyor-general's office without delay.

127. The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

128. A mineral surveyor is precluded from acting, either directly or indirectly, as attorney in mineral claims. His duty in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this rule, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper surveyor-general a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ chainmen interested therein in any manner.

### Method of Survey

129. The survey made and returned must, in every case, be an actual survey on the ground in full detail, made by the mineral surveyor in person after the receipt of the order, and without reference to any knowledge he may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. This precludes him from calculating the connections to corners of the public survey and location monuments, or any other lines of his survey through prior surveys made by others and substituting the same for connections or lines of the survey returned by him. The term *survey* in this paragraph applies not only to the usual field work, but also to the examinations required for the preparation of affidavits of five hundred dollars expenditure, descriptive reports on placer claims, and all other reports.

130. The survey of a mining claim may consist of several contiguous locations, but such survey must, in conformity with statutory requirements, distinguish the several locations, and exhibit the boundaries of each. The survey will be given but one number.

131. The survey must be made in strict conformity with, or be embraced within, the lines of the location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of survey to the corresponding corner of the location, and the location corner must be fully described, so that it can be identified. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such a manner as to contrast and show their relation to the lines of survey.

132. In view of the principle that courses and distances must give way when in conflict with fixed objects and monuments, the surveyor will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field notes.

133. No mining claim located subsequent to May 10, 1872, should exceed the statutory limit in width on each side of the center of vein or 1,500 feet in length, and all surveys must

close within 50-100 feet in 1,000 feet, and the error must not be such as to make the location exceed the statutory limit, and in absence of other proof the discovery point is held to be the center of the vein on the surface. The course and length of the vein should be marked upon the plat.

134. All mineral surveys must be made with a transit, with or without solar attachment, by which the meridian can be determined independently of the magnetic needle, and all courses must be referred to the true meridian. The variation should be noted at each corner of the survey. The true course of at least one line of each survey must be ascertained by astronomical observations made at the time of the survey; the data for determining the same and details as to how these data were arrived at must be given. Or, in lieu of the foregoing, the survey must be connected with some line the true course of which has been previously established beyond question, and in a similar manner, and, when such lines exist, it is desirable in all cases that they should be used as a proof of the accuracy of subsequent work.

135. Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey or with a United States location monument, if the claim lies within two miles of such corner or monument. If both are within the required distance, the connection must be with the corner of the public survey.

136. Surveys and connections of mineral claims may be made in suspended townships in the same manner as though the claims were upon unsurveyed land, except as hereinafter specified, by connecting them with independent mineral monuments. At the same time, the position of any public-land corner which may be found in the neighborhood of the claim should be noted, so that, in case of the release of the township from suspension, the position of the claim can be shown on the plat.

137. A mineral survey must not be returned with its connection made only with a corner of the public survey, where the survey of the township within which it is situated is under suspension, nor connected with a mineral monument alone, when situated within the limits of a township the regularity and correctness of the survey of which is unquestioned.

138. In making an official survey, corner No. 1 of each location must be established at the corner nearest the corner of the public survey or location monument, unless good cause is shown for its being placed otherwise. If connections are given to both a corner of the public survey and location monument, corners Nos. 1 should be placed at the corner nearest the corner of the public survey. When a boundary line of a claim intersects a section line, courses and distances from point of intersection to the government corners at each end of the half mile of section line so intersected must be given.

139. In case a survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, a mineral monument must be established, in the location of which the greatest care must be exercised to insure permanency as to site and construction.

140. The site, when practicable, should be some prominent point, visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock, or landslides, or other natural causes.

141. The monument should consist of a stone not less than 30 inches long, 20 inches wide, and 6 inches thick, set halfway in the ground, with a conical mound of stone 4 feet high and 6 feet base alongside. The letters U. S. L. M., followed by the consecutive number of the monument in the district, must be plainly chiseled upon the stone. If impracticable to obtain a stone of required dimensions, then a post 8 feet long, 6 inches square, set 3 feet in the ground, scribed as for a stone monument, protected by a well-built conical mound of stone of not less than 3 feet high and 6 feet base around it, may be used. The exact point for connection must be indicated on the monument by an X chiseled thereon; if a post is used, then a tack must be driven into the post to indicate the point.

142. From the monument, connections by course and distance must be taken to two or three bearing trees or rocks, and to any well-known and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts, or mouths of adits. Bearing trees must be properly scribed B. T. and bearing rocks chiseled B. R., together with the number of the location monument; the exact point on the tree or stone to which the connection is taken should be indicated by a cross or other unmistakable mark. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the locating monument, with a topographical map of its location, should be furnished the office of the surveyor-general by the surveyor.

143. Corners may consist of—

*First*—A stone at least 24 inches long set 12 inches in the ground, with a conical mound of stone 1½ feet high, 2 feet base, alongside.

*Second*—A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

*Third*—A rock in place.

A stone should always be used for a corner when possible, and when so used the kind should be stated.

144. All corners must be established in a permanent and workmanlike manner, and the corner and survey number must be neatly chiseled or scribed on the sides facing the claim.

The *exact* corner point must be permanently indicated on the corner. When a rock in place is used, its dimensions above ground must be stated and a cross chiseled at the exact corner point.

145. In case the point for the corner be inaccessible or unsuitable, a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number, should be established. The witness corner should be located upon a line of the survey and as near as possible to the true corner, with which it must be connected by course and distance. The reason why it is impossible or impracticable to establish the true corner must always be stated in the field notes, and in running the next course it should be stated whether the start is made from the true place for corner or from witness corner.

146. The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and other objects, as prescribed in the establishment of location monuments, and when no bearings are given it should be stated that no bearings are available. Permanent objects should be selected for bearings whenever possible.

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return *how* and by what *visible evidences* he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

148. The mineral surveyor should note carefully all topographical features of the claim, taking distances on his lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses, and other data that may be required to map them correctly. All municipal or private improvements, such as blocks, streets and buildings, should be located.

149. If, in running the exterior lines of a claim, the survey is found to conflict with the survey of another claim, the distances to the points of intersection and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection, should be described in the field notes; *provided*, that where a corner of the conflicting survey falls within the claim being surveyed, such corner should be selected from which to give the bearing, otherwise the corner nearest the intersection should be taken. The same rule should govern in the survey of claims embracing two or more locations the lines of which intersect.

150. A lode and millsite claim in one survey will be distinguished by the letters A and B following the number of the survey. The corners of the millsite will be numbered independently of those of the lode. Corner No. 1 of the millsite must be connected with a corner of the lode claim as well as with a corner of the public survey or United States location monument.

151. When a placer claim includes lodes, or when several contiguous placer or lode locations are included as one claim in one survey, there must be given to the corners of each location constituting the same a separate consecutive numerical designation, beginning with corner No. 1 in each case.

152. Throughout the description of the survey, after each reference to the lines or corners of a location, the name thereof must be given, and if unsurveyed, the fact stated. If reference is made to a location included in a prior official survey, the survey number must be given, followed by the name of the location. Corners should be described once only.

153. The total area of each location and also the area in conflict with each intersecting survey or claim should be stated. But when locations embraced in one survey conflict with each other such conflicts should only be stated in connection with the location from which the conflicting area is excluded.

154. It should be stated particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the quarter section, township, and range in which it is located, and the section lines should be indicated by full lines and the quarter-section lines by dotted lines.

155. The title-page of the field notes must contain the postoffice address of the claimant or his authorized agent.

156. In the mineral surveyor's report of the value of the improvements all *actual* expenditures and *mining* improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

157. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

158. All mining and other improvements claimed will be located by courses and distances from corners of the survey, or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always No. 1. Improvements made by a former locator who has abandoned his claim cannot be included in the estimate, but should be described and located in the notes and plat.

159. In case of a lode and millsite claim in the same survey the expenditure of five hundred dollars must be shown upon the lode claim.

160. If the value of the labor and improvements upon a mineral claim is less than five hundred dollars at the time of survey, the mineral surveyor may file with the surveyor-general supplemental proof showing five hundred dollars expenditure made prior to the expiration of the period of publication.

161. The mineral surveyor will return with his field notes a preliminary plat on blank sent to him for that purpose, protracted on a scale of two hundred feet to an inch if practicable. In preparing plats the top is north. Copy of the calculations of areas by double meridian distances and of all triangulations or traverse lines must be furnished. The lines of the claim surveyed should be heavier than the lines of conflicting claims.

162. Whenever a survey has been reported in error the surveyor who made it will be required to promptly make a thorough examination upon the premises and report the result, under oath, to the surveyor-general's office. In case he finds his survey in error he will report in detail all discrepancies with the original survey and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, a joint survey will be ordered to settle the differences with the surveyor who reported the error. A joint survey must be made within ten days after the date of order unless satisfactory reasons are submitted, under oath, for a postponement. The field work must in every sense of the term be a *joint* and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.

163. The mineral surveyor found in error, or, if both are in error, the one who reported the same, will make out the field notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to the surveyor-general's office.

164. Inasmuch as amended surveys are ordered only by special instructions from the general land office, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject-matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

165. The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

166. The field notes of the amended survey must be prepared on the same size and form of blanks as are the field notes of the original survey, and the word "amended" must be used before the word "survey" wherever it occurs in the field notes.

167. Mineral surveyors are required to make full examinations of all placer claims at the time of survey and file with the field notes a descriptive report, in which will be described—

(a) The quality and composition of the soil, and the kind and amount of timber and other vegetation.

(b) The *locus* and size of streams, and such other matter as may appear upon the surface of the claims.

(c) The character and extent of all surface and underground workings, whether placer or lode, for mining purposes, locating and describing them.

(d) The proximity of centers of trade or residence.

(e) The proximity of well-known systems of lode deposits or of individual lodes.

(f) The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

(g) What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(h) The true situation of all mines, salt licks, salt springs, and millsites which come to the surveyor's knowledge, or a report by him that none exist on the claim, as the facts may warrant.

(i) Said report must be made under oath and duly corroborated by one or more disinterested persons.

168. The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

169. The field work must be accurately and properly performed and returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at the surveyor's own expense, and if the time required in the examination of the returns is increased

by reason of neglect or carelessness, he will be required to make an additional deposit for office work. He will be held to a strict accountability for the faithful discharge of his duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of his duties, or guilty of a violation of said regulations, his appointment will be promptly revoked.

Approved March 29, 1909.

R. A. BALLINGER,  
*Secretary.*

S. V. PROUDFIT,  
*Acting Commissioner.*

The commissioners of the general land office and the secretary of the interior can enforce by appropriate regulations every part of the public land laws as to which it is not otherwise specially provided. *Leonard v. Lennox* (C. C. A.), 181 Fed. 760.

homestead law (Rev. Stats., sec. 2306, U. S. Comp. Stats. 1901, p. 1415) must comply with the regulation of the land department of November 19, 1901, by supporting his application by showing that the land is non-saline. *Idem.*

An applicant under the soldier's additional

See, also, *U. S. v. Rizzinelli*, 182 Fed. 675.

STATE LAWS

General act relating to the location and holding of mining claims, millsites, and tunnel rights, approved March 16, 1897, sections 2422-2446.

An act to provide for the location of lands containing salt, approved February 24, 1865, sections 2447-2450.

"An act for the better protection of the rights of locators of mining claims," relating to certificates of location, receipts, and seal of district mining recorder, approved March 20, 1907, sections 2451-2455.

"An act to encourage mining," approved March 3, 1887, allowing prospecting for minerals upon lands held or patented by the state, sections 2456, 2457.

Act of March 14, 1907, supplementary to an act entitled "An act to encourage mining," authorizing prospecting on unfenced and unimproved land in private ownership, and for acquiring title thereto, sections 2458-2462.

Act of February 10, 1881, supplemental to an act to provide for the better preservation of mining records, sections 2463-2468.

Act to provide for the better preservation of mining records and to repeal acts in conflict, approved February 14, 1885, sections 2469-2474.

Act to provide for the recording of grub-stake contracts, approved March 29, 1907, section 2475.

"An act for the encouragement of mining," regarding suit for expenditures by company owning majority interest in mine, approved March 7, 1865, sections 2476-2482.

Act to facilitate the recovery of ores and metals taken by theft or trespass, approved March 29, 1907, sections 2483-2486.

An act to regulate the purchase of ore, approved March 29, 1907, sections 2487-2491.

Act relating to the inspection of mines by stockholders, approved February 21, 1879, sections 2492-2496.

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Act in relation to conveyances not to be construed as conflicting with mining rules, regulations or customs, section 1091.

Actions to determine right of possession of mining claims upon application for patent, section 5526.

Action to prevent injurious working of mines and for damages, section 5509.

Arbitration between employers and employees, section 1929.

Attorney-general as mineral land commissioner, sections 4141-4147.

Capital stock may be paid for by deed to mining ground, section 1200.

Conveyances of mining property by persons under age, sections 1103, 1104.

Corporations for mining may be formed, sections 1105, et seq., 1203.

Corporate stock not to be assessed unless power reserved in certificate of incorporation, section 1200.

District laws govern mining corporations, section 1201.

Eight-hour law—

For underground mines, sec. 6554.

For plaster and cement mills, sec. 6559.

For smelters, quartz mills, and ore reduction plants, sec. 6555.

For surface-men, secs. 1941, 1942.

Employers' liability act, section 1915.

Inspector of mines, sections 4198-4239.

Liens on mines for labor and material, section 2213.

Limitation of actions for recovery of mines, section 4951.

Mining claims transferred on same conditions as other real estate, sections 1100, 1102.

Mining corporations may become stockholders in tunnel companies, section 1202.

Mining corporations may consolidate, sections 1216-1218.

Mining corporations to report annually to attorney-general and county recorder, sections 1330-1340.

Mining companies to report to assessor, section 3695.

Mortgagee of mines has right to prevent forfeiture and recover expenditure, section 1091.

Order for underground survey, section 5511.

Partition of mines, section 5576, et seq.

Right of eminent domain over land and water for mines and works for reduction of ores, section 5606.

Right of way for ditches and canals, sections 2401, 2417. (See, also, schedule under Public Lands, section 3063.)

Safety appliances in mines, section 6799.

Taxation of net proceeds of mines, sections 3687-3689.

Taxation of patented mines, Const. as amended, section 352.

Timber for mining and other purposes, section 2414.

Town lots subject to recognized veins, section 1960.

Townsites on mineral lands, sections 1978, 2392, 2418.

United States laws relating to lands, schedule, 3063.

United States laws relating to mines, schedule, 2375.

Water for mining purposes and right of way for ditches, sections 2401, 3149, 3182.

*An Act relating to the location, relocation, manner of recording lode and placer claims, millsites, tunnel rights, amount of work necessary to hold possession of mining claims and the right of coowners therein.*

Approved March 16, 1897, 103

## 2422. Who may locate—Form and posting of notice.

SECTION 1. Any person, a citizen of the United States or one who has declared his intention to become such, who discovers a vein or lode, may locate a claim upon such vein or lode by defining the boundaries of the claim in the manner hereinafter described, and by posting a notice of such location at the time and point of discovery, which notice must be posted upon one of the several monuments prescribed in section 2 of this act, and such notice must contain:

First—The name of the lode or claim;

Second—The name of the locator or locators;

Third—The date of the location;

Fourth—The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the vein, and the general course of the vein or lode as near as may be. *As amended, Stats. 1907, 418.*

See federal statute and note, secs. 2377, 2400.

In order to hold a mining ledge, it is not necessary that the notice of location should be placed on the ore or any part of the vein or lode; it is sufficient if it be placed in such reasonable proximity and relation to the ledge as, in connection with the work done under it, to give notice to all comers what ledge is intended. *Phillpotts v. Blasdel*, 8 Nev. 61.

Placing a notice of location headed with a certain name upon a lode of ore is to christen it with such name. *Idem.*

There is no law to prevent a person from relocating his own mining claim by a different name; and if he does so and then conveys it by the latter name, there is no reason why the existence of the former location should invalidate the deed. *Idem.*

An alien who has never declared his intention to become a citizen, is not a qualified locator of mining ground, and he cannot hold a mining claim either by actual possession or by location against one who connects himself with the government title by compliance with the mining law. *Golden Fleece G. & S. M. Co. v. Cable Con. G. & S. M. Co.*, 12 Nev. 312.

The mining laws of the United States recognize and sanction the custom of the miners among organized mining districts to

adopt local laws or rules governing the location, recording and working of claim not in conflict with state or federal legislation. *Idem.*

This section not requiring that the location notice shall contain a recital that a discovery has there been made, a notice containing such recital is not prima facie evidence of the discovery. *Fox v. Myers*, 29 Nev. 169 (86 P. 793).

The posting of a notice under this section at a certain point establishes that at that point locator claims a discovery. *Idem.*

Where conflicting claimants both posted their notices at the same point, such fact, in the absence of evidence to the contrary, warranted a presumption that both based their claims of a discovery on the same natural conditions, and that discovery of mineral, therefore, for the purposes of the case, presumptively existed. *Idem.*

Where mining claims were located on a designated date, by posting the requisite notice and by the proper marking of their boundaries within ninety days thereafter, the right to the ground covered by them related back to the time of the posting of the notice and segregated the land from the public domain, so that a subsequent location was invalid until after there had been a

failure to do the work required by the statutes to be done within ninety days from the posting of the notice; but where the notices were posted and the claims were not staked within ninety days thereafter, the locations were not completed, and they were not segregated from the public domain, though such posting carried the right to define the boundaries within ninety days.

Where a senior location of mining claims was not a valid and existing location at the

time of a junior location, the junior locator became entitled to hold the claims for ninety days, and, by instituting his suit to recover the claims before the expiration of ninety days, he could recover judgment for possession and damages to the end of that period, and, if he should fail to do the required work within ninety days, the claims would become subject to relocation by others. *Nash v. McNamara*, 30 Nev. 114, 129, 142, 16 L. R. A. (N. S.) 168, 133 A. S. 694, 93 P. 405.

## 2423. Location work—Boundaries, how and when defined.

**SEC. 2.** The locator of the lode mining claim must sink a discovery shaft upon the claim located four feet by six feet to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show by such work a lode deposit of mineral in place; a cut or crosscut or tunnel which cuts the lode at a depth of ten feet or an open cut along the said ledge or lode, equivalent in size to a shaft four feet by six feet by ten feet deep, is equivalent to a discovery shaft. The locator must define the boundaries of his claim by removing the top of a tree (having a diameter of not less than four inches) not less than three feet above the ground, and blazing and marking the same, or by a rock in place, capping such rock with smaller stones, such rock and stones to have a height of not less than three feet, or by setting a post or stone one at each corner and one at the center of each side line. When a post is used, it must be at least four inches in diameter by four and one-half feet in length set one foot in the ground. When it is practically impossible, on account of bed-rock or precipitous ground, to sink such posts, they may be placed in a mound of earth or stones, or where the proper placing of such posts or other monuments is impracticable or dangerous to life or limb, it shall be lawful to place such posts or monuments at the nearest point properly marked to designate its right place. When a stone is used (not a rock in place) it must be not less than six inches in diameter and eighteen inches in length set two-thirds of its length in the top of a mound of earth or stone, four feet in diameter and two and one-half feet in height. All trees, posts or rocks used as monuments, when not four feet in diameter at the base, shall be surrounded by a mound of earth or stone four feet in diameter by two feet in height, which trees, posts, stones or rock monuments must be so marked as to designate the corners of the claim located; *provided, however*, that the locator of a mining claim shall within twenty days from the date of posting the notice of location define the boundaries of said claim by placing at each corner and at the center of each side line one of the hereinbefore described monuments, and shall within ninety days of the date of posting said location notice perform the location work hereinbefore prescribed. *As amended, Stats. 1899, 93; 1901, 97; 1907, 419.*

For requirements under the federal statute, see secs. 2378, 2382, and note. See *Murray v. Osborne* under sec. 7 of this act.

The mining laws of the locality govern the location and manner of developing the mines, and when they directly point out how such mining claims must be located, and how the possession once acquired is to be maintained, that course must be strictly pursued. *Mallett v. Unele Sam G. & S. M. Co.*, 1 Nev. 188, affirmed, *Gleeson v. Martin White Mining Co.*, 13 Nev. 442.

No valid location of a mining claim can be made until a vein, or deposit, of gold, silver, or metalliferous ore, or rock in place has been discovered. *Overman S. M. Co. v. Corcoran*, 15 Nev. 147.

Assays of rock which was taken from a mining claim, long after the date of its location, are competent evidence, as tending to show that the locators had discovered a vein at the time of the location. *Southern Cross v. Europa M. Co.*, 15 Nev. 385.

It is the record of a mining claim, and not the notice of location, that must contain such reference to a natural object or permanent monument as will identify the claim, and only then when the local laws require a record to be made. *Brady v. Husby*, 21 Nev. 453; *Poujade v. Ryan*, 21 Nev. 449 (33 P. 659).

Where the record of a mining claim contains such reference to a natural object or permanent monument as might under any circumstances identify the claim, the record is admissible in evidence, and it becomes a question of fact as to whether such reference is sufficient. *Idem*.

In the absence of all evidence upon the point it will be presumed that the reference is sufficient for identification. *Idem*.

The court cannot take judicial notice of the existence in a particular district of a rule requiring claims to be recorded. Such rule, if it exists, must be proven the same as any other fact in the case. *Idem*.

The presumption, in the first instance, is that the owner of the mine owns all the veins found within his boundary lines, but when there is evidence tending to prove that the vein in controversy apexes outside those lines, this, if sufficient, will rebut that presumption; and as the burden of proving ownership is, when denied, always upon the party alleging it, he must also meet and overcome this evidence, or he will fail in establishing his title. *Jones v. Prospect T. Co.*, 21 Nev. 339 (31 P. 642).

By "rock in place," as used in the mining statutes, is meant rock that is enclosed and embraced in the general mass of the mountain, as distinguished from the float, soil and debris of the surface; and it is not material where the rock or mineral was originally formed or deposited, or that the vein matter is loose, or broken, or disintegrated. *Idem*.

To enable a party to maintain a right to a mining claim after it has been acquired, he must continue to comply substantially with the laws of Congress and of the state, and the local regulations of miners in force in the district where the claim is located.

A failure to comply with the laws and regulations in force in the district, whether national, state or local, works a forfeiture of the claim, whether such laws or regulations so provide or not, and the same becomes subject to location by any qualified locator.

This section is not in conflict with the act

of Congress, which gives the locator one year in which to do the one hundred dollars' worth of labor prescribed by Congress as a condition of holding the claim.

The state cannot, by its legislation, dispense with the performance of the conditions imposed by national law, in order to hold a mining claim, but it may require a reasonable additional amount of work to be done annually, or to complete the location, and, after location, a reasonable additional amount of work within a reasonable time, less than the time prescribed by Congress for the annual expenditure. *Sisson v. Sommers*, 24 Nev. 379, 386 (77 A. S. 815, 55 P. 829).

A patent to a mining claim conveys title to all the surface thereof. *Abbott v. Primeaux*, 16 Nev. 361.

A junior location made on ground covered by a valid existing senior location will not prevail over a relocation of the same ground, made after failure to do the work on the senior location. *Nash v. McNamara*, 30 Nev. 114, 16 L. R. A. (N. S.) 168, 133 A. S. 694, 93 P. 405.

The declarations of a locator that he located but one ledge may operate as an estoppel against his claiming both, where it afterwards appears that there are in fact two distinct ledges. *Van Valkenburg v. Huff*, 1 Nev. 147.

In a dispute as to the extent of a mining company's claim, the declarations of the president of the company as to the position of the boundaries, if objected to, are not admissible in evidence. *Overman S. M. Co. v. American M. Co.*, 7 Nev. 313.

Notice of mining location construed. *Weill v. Lucerne M. Co.*, 11 Nev. 200.

Deed of mining claim, how construed. *Idem*.

Second location of mining ground when not an abandonment of the first. *Idem*.

If the statute of the United States has not been complied with, and a patent is issued without authority of law, it is absolutely void. *Rose v. Richmond M. Co.*, 17 Nev. 26 (37 P. 1105), affirmed, 114 U. S. 576.

## 2424. Location notice—Form and recording—Authenticated copy evidence.

SEC. 3. Any locator or locators of a mining claim, after having established the boundaries of said claims, and after having complied with the provisions of this act with reference to the establishment of such boundaries, may file with the district mining recorder a notice of location, setting forth the name given to the lode or vein, the number of linear feet claimed in length along the course of the vein, the date of location, the date on which the boundaries of the claim were completed, and the name of the locator or locators. Should any claim be located in any section or territory where no district has been as yet formed, or where there is no district recorder, the locator or locators of such claims may file with the county recorder, notice of location as set forth above, and said notice of location will be prima facie evidence in all courts of justice of the first location of said lode or vein. Within ninety days of the date of posting the location notice upon the claim the locator shall record his claim with the mining district recorder and the county recorder of the mining district or county in which such claim is situated by location certificate which must contain:

First—The name of the lode or vein;

Second—The name of the locator or locators;

Third—The date of the location and such description of the location of said claim, with reference to some natural object or permanent monument, as will identify the claim;

Fourth—The number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width on each side of the center of the vein, and the general course of the lode or vein as near as may be;

Fifth—The dimensions and locations of the discovery shaft or its equivalent, sunk upon the claim;

Sixth—The location and description of each corner, with the markings thereon.

Any record of the location of a lode mining claim which shall not contain all the requirements named in this section shall be void. All records of lode or placer mining claims, millsites or tunnel rights heretofore made by any recorder of any mining district or any county recorder are hereby declared to be valid and to have the same force and effect as records made in pursuance of the provisions of this act. And any such record, or a copy thereof duly verified by a mining recorder or duly certified by a county recorder shall be prima facie evidence of the facts therein stated. *As amended, Stats. 1907, 420.*

See secs. 2382, 2469.

It is the record of a mining claim, and not the notice of location that must contain the reference to the natural object and only then when the local laws require a record to be made. *Brady v. Husby*, 21 Nev. 453, 33 P. 801.

Where the record of a mining claim contains such reference to a natural object as might under any circumstances identify the claim, the record is admissible in evidence, and it becomes a question of fact as to whether such reference is sufficient. *Idem.*

Where there is a mining district recorder whose place of business is publicly known, it is essential to a valid record of a mining claim that the certificate of location be recorded with the district recorder as well as with the county recorder. *Ford v. Campbell*, 29 Nev. 578 (92 P. 206).

Where the certificate of location described the claim as situated about two miles from a certain town, without giving any direction, such description did not constitute a substantial compliance with this section. *Idem.*

Recording a certificate of location is not made an essential requisite to a valid location by the laws of the United States. *Idem.*

The recording of a certificate of location of a mining claim is not essential to the validity of the location. *Idem.*

Facts held insufficient to indicate an abandon-

ment of rights under prior location. *Idem.*  
Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

A notice of location of a mining claim is not required to be recorded. *Gibson v. Hjul*, 32 Nev. 360 (108 P. 759, 761).

A notice of location of a mining claim, while not answering the requirements of this section for a certificate of location, and so not evidence of an act of location, is admissible in support of a claim of adverse possession and to explain testimony. *Idem.*

Filing of a defective certificate of a location of a mining claim or failure to file any certificate, does not invalidate the claim. *Idem.*

Notice of location of a mining claim is not required to be strictly exact, and is not controlling; courses and distances given therein yielding to monuments erected on the ground. *Idem.*

Though ore was not discovered in a so-called "discovery shaft," it is enough that the locator subsequently found valuable ore in other workings on the claim, and where ore was unquestionably discovered did more than the equivalent of that required for a discovery shaft. *Idem.*

That the end lines of a mining claim are not parallel, does not invalidate the location but only affects extralateral rights. *Idem.*

## 2425. What location includes.

SEC. 4. The location or record of any vein or lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lies inside of such lines extended downward, vertically with all parts of such lodes or veins as continue to dip beyond the side lines of the claim, but shall not include any portion of such lodes, veins, 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.

For the federal statute, see sec. 2380.

See *Ford v. Campbell*, under sec. 3 of this act.

Regarding extralateral rights where mining ground is patented under lapping locations to the same persons, see *Round Mountain M. Co. v. Round Mountain Sphinx M. Co.*, 34 Nev. —.

## 2426. Lode not to be followed beyond end lines.

SEC. 5. 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 where it is intersected by the exterior lines.

See sec. 2380.

The U. S. patent does not convey the veins or ledges which apex outside the boundary lines of the mine extended downward vertically, and the mine owner is not necessarily the owner of such veins. *Jones v. Prospect M. T. Co.*, 21 Nev. 339 (31 P. 642).

## 2427. Defective and additional certificate—Change of boundaries—Existing rights.

SEC. 6. 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 benefits of this act, such locator or his assigns may file an additional certificate, subject to the provisions of this act; *provided*, that such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or the record thereof shall preclude the claimant or claimants from proving any such titles as he or they may have held under previous location.

See sec. 2382.

## 2428. Relocation—Work to be done—New boundaries—Record.

SEC. 7. The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocater may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, in which case the record must give the depth and dimensions of the original discovery shaft at the date of such relocation, and erect new or adopt the old boundaries, renewing the posts or monuments 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 record may state that the whole or any part of the new location is located as abandoned property. If it is not known to the relocater that his location is on an abandoned claim, then the provisions of this section do not apply.

See sec. 2382.

To enable a party to maintain a right to a mining claim after the right is acquired, it is necessary that he continue substantially to comply with all the mining rules and customs. *Oreamuno v. U. S. G. & S. M. Co.*, 1 Nev. 215.

Abandonment is a mixed question of law and fact. If in fact a person intend to give up his claim and quit paying assessments in pursuance of that intention, it is an abandonment. *Idem*.

A party who insists upon forfeiture or

abandonment and relies thereon to build up a right in himself to the thing abandoned, is bound to establish the fact or facts upon which his asserted claim depends. *Idem*.

There can be no strict abandonment of property without the intention so to do. The bare lapse of time, short of the statute of limitations and unaccompanied by other circumstances would be no evidence of abandonment. *Mallett v. Uncle Sam G. & S. M. Co.*, 1 Nev. 189.

On the question of estoppel in relocation

of mining claim, see *Sever v. Gregovich*, 16 Nev. 325.

If an application for a patent to mine be abandoned and the applicant fails to do assessment work on his ground without having obtained a certificate of purchase, the ground may be relocated. *South End M. Co. v. Tinney*, 22 Nev. 19 (35 P. 89).

Where one or more of the parties first locating mining ground afterwards make a second location upon the same lode, with the names of other parties added to the notice of location, it appearing that at the time of the second location the ground was undeveloped, and it was not known that both notices were on the same lode, and it further appearing that the second notice was posted for the express purpose of protecting the original location: Held, that the second location did not of itself constitute an abandonment of the first location. *Weill v. Lucerne M. Co.*, 11 Nev. 200.

The question of abandonment is one of intention. Whether it was the intention of the locators in the first notice to abandon their interest in the ground derived from said first notice of location, was a question of fact for the jury to determine from all

the facts and circumstances of the case. *Idem*.

A party cannot locate a valid claim to a lode already located and legally possessed by others. Mining claims are not open to relocation until the rights of a former locator have been abandoned, forfeited or otherwise come to an end. *Rose v. Richmond M. Co.*, 17 Nev. 26 (37 P. 1105, affirmed, 114 U. S. 576).

Where the first claimant who takes up the claim is not a citizen, or has forfeited his right by noncompliance with the mining laws, or abandoned his claim, the mining ground staked off by him, is open to location by any citizen of the United States. *Golden Fleece M. Co. v. Cable Consolidated Co.*, 12 Nev. 312.

A locator of a mining claim on which an old tunnel had been run, who cleaned out the tunnel for a distance of about thirty feet, and who drove the tunnel ahead five or six feet, and who thereby removed several times the quantity of earth necessary to do work in new ground for the construction of a shaft or cut equivalent to a shaft, performed the statutory discovery work. *Murray v. Osborne*, 33 Nev. — (111 P. 31-34).

#### 2429. Survey and certificate of surveyor becomes part of record and evidence.

SEC. 8. Where a locator, or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral surveyor, or a licensed surveyor of this state, and his claim connected with a corner of the public or minor surveys of an established initial point, and incorporates into the record of the claim the field notes of such survey, and attaches to and files with such location certificate a certificate of the surveyor, setting forth: First, that said survey was actually made by him, giving the date thereof; second, the name of the claim surveyed and the location thereof; third, that the description incorporated in the declaratory statement is sufficient to identify. Such survey and certificate becomes a part of the record, and such record is prima facie evidence of the facts therein contained.

#### 2430. Assessment work—\$4 for eight hours.

SEC. 9. The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: One hundred dollars annually. In estimating the worth of labor required to be performed upon any mining claim, to hold the same under the laws of the United States, the value of a day's labor is hereby fixed at four dollars; *provided, however*, that in the sense of this statute eight hours of labor actually performed upon the mining claim shall constitute a day's labor.

See sec. 2382.

In an action of ejectment, to recover the possession of a mining claim, where the defendant relies upon a forfeiture by plaintiff, for failure to do the necessary work required by the act of Congress (Rev. Stats. 2326), such forfeiture need not be specially pleaded. *Steel v. Gold Lead M. Co.*, 18 Nev. 80 (1 P. 448).

After the purchase price is paid, and the receiver's receipt is taken, the locator's right to a patent is vested, and he is not required to do assessment work. *Deno v. Griffin*, 20 Nev. 249 (20 P. 308). Writ of error dismissed, 163 U. S. 683.

See *Ford v. Campbell*, under sec. 3 of this act.

#### 2431. Affidavit of work performed—Record—Evidence.

SEC. 10. Within sixty days after the performance of labor or making of improvements, required by law to be annually performed or made upon any

mining claim, the person in whose behalf such labor was performed, or improvements made, or some one in his behalf, shall make and have recorded by the mining district recorder or the county recorder in books kept for that purpose in the mining district or county in which such mining claim is situated, an affidavit setting forth the amount of money expended, or value of labor or improvements made, or both, the character of expenditures or labor or improvements, a description of the claim or part of the claim affected by such expenditures, or labor or improvements, for what year, and the name of the owner or claimant of said claim at whose expense the same was made or performed. Such affidavit, or a copy thereof, duly certified by the county recorder, shall be prima facie evidence of the performance of such labor or the making of such improvements, or both.

See sec. 2445.

See Ford v. Campbell, under sec. 3 of this act.

Cited, State ex. rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

### 2432. Notice to a delinquent coowner—Penalty for failure to give receipt—Affidavit—Evidence.

SEC. 11. Whenever a coowner or coowners shall give to a delinquent coowner or coowners the notice in writing or notice by publication provided for in section 2324, Revised Statutes of the United States, an affidavit of the person giving such notice, stating the time, place, manner of service, and by whom and upon whom such service was made, shall be attached to a true copy of such notice, and such notice and affidavit must be recorded by the mining district recorder or the county recorder, in books kept for that purpose, in the mining district or county in which the mining claim is situated; within ninety days after the giving of such notice, or if such notice is given by publication in a newspaper, there shall be attached to a printed copy of such notice an affidavit of the printer or his foreman or principal clerk of such paper, stating the date of the first, last and each insertion of such notice therein, and when and where the newspaper was published during that time, and the name of such newspaper. Such affidavit and notice shall be recorded as aforesaid within one hundred and eighty days after the first publication thereof. The original of such notice and affidavits, or a duly certified copy of the record thereof, shall be evidence that the delinquent mentioned in section 2324 has failed or refused to contribute his proportion of the expenditure required by that section and of the service or publication of said notice; *provided*, the writing or affidavit hereinafter provided for is not of record. If such delinquent shall, within the ninety days required by section 2324 aforesaid, contribute to his coowner or coowners his proportion of such expenditures, such coowner or coowners shall sign and deliver to the delinquent or delinquents a writing, stating that the delinquent or delinquents by name, has within the time required by section 2324 of the Revised Statutes of the United States contributed his share for the year ....., upon the ..... mine, and further stating therein the district, county and state where the same is situate and the book and page where the location notice is recorded; such writing shall be recorded in the office of the county recorder of said county. If such coowner or coowners shall fail to sign and deliver such writing to the delinquent or delinquents within twenty days after such contribution, the coowner or coowners so failing as aforesaid shall be liable to a penalty of one hundred dollars, to be recovered by any person for the use of the delinquent or delinquents in any court of competent jurisdiction. If such coowner or coowners fail to deliver such writing within said twenty days, then the delinquent with two disinterested persons having personal knowledge of such contribution, may make affidavit setting forth in what manner, the amounts of, to whom and upon what mine, such contribution was made.

Such affidavit, or a record thereof in the office of the county recorder of the county in which said mine is situate, shall be prima facie evidence of such contribution.

This section supersedes act of March 5, 1887, 136.

For the federal statute regarding notice to delinquent coowners, see sec. 2382. Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

### 2433. Notice to claim but one location.

SEC. 12. No notice of location of a lode claim shall claim more than one location, whether the location be made by one or several persons. And if such notice purport to claim more than one location it shall be absolutely void, except as to the first location therein described. And if they are described together, or so that it cannot be told which location is first described, the notice of location shall be void as to all.

### 2434. Location of placer claim, how made—Boundaries—United States survey.

SEC. 13. The location of a placer claim shall be made in the following manner: By posting thereon, upon a tree, rock in place, stone, post, or monument, a notice of location, containing the name of the claim, name of locator or locators, date of location, and number of feet or acres claimed, and by marking the boundaries and the location point in the same manner and by the same means as required by the laws of this state for marking the boundaries of lode claim locations; *provided*, that where the United States survey has been extended over the land embraced in the location, the claim may be taken by legal subdivisions, and, except the marking of the location point as hereinbefore prescribed, no other markings than those of said survey shall be required. *As amended, Stats. 1899, 94.*

See secs. 2387-2389.

### 2435. Location work on placer—Location certificate—Record—Evidence.

SEC. 14. Within ninety days after the posting of the notice of location of a placer claim, the locator shall perform not less than twenty dollars worth of labor upon the claim for the development thereof, and shall have recorded by the mining district recorder and the county recorder of the district and county in which the claim is situated a certificate which shall state the name of the claim, designating it as a placer claim, name of locator or locators, date of location, number of feet or acres claimed, a description of the claim with regard to some natural object or permanent monument, so as to identify the claim, and the kind and amount of work done by him as herein required, and the place on the claim where said work was done. This certificate, or the record thereof, or a duly certified copy of said record, shall be prima facie evidence of the recitals therein. But if such certificate do not state all the facts herein required to be stated, it shall be void. *As amended, Stats. 1899, 94.*

See secs. 2469-2473.

Cited, *Ford v. Campbell*, 29 Nev. 589.

### 2436. Millsite.

SEC. 15. The proprietor of a vein or lode claim or mine, or the owner of a quartz mill or reduction works, may locate five acres of nonmineral land as a millsite.

For the federal statute relating to location of millsites, see sec. 2499.

### 2437. Millsite—Location notice, what to contain—Marking boundaries.

SEC. 16. The locator of a millsite location shall locate his claim by posting a notice of location thereon, which must contain: 1st, the name of the locator or locators; 2d, the name of the vein or lode claim, or mine, of which he is the proprietor, or the name of the quartz mill or reduction works of

which he is the owner; 3d, the date of the location; 4th, the number of feet or acres claimed; 5th, a description of the claim by such reference to a natural object or permanent monument as shall identify the claim or mill-site. And by marking the boundaries of his claim in the same manner as provided in this act for the marking of the boundaries of a placer mining claim, so far as the same may be applicable thereto.

#### 2438. Millsite—Location notice to be recorded.

SEC. 17. The locator of a millsite claim or location shall within thirty days from the date of his location record his location with the mining district recorder and the county recorder of the district or county in which such location is situated, by a location certificate which must be similar in all respects to the one posted on the location.

See *Ford v. Campbell*, under sec. 3 of this act.

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

#### 2439. Millsite—When location of void—Necessary record—Description.

SEC. 18. Any record of a millsite location which shall not contain the name of the locator or locators, the name of the vein or lode claim or mine of which the locator is the proprietor, or the name of the quartz mill or reduction works of which the locator is the owner, the number of feet or acres claimed, and such description as shall identify the claim with reasonable certainty, shall be void.

#### 2440. Tunnel right, how located—What notice must contain.

SEC. 19. The locator of a tunnel right or location shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel which must contain: 1st, the name of the locator or locators; 2d, the date of the location; 3d, the proposed course or direction of the tunnel; 4th, the height and width thereof; 5th, the position and character of the boundary monuments; 6th, a description of the tunnel by such reference to a natural object or permanent monument as shall identify the claim or tunnel right.

See sec. 2381.

#### 2441. Tunnel right—Boundaries—Monuments—Size of claim.

SEC. 20. The boundary lines of the tunnel shall be established by stakes or monuments placed along such lines at an interval of not more than three hundred feet from the face or point of commencement of the tunnel to the terminus of three thousand feet therefrom. The stakes or monuments shall be of the same size and character as those provided for lode or placer claims in this act.

#### 2442. Tunnel right—When location to be recorded.

SEC. 21. The locator of a tunnel right or location shall within sixty days from the date of the location record his location with the mining district recorder and the county recorder of the county or district in which such location is situated, which must be similar in all respects to the one posted on the location. Any record of a tunnel right or location which shall not contain all the requirements named in this section shall be void.

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

See *Ford v. Campbell*, under sec. 3 of this act.

#### 2443. Tunnel—Location of blind lodes in.

SEC. 22. All blind lodes, or veins or lodes not previously known to exist, discovered in a tunnel run for the development of a vein or lode, or for the discovery of mines, and within three thousand feet from the face of such

tunnel, shall be located upon the surface and held in like manner as other lode claims under the provisions of this act.

See sec. 2381.

#### 2444. Provisions of this act applicable.

SEC. 23. The provisions of this act shall be construed as equally applicable to all classes of locations except where the requirement as to any one class is manifestly inapplicable to any other class or classes.

#### 2445. Certificate of location and labor need not be sworn to.

SEC. 24. Certificates of location and of labor and improvements necessary to hold claims need not be sworn to, and are not required to be in any specified form, nor to state facts in any specific order; but must truly state the required facts.

The words "necessary to hold claims," do not refer to "certificates of location," but only to the words "labor and improvements," which referred to the provisions of the federal statutes in regard to annual labor. *Ford v. Campbell*, 29 Nev. 578 (92 P. 206).

#### 2446. Recording of locations when no district recorder.

SEC. 25. Where there is no mining district, or where a district having once existed the residence of the officers within the district and their places of business within the district where the books are kept are not publicly known, district recording shall not be required of the locator or claim owner. But recording shall be required in the office of the county recorder in all cases; as well where there is a district recorder as where there is none.

Secs. 24 and 25 added, Stats. 1899, 95.

See *Ford v. Campbell*, under sec. 3 of this act.

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

### *An Act to provide for the location of lands containing salt.*

Approved February 24, 1865, 172

#### 2447. Location of saline lands.

SECTION 1. Any person may locate, claim, and hold not exceeding one hundred and sixty acres of the public lands within this state containing salt or saline matter.

For the federal law relating to location of saline lands, see sec. 2392.

#### 2448. Duty of persons locating salt lands—Survey—Recording plat.

SEC. 2. It shall be the duty of any person or persons locating salt lands to have the same surveyed by the county surveyor of the county in which said lands are located, within thirty days from the date of location; and the surveyor shall, within thirty days from the completion of said survey, make and deliver to the party employing him to make the survey, a correct description and plat of the lands thus surveyed, and the same shall be recorded in the office of the county recorder of said county within thirty days from the delivery thereof by the surveyor.

#### 2449. Location made prior to passage of act ratified.

SEC. 3. All locations made prior to the passage of this act upon saline lands are hereby ratified and confirmed to the locators thereof, their heirs and assigns; *provided*, the parties now holding and occupying said lands shall, within sixty days from the passage of this act, have the same surveyed and recorded as provided in section 2 of this act.

#### 2450. When subject to relocation.

SEC. 4. All persons claiming and holding saline lands under the provisions of this act shall keep and hold actual possession of said lands by occupying

the same, and whenever said lands are abandoned for a period longer than sixty days, the same shall be subject to relocation.

*An Act for the better protection of the rights of locators of mining claims.*

Approved March 20, 1907, 193

**2451. Recorder to give receipt for location certificate—To contain what.**

SECTION 1. Whenever the locator of a mining claim shall file his certificate of location in accordance with the law and pay the prescribed fees therefor, it shall be the duty of the mining district recorder, and of the county recorder, with whom said certificate is filed, forthwith to give such locator, or his agent, a receipt therefor; said receipt shall contain name of the claim given in notice filed and date of location thereof, stating the day and hour such certificate of location was filed.

**2452. Receipt prima facie evidence.**

SEC. 2. The receipt called for in section 1 of this act shall be prima facie evidence that the certificate of location has been duly filed, and the date of filing.

**2453. Mining recorder to procure seal—Exemption.**

SEC. 3. Each district mining recorder shall provide a seal on which shall be engraved the name of the mining district, the county and state, with which said seal he shall authenticate all of his official acts, which seal, together with his official documents and books, shall not be liable to be seized on execution.

**2454. County recorder to notify mining recorders.**

SEC. 4. It shall be the duty of the several county recorders, within ten days after the passage of this act, to notify each of the several district mining recorders in their respective counties of the passage of this act, which shall take effect on and after the first day of April, 1907.

**2455. Violation misdemeanor—Penalty.**

SEC. 5. Any mining district recorder or county recorder neglecting or refusing to comply with the provisions of this act shall be deemed guilty of misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred (\$500) dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

*An Act to encourage mining.*

Approved March 3, 1887, 102

**2456. May enter upon mineral lands—Compensation for injury—Improvements may be condemned.**

SECTION 1. The several grants made by the United States to the State of Nevada reserved the mineral lands. Sales of such lands made by the state were made subject to such reservation. Any citizen of the United States, or person having declared his intention to become such, may enter upon any mineral lands in this state, notwithstanding the state's selection, and explore for gold, silver, copper, lead, cinnabar, or other valuable mineral, and upon the discovery of such valuable mineral may work and mine the same in pursuance of the local rules and regulations of the miners and the laws of the United States; *provided*, that after a person who has purchased land from the state has made valuable improvements thereon, such improvements shall not be taken or injured without full compensation. But such improvement may be condemned for the uses and purposes of mining in like manner as private property is by law condemned and taken for public use. Mining for

gold, silver, copper, lead, cinnabar, and other valuable mineral, is the paramount interest of this state, and is hereby declared to be a public use.

Cited, *Ex Parte Boyce*, 27 Nev. 33 (65 L. R. A. 47, 75 P. 1).

See secs. 2458-2459.

For condemnation of property, see secs. 5606-5629.

## 2457. State disclaims interest in mineral lands.

SEC. 2. Every contract, patent or deed hereafter made by this state or the authorized agents thereof, shall contain a provision expressly reserving all mines of gold, silver, copper, lead, cinnabar and other valuable minerals that may exist in such land, and the state, for itself and its grantees, hereby disclaims any interest in mineral lands heretofore or hereafter selected by the state on account of any grant from the United States. All persons desiring titles to mines upon lands which have been selected by the state must obtain such title from the United States under the laws of Congress, notwithstanding such selection. *As amended, Stats. 1897, 36.*

Regarding the reservation of mines from entries of other lands under the act of Congress, see sec. 2407.

One taking a patent to such lands, with such reservation acquired no interest in a mine located after his application was filed and before the patent issued, notwithstanding the selection by the state under the

grant from the government determined that the lands were agricultural and nonmineral within the meaning of the grant. *Stanley v. Hirsching*, 26 Nev. 55, 66 (63 P. 59).

*An Act supplementary to an act entitled "An act to encourage the mining, milling, smelting or other reduction of ores in the State of Nevada," approved March 1, 1875.*

Approved March 14, 1907, 140

## 2458. Prospector may enter on private land.

SECTION 1. Any person, a citizen of the United States, may enter upon any unfenced and unimproved land in the State of Nevada held in private ownership, excepting mining claims and mining property already located or occupied for mining purposes, and may prospect thereon for gold, silver or other valuable minerals or metals, being responsible to the owner of the land for all damage done thereon.

See sec. 2456.

## 2459. May locate mineral deposit thereon and acquire title, how.

SEC. 2. Any person, a citizen of the United States, discovering a ledge or deposit containing gold, silver or other valuable mineral or metals in or upon any unfenced and unimproved land in this state held in private ownership, excepting mining claims or mining property already located or occupied for mining purposes, may locate such ledge or deposit, in accordance with the laws of the United States and of this state in respect to the location of mining claims, the same as though such ledge or deposit was found upon the public domain, and may acquire title to such land so located by means of the special proceedings prescribed in this act. The said special proceedings shall be substantially as follows: There shall be filed in the clerk's office of the district court in the county where the real estate is situated a petition verified according to law, stating therein the names of the person or persons presenting the petition; that he or they have discovered a ledge or deposit containing gold, silver, or some other valuable mineral or metal; the description by metes and bounds, or by some other accurate designation of the tract or tracts of land, located in the manner of mining claims as herein provided and desired to be appropriated for mining purposes; that said land is more valuable for mining purposes than the purpose for which the same is being held; the names of those in possession of said land, and those claiming any right, title or interest therein, so far as the same can be obtained by reasonable diligence.

**2460. Method of proceeding prescribed.**

SEC. 3. That the proceedings following the filing of such petition shall be as prescribed in that certain act of the legislature of this state entitled "An act to encourage the mining, milling, smelting or other reduction of ores in the State of Nevada," approved March 1, 1875, in so far as the same are not inconsistent with the provisions of this act.

**2461. Title, how acquired.**

SEC. 4. If upon the hearing of the petition filed as provided in this act it appears to the satisfaction of the court or judge thereof that the land in question is more valuable for mining than for the purpose for which the same is being used, then the petitioner or petitioners shall acquire title thereto in manner similar to that prescribed in the act to which this act is supplementary.

**2462. Basis for determining value.**

SEC. 5. In determining the value of the land as a basis for the compensation which the petitioner or petitioners shall pay to the owners thereof, the minerals therein contained shall not be considered as going to make up the value, but the value which shall govern is the reasonable value of the land for the use to which the same has previously been put, or reasonably might be expected to be put in the future, by the owners thereof.

NOTE—The act of which this act is supplementary is covered by chapter 66 of civil practice act and is for that reason omitted, secs. 5606-5629.

*An Act amendatory of and supplemental to an act entitled "An act to provide for the better preservation of the mining records in certain districts in this state," approved March 6, 1879.*

Approved February 10, 1881, 33

**2463. County recorders to be ex officio district mining recorders at county-seat.**

SECTION 1. In every mining district in this state, in which the seat of government of any county is situated, the county recorder of said county shall be ex officio district mining recorder, subject in the discharge of his duties to such rules, regulations, and compensations as may be now in force or hereafter prescribed by the mining laws of the mining districts respectively to which this act is applicable. He shall, as such ex officio mining recorder, be responsible on his official bond for the faithful performance of the duties of his office and the correct and safe keeping of all the records thereof, and the correct and safe keeping of the copies of all the records mentioned and referred to in section 2 of this act.

**2464. Duties of mining recorders to certify and transmit copies quarterly.**

SEC. 2. It shall be the duty of each and every mining recorder of the several mining districts in the state, on or before the first Monday in January, April, July and October in each year, to transcribe into a suitable book or books, to be provided for that purpose, and to deposit and file with the county recorders of the respective counties in which said mining districts may be located, a full, true, and correct copy of the mining records of the respective mining districts for the three months next preceding said first Mondays in January, April, July and October, duly certified under oath; *provided*, this section shall not apply to the mining recorder created by section 1 of this act.

**2465. County commissioners to provide books.**

SEC. 3. There shall be provided by the county commissioners of the several counties in this state, and furnished to each mining recorder, on his

application, suitable books, into which the mining records mentioned in section 2 of this act shall be transcribed.

#### 2466. Fees to recorders.

SEC. 4. The several mining recorders shall receive for services herein required by section 2 of this act, one dollar for the transcript of each claim, including the oath, which shall be paid at the time of recording by the parties making the locations.

#### 2467. Copies of records introduced in court in evidence.

SEC. 5. The certified copies of the mining records certified to be deposited and filed as herein provided, shall be received in evidence, and have the same force and effect in all courts as the original.

#### 2468. Penalty for not complying.

SEC. 6. Any person neglecting or refusing to comply with the provisions of section 2 of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Original act, Stats. 1879, 80, consisted of but one section and that is amended. It is therefore omitted as having been superseded by this act.

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

*An Act to provide for the better preservation of the mining records of this state, and to repeal all other acts in conflict with this act.*

Approved February 14, 1885, 27

#### 2469. Duties of mining recorders—Duplicate notices for county recorders.

SECTION 1. It shall be the duty of each and every mining recorder of the several mining districts of the state to require all persons locating and recording a mining claim to make a duplicate copy of each and every mining notice, which copy the said mining recorder shall carefully compare with the original, and mark "duplicate" on its face or margin, and he shall immediately deposit with or transmit the same to the county recorders of the respective counties in which said mining district may be located.

See secs. 2382-2435.

#### 2470. Fees to be collected.

SEC. 2. The said district mining recorders, at the time of comparing said duplicate notices with the original, shall collect from the locators of said mining claims the sum of one dollar for each and every notice compared, which sum he shall transmit, together with the said duplicate notices, to the county recorders of the respective counties in which said mining claims shall be located.

#### 2471. Duplicate to be forwarded to county recorder.

SEC. 3. Whenever, owing to the distance of the mining district from the county-seat, it becomes inconvenient for the district mining recorder to personally deposit the duplicate copy with the county recorder, then in that case he may forward the same by mail or express, or such other manner as will insure safe transit and delivery to the county recorder.

#### 2472. Fees for recording—Location out of district recorded with county recorder.

SEC. 4. The county recorders of the several counties shall receive for their services for recording each of said duplicate notices mentioned in section 2 of this act, the sum of one dollar; *provided*, that in case the location is made

outside of an organized mining district or in the absence of a mining recorder in any organized district, then the person or persons making such location shall within ninety days after making such location transmit a duplicate copy of such notice to the recorder of the county in which the location is made and the recorder shall record the same for a fee of one dollar. *As amended, Stats. 1897, 77.*

#### 2473. Duplicate notice evidence same as original.

SEC. 5. The record of any original or duplicate notice of the location of a mining claim in the office of the county recorder as herein provided, shall be received in evidence, and have the same force and effect in the courts of the state, as the original mining district records. *As amended, Stats. 1897, 77.*

See sec. 2435.

#### 2474. Penalty.

SEC. 6. Any person neglecting or refusing to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by such fine and imprisonment.

For recording of mining claims, see sec. 2424.

*An Act to regulate grubstake contracts and prospecting agreements, and to provide for the recording of the same.*

Approved March 29, 1907, 370

#### 2475. Contracts to be recorded—Evidence.

SECTION 1. All grubstake contracts and prospecting agreements hereafter entered into, and which may in any way affect the title of mining locations, or other locations under the mining laws of this state, shall be void and of no effect, except between the parties to said contract or agreement, unless the instrument shall first have been recorded in the office of the county recorder of the county in which said instrument is made. The instrument or instruments shall be duly acknowledged before a notary public or other person competent to take acknowledgments. Grubstake contracts and prospecting agreements, duly acknowledged and recorded as provided for in this act, shall be prima facie evidence in all courts of justice in this state in all cases wherein the title to mining locations and other locations under the mining laws of this state are in dispute.

*An Act for the encouragement of mining.*

Approved March 7, 1865, 228

#### 2476. Mining companies may sue minority owners for expenditures.

SECTION 1. When three or more persons, owning or claiming as joint tenants in common, or coparceners, a majority of the number of feet, shares, or interests in any mining claim in this state, shall have formed, or shall hereafter form themselves into a corporation or organized association, for the purpose of working and developing such mining claim, and shall actually proceed to work and develop the same, such corporation or association may, without demand, except by commencement of action, institute in any court of competent jurisdiction, suit in its corporate or associate name, as upon an implied contract for the payment of money, against any person not a stockholder in or member of such corporation or association, owning or claiming to own in said mining claim as joint tenant, tenant in common, or coparcener, for his or her proportion of the money actually expended, or indebtedness assumed by such corporation or association, in the actual and necessary working and development of said mining claim.

**2477. Money expended or indebtedness assumed.**

SEC. 2. The proportion of money expended or indebtedness assumed by such corporation or association, and for the payment of which such joint tenant, tenant in common, or coparcener, is made liable under the provisions of this act, shall be deemed such an amount of money or indebtedness as bears the same proportion to the whole amount of money expended or indebtedness assumed, as the interest in the mining claim owned or claimed by such joint tenant, tenant in common, or coparcener, bears to the whole of the mining claim.

**2478. Who may join in suit—Issue of facts—Judgment to be separate.**

SEC. 3. Any number of such joint tenants, tenants in common, or coparceners, may be joined as parties defendant in any suit instituted under the provisions of this act; but each defendant shall be entitled to plead separately; and when the cause shall be tried by jury, as many of the separate issues of fact as may be agreed upon by the parties may be determined by the same jury. Judgment shall be rendered for or against each defendant separately, and the costs of suit may be apportioned among the several parties defendant, against whom judgment may be rendered, in such manner as to the court may appear just and equitable; *provided*, that in all cases the defendant, prior to the institution of suit under the provisions of this act, shall be entitled to three weeks' notice of the intention of such corporation or association to institute such suit, which notice may be either personally or by the publication in some newspaper published in the county within which such mining claim is located; and if none be published in said county, then in the nearest adjoining county.

**2479. What summons shall specify.**

SEC. 4. The summons shall specify: First, the amount of money actually expended, or indebtedness assumed, by such corporation or association, in the actual and necessary working and development of said mining claim; and, second, the amount due from each joint tenant, tenant in common, or coparcener, as his or her proportion of such money or indebtedness.

**2480. Where suit to be brought—Service of summons.**

SEC. 5. All suits instituted under the provisions of this act shall be brought in the county within which the mining claim may be located; and where the defendant is a nonresident of the county within which suit is brought, but a resident of the state, service of summons may be had personally, as in other cases, or by publication in the same manner as provided by law for service of summons by publication where the defendant is a nonresident of the state and a resident of the State of California; and all of the provisions of law regulating proceedings in other civil cases shall, so far as the same are applicable, apply to suits instituted under this act.

**2481. Lien.**

SEC. 6. The amount of money expended or indebtedness assumed, by such corporation or association, as the proportion due from such joint tenant, tenant in common, or coparcener, for the actual and necessary working and development of said mining claim, shall be a lien in favor of such corporation or association upon the interest of such joint tenant, tenant in common, or coparcener, in such mining claim, from the time such money was expended, or indebtedness assumed, by such corporation or association; which lien shall bind such interest from the time of such payment or assumption as against any subsequent purchaser, mortgagee, or other person acquiring a lien upon, or title to, or interest in, the same. Suit may be instituted against the person owning or claiming such interest at the time of the commencement of the action for the recovery of the whole amount due upon such interest; and

all judgments rendered in any action instituted under the provisions of this act, and any execution issued thereon, shall bind and run against such interest, and no other property of the defendant shall be subject to execution on said judgment.

#### 2482. Sales to be absolute.

SEC. 7. All sales of any interest in a mining claim under an execution issued on a judgment obtained in any suit instituted under the provisions of this act shall be absolute, and the purchaser shall be entitled to the immediate possession of the interest purchased by him at such sale.

*An Act to facilitate the recovery of ores, gold, silver, lead or copper, taken by theft or trespass, and to provide a punishment for the violations of the provisions thereof.*

Approved March 29, 1907, 416

#### 2483. Assayers and buyers to keep record—What shall state.

SECTION 1. That every assayer, person, partnership, association or corporation engaged, or who or which may hereafter be engaged, directly, indirectly or occasionally in the business, or who or which, being engaged in other business, shall at any time assay, mill, sample, reduce, ship, transport, buy, purchase, trade in, barter, concentrate, smelt, refine or sell metalliferous bearing ores, free gold, gold dust, gold amalgam, gold nuggets, gold specimens, gold bullion, free silver, silver nuggets, silver bullion, lead or lead bullion, copper or copper bullion, shall keep and preserve a book of records thereof, in which shall be entered at the times they shall occur the following entries, with the dates thereof:

First—The name of the assayer, person, persons, partnership, association or corporation on whose behalf such ore, free gold, gold dust, gold amalgam, gold nuggets, gold specimens, gold bullion, free silver, silver nuggets, silver bullion, lead, lead bullion, copper or copper bullion, is delivered, or purchased, or sampled, or transported, or sold, or reduced, or smelted, or milled, as the case may be.

Second—The weight or quantity thereof, and a short description of each and every lot or consignment thereof.

Third—The name or names of the teamster or teamsters, packer or packers, or other person or persons actually delivering or transferring the same, and each and every portion of the same, and the name or names of the owner or owners of the team, pack train, railway or express company, automobile or other conveyance used or employed in and for such delivery.

Fourth—The name and location of the mine, mining claim, mining location, or other premises from which the same has been or purports to have been extracted, mined or procured, and if the products or property consists of concentrates, amalgam, bullion concentrates, free gold or free silver, there shall also be recorded the name and location of the mill, concentrator, refinery or smelter which milled or purported to have milled, reduced, concentrated, smelted or refined the same, and for whom such milling, reducing, refining, concentration or smelting was done.

Fifth—The date of the receipt thereof, and whether received by purchase, barter, trade or gift, or for treatment, concentration, reduction, sampling, refining, assay, transportation, sale, exchange or otherwise.

Sixth—Whether [whenever] the assayer, person, partnership, association or corporation receiving any property hereinabove specifically designated, shall become the owner thereof by purchase, barter, trade or exchange, there shall also be recorded in said book a statement showing the amount and terms of such purchase, barter, trade or exchange.

Seventh—Whenever the assayer, person, partnership, association or corporation receiving any property hereinabove specifically designated, shall

become the owner thereof by purchase, barter, trade or exchange there shall also be recorded in said book a statement showing the amount and terms of such purchase, barter, trade or exchange.

Seventh—Whenever the assayer, person, partnership, association, or corporation receiving any property herein specifically designated shall as agent, factor, broker or in any other capacity sell, barter, trade or exchange the same for and in behalf of the owner or reputed owner thereof, there shall also be recorded in said book the date, names of the parties, the amount and character of the property sold or disposed of, (by) and the amount of such transaction.

Eighth—The interest, if any, of the delivering person, partnership, association or corporation in the property or any part thereof herein above specifically designated, whether as owner, lessee, pledgee, superintendent, foreman or workman in the mine, mining claim, mining location, premises, mill, concentrator, sampler, refiner or smelting works from which the same was or purports to have been mined or treated.

#### 2484. Stolen ore, how recovered—Affidavit—Examination of books.

SEC. 2. Whenever affidavit shall be made by any person before any justice of the peace or district judge that any ore, free gold, gold dust, gold amalgam, gold nuggets, gold specimens, gold bullion, free silver, silver nuggets, silver bullion, lead, lead bullion, copper or copper bullion has been stolen or unlawfully taken from him or from any copartnership, association or corporation in which he is interested, or in which he is an officer or agent, stating as near as may be the character, amount and value thereof, such person by himself, or his attorneys, or both, upon presentation of such affidavit, or a copy thereof, duly certified as such by the officer before whom the same is verified, shall have access to such book or books of any and every assayer, person, partnership, association or corporation hereby required to keep the same, and may freely and without hindrance or interference, read and examine all entries which may have been made therein during a period of sixty days next preceding the date of such affidavit; *provided, nevertheless*, that the person making such affidavit or the partnership, association or corporation, or in whose behalf the same is made, shall at the time thereof have a present ownership or interest in the assay office, mine, claim, premises, mill, smelter, concentrator, refinery or establishment, from which such ores, free gold, gold dust, gold amalgam, gold specimens, gold bullion, silver, silver nuggets, silver bullion, lead, lead bullion, copper, copper bullion, has been stolen or unlawfully taken or alleged to have been stolen or unlawfully taken.

#### 2485. Failure to keep or making false record punished.

SEC. 3. Every assayer, person, copartnership, association or corporation described in section 1 of this act, who or which shall fail, refuse or neglect to keep the book or books, or to make the entries therein as hereby required, or who or which shall make or cause to be made any false or fictitious entry therein, or who or which shall refuse the right of inspection thereof to any person entitled thereto, as herein provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than three hundred dollars or more than one thousand dollars.

#### 2486. Failure, refusal or neglect no defense.

SEC. 4. If any assayer, person, partnership, association or corporation shall fail, refuse or neglect to make the inquiries or secure the information necessary to the making of the proper[ty] entries in said book as provided in section 1 of this act, or shall so negligently and imperfectly make such entry or entries that the nature, character or value of the ore or other property therein mentioned the assayer, partnership, person, association or corporation delivering the same or receiving the proceeds thereof cannot be

ascertained, identified or determined, or shall fail, neglect or refuse to keep such book or books, or shall wilfully lose or mislay or wilfully or knowingly permit to be lost or mislaid the said book or books, or that the same cannot be produced for inspection as herein provided, such failure, refusal or neglect shall not excuse, protect or operate as a defense to any such assayer, partnership, association or corporation as defendant or defendants in any action or prosecution brought or instituted under the provisions of this act.

*An Act to regulate the purchase of ore.*

Approved March 29, 1907. 365

**2487. Possessor of mining claim deemed owner of ore.**

SECTION 1. Any person, copartnership, association or corporation in the actual and peaceable possession of any mining claim, under claim or color of title, and engaged in the mining, shipment and treatment, or sale of ores therefrom, shall, as to all persons purchasing such ore or ores in good faith and without notice as herein provided, of the title or claim of title or ownership of any other person, copartnership, association or corporation thereto shall be deemed to be the lawful owner or owners of such ore or ores.

**2488. Purchaser in good faith deemed owner.**

SEC. 2. Any person who, or copartnership, association or corporation which shall in good faith and in the usual course of business and without notice, as hereinafter provided, purchase and obtain delivery of any ore or ores from any person, copartnership, association or corporation in possession of the mines, mining claim or claims, from which such ore or ores shall have been mined and extracted, shall be deemed the owner or owners of such ores except as herein provided; and he or they shall not be liable to, or subject to any action at law or in equity, for the recovery of the same or the value thereof by any person, copartnership, association or corporation who or which may thereafter be adjudged to be the owner or owners of such mine, mines, mining claim or claims.

**2489. Notice not to purchase—Action for recovery of ore—Injunction.**

SEC. 3. If any person, copartnership, association or corporation shall be or shall claim to be the owner or owners, or entitled to the possession or enjoyment of any mine, mines, mining claim, claims or premises, then in the possession of some other person, copartnership, association or corporation claiming to be the owner or owners or entitled to the possession thereof, and mining, shipping and treating or selling the ore therefrom, may, if he, they, or it shall intend or desire to hold purchasers of or those intending to purchase such ore or ores, responsible for the value thereof, serve or cause to be served upon such purchaser or purchasers, or intending purchaser or purchasers, a notice in writing, which shall contain the name of the mine, mines, mining claim, claims or premises, the name of the person, copartnership, association or corporation claiming or asserting ownership or right to the possession or enjoyment thereof, the name or names of the person, copartnership, association or corporation in possession of and mining, shipping and selling ore therefrom, and warning such purchaser or purchasers, or intending purchaser or purchasers, that he, they or it will be held liable and responsible for all ore or ores by him, them, or it purchased and delivered or to be purchased and delivered from such mine, mines, mining claim, claims or premises by such person, copartnership, association or corporation, or his, their or its heirs, assigns or agents subsequent to the service of such notice. Within thirty days from and after the service of such notice, the person, copartnership, association or corporation serving or causing to be served the same, shall institute an action to enforce his, their or its title in some court of competent jurisdiction against the person, copartnership, association or

corporation in possession of and mining and shipping ore from such mine, mines, mining claim, claims or premises, and to enjoin him, them or it from the mining or shipment and sale of ores taken therefrom, pending such action, and at once notify such purchaser or purchasers or intending purchaser or purchasers of such ore or ores of the pendency of such action; *provided*, that if the notice hereinabove required shall be served after an action shall have been instituted, it shall not be necessary to commence another under the provisions hereof.

**2490. Claimant serving notice and not bringing suit liable for double damages.**

SEC. 4. If any person, copartnership, association or corporation claiming title to or right of possession of such mine, mines, mining claim, claims or premises, not having before then brought action, shall serve a notice upon any purchaser or purchasers or intending purchaser or purchasers of ore or ores, as provided in section 3 of this act, and shall fail or neglect to institute an action as herein required, such notice shall be deemed to have been waived, and the party or parties serving such notice shall be liable to the parties injured thereby in double damages including costs and reasonable attorney fees, and such purchaser or purchasers or intending purchaser or purchasers shall not be bound by anything therein contained.

**2491. Purchaser responsible to real owner.**

SEC. 5. Any purchaser of ore or ores, who or which shall have received the notice herein provided for, and followed or preceded by the commencement of an action, as herein set forth, [who] shall purchase or continue to purchase and receive ores taken from the mine, mines, mining claim, claims or premises named therein, shall be liable and responsible for the value thereof to the person, copartnership, association or corporation who or which shall be ultimately adjudged or decreed to be the owner or entitled to the possession thereof.

*An Act to protect the rights of owners of stock shares and other interests in the mineral and metal-yielding mines of this state.*

Approved February 21, 1877, 80

**2492. Provision for inspection of mines by stockholders.**

SECTION 1. Any person who shall be the bona fide owner of stock shares representing the value of one-fifth of one per cent of the original capital stock of any company incorporated for the purpose of working upon and mining in any lode, ledge, deposit, or bed of the precious metals, or useful minerals, in this state, and any number of persons who shall be bona fide owners of an aggregate number of mining shares, amounting in value to one-fifth of one per cent of said capital stock, at the time application for a permit to examine any such mine shall be made, such owner or owners of mining stock shall, upon a written order from the county clerk, or from the justice of the peace of the county in which such lode, ledge, deposit, or bed is located, be entitled to the privilege of fully examining all of the shafts, adits, borings, drifts, stopes, hoisting apparatus, and every and all properties and appurtenances belonging to any such mining company; *provided*, that not more than one owner of said percentage or aggregate percentages of such mining stock shall either in person, or by an accredited agent, be entitled to such written order for examination of any specified mine or mining property, oftener than twice in one month; these days shall, however, not be more than fourteen, nor less than fifteen days apart. It shall be the duty of the superintendent or other person or parties in charge of any incorporated mining claim, or mining property in this state, to keep posted in some conspicuous

place at or near the mine, the day of the week in which authorized stockholders may be admitted under the provisions of this act. *As amended, Stats. 1879, 57.*

#### 2493. Registration—Applicant for privileges—Oath—Fee.

SEC. 2. The county clerk, or justice of the peace, in each of the counties of this state, shall keep in his office a suitable book of registration, in which he shall enter the names of all persons who shall be entitled to the privileges granted by this act; and the county clerks or justices of the peace of the several counties in this state are hereby authorized to administer an oath or affirmation to each and every application for said privileges; and for administering such oath or affirmation, and for registering the name of the applicant, the clerk or justice of the peace shall receive a fee of one dollar, to be paid by the applicant at the time of registration.

#### 2494. Stock certificate to be presented—Oath of applicant.

SEC. 3. Upon making application as provided in section 2 of this act, for the privilege of entering and examining any of the mining properties mentioned in section 1 of this act, the applicant shall present to the county clerk or justice of the peace, certificates of stock shares representing in value one-fifth of one per cent of the original capital stock of the company whose mine or mining property he or she desires to examine. Thereupon the applicant shall make oath or affirmation that the said stock certificate or stock certificates presented by him or her are actually his or her own property, or that such certificates of stock at the time of presentation really belong to the party or parties whom he or she is, under the provisions of section 1 of said act, authorized to represent. *As amended, Stats. 1879, 57.*

#### 2495. Order for admission to mine.

SEC. 4. Immediately upon complying with the provisions of section 3 of this act, it shall be the duty of the county clerk, or justice of the peace, to furnish the applicant with a written order for admission to the mine and mining properties which he or she may desire to examine. *As amended, Stats. 1879, 58.*

#### 2496. Penalty for refusal.

SEC. 5. Any mining superintendent, or mining foreman, or mining secretary of any incorporated mining company in this state, acting under and for such mining company, who shall fail or refuse to comply with any of the conditions mentioned in section 1 of this act, shall for each and every such failure or refusal be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction, shall be fined in any sum not less than one hundred (\$100) dollars, and not exceeding five hundred (\$500) dollars, or by imprisonment in the county jail for a term not less than thirty days and not exceeding six months, or by both such fine and imprisonment.

In construing the provisions of this act, it was held that the superintendent cannot be held guilty of a misdemeanor for refusing to permit the qualified stockholders to examine the mine.

Penal statutes must be plainly written, so that every one may know with certainty what acts or omissions constitute the crime. Ex Parte Deidesheimer, 14 Nev. 311.

Notwithstanding that the criminal provision of this act has been annulled by the above decision, it has been thought best to publish the act.

## MONEY AND INTEREST

In relation to money of account and interest, sections 2497-2500.

Concerning the payment in money of debts and other obligations, section 2501.

*An Act in relation to money of account and interest.*

Approved November 28, 1861, 99

### 2497. Money of account.

SECTION 1. The money of account of this territory shall be the dollar, cent and mill; and all the accounts in the public offices, and other public accounts, and all proceedings in courts, shall be kept and had in conformity to this regulation.

Cited, *Hastings v. B. M. Co.*, 2 Nev. 96.

In an action to recover delinquent taxes, where plaintiff was allowed to introduce in evidence the original assessment roll, notwithstanding there was no dollar mark attached to the figures purporting to indicate the amount of the tax due or assessed, it was held that the fair and reasonable

presumption, in the absence of anything to show the contrary, was that the figures disposed in perpendicular columns in the form prescribed by statute, indicated dollars and cents and that the admission of the roll in evidence was not error. *State v. Eureka Con. M. Co.*, 8 Nev. 27, 28.

### 2498. Accounts not vitiated.

SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry originally made, or any note, bond or other instrument, expressed in any other money of account, but the same shall be reduced to dollars, or parts of dollars, as hereinbefore directed, in any suit thereupon.

[Sec. 3, now Civ. Prac. sec. 329, sec. 5271 of this work.]

### 2499. Legal interest rate seven per cent.

SEC. 4. When there is no express contract, in writing, fixing a different rate of interest, interest shall be allowed at the rate of seven per cent per annum for all moneys after they become due on any bond bill or promissory note, or other instrument of writing, on any judgment recovered before any court in this state for money lent, for money due on the settlement of accounts from the day on which the balance is ascertained, and from money received to the use of another. *As amended, Stats. 1887, 82.*

See *Cox v. Smith*, 1 Nev. 161, under sec. 5 of this act.

The amendment above changes the rate from ten to seven per cent.

Interest exceeding the rate specified in this section cannot be recovered unless the promise to pay it be in writing. *Williams v. Glasgow*, 1 Nev. 533.

The execution must be authorized by the judgment, and must follow it in every essential particular, not only as to material matters of form, but also as to the amount for which it is rendered. *Hastings v. Johnson*, 1 Nev. 613.

Only the original claim or demand draws interest after judgment. When an execution is issued directing the collection of interest on the interest included in the judgment, and a sale of property is made to satisfy such excess of interest, the sale is nugatory even against a bona fide purchaser. *Idem.*

The clerk cannot go behind the judgment to see whether a part or the whole of a judgment is to bear interest, nor what rate

of interest, if any, it is to bear. (Per Beatty, J.) *Idem.*

When a party borrows money and agrees to pay a certain rate of interest until due, the contract is broken when the day of payment is passed, and the note remains unpaid. After breach, in the absence of a continuing contract as to interest, the statute fixes the damages to be recovered. *McLane v. Abrams*, 2 Nev. 199, 204-207.

By our statute, the rate of interest (or damage for detention) after breach is the same as that fixed by the contract before breach. *Idem.*

Interest constitutes no part of the original demand; it is simply a statutory allowance for delay. *Ash v. Parkinson*, 5 Nev. 16.

This section does not allow interest on money due on an open account; and a judgment allowing such interest where there is no special agreement, is so far erroneous. *Flannery v. Anderson*, 4 Nev. 438, 443.

On actions to recover personal property wrongfully taken, interest from the time of taking may always be given as damages without proof of special damage. *Blackie v. Cooney*, 8 Nev. 41.

Where an answer admitted an account for goods sold and delivered, it was held that such answer amounted to an ascertainment of the balance of account, and that interest was due from that time upon such balance. *Skinker v. Clute*, 9 Nev. 343, 345.

If a party claims and is entitled to any interest, it should be inserted in the judgment. *Solen v. V. & T. R. R. Co.*, 15 Nev. 318-320.

Interest is allowable upon the amount of a judgment recovered in an action *ex delicto*. *Idem*.

This section means that interest shall be

allowed at the legal rate on all moneys after they become due on any judgment recovered in any court in the state. *Smith v. D. V. L. S. & L. Co.*, 21 Nev. 86, 93 (25 P. 448).

Interest, as such, can only be collected where authorized by statute. In an action upon contract, where there has been no settlement and the balance due upon the contract is uncertain and unascertained, interest cannot be collected. *Vietti v. Nesbitt*, 22 Nev. 390, 399 (41 P. 151).

In an accounting between partners, where it is shown that one of the firm, prior to the dissolution of the partnership, is allowed to take firm property, the other partner is allowed interest upon the value of the property from the date of its appropriation by the other. *Folsom v. Marlette*, 23 Nev. 460 (49 P. 39).

## 2500. Any interest rate may be agreed to—Principal only to draw interest after judgment.

SEC. 5. Parties may agree, in writing, for the payment of any rate of interest whatever on money due, or to become due, on any contract. Any judgment rendered on such contract, shall conform thereto, and shall bear the interest agreed upon by the parties, and which shall be specified in the judgment; *provided*, only the amount of the original claim or demand shall draw interest after judgment.

See sec. 5271.

It is a well-settled rule in courts of equity that a contract for future compound interest will not be enforced. The rule in courts of law is not so well settled in regard to such contracts. *Cox v. Smith*, 1 Nev. 161.

Our statute does not sanction compound interest. Contracts in regard to compound interest must stand or fall by the established rules of equity and common-law courts.

See, also, citations under sec. 4 of this act.

### *An Act concerning the payment in money of debts and other obligations.*

Approved February 15, 1893, 121

## 2501. Official bonds and certain obligations payable in legal money.

SECTION 1. On and after the passage of this act, all official bonds and undertakings, and also all obligations of debt, judgments or executions stated in terms of dollars and to be paid in money, shall be payable in either the standard silver or gold coins or other legal money authorized by the Congress of the United States. *As amended, Stats. 1895, 13.*

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## NAMES AND EMBLEMS

Changing names of individuals, see secs. 5335-5337.

*An Act to protect the Grand Army of the Republic, benevolent, humane, fraternal, charitable or other organizations in the use of their names and emblems, and providing penalties for the violation thereof.*

Approved March 15, 1911, 65

## 2502. Unlawful to use name of incorporated society or association without authority.

SECTION 1. No person, society, association, or corporation shall assume, adopt or use the name of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable organization, incorporated under the laws of this or any other state, or of the United States, or a name so nearly resem-

bling the name of such incorporated organization as to be a colorable imitation thereof, or calculated to deceive persons not members, with respect to such corporation. In all cases where two or more such societies, associations, or corporations claim the right to the same name, or to names substantially similar, as above provided, the organization which was first organized and used the name, and first became incorporated under the laws of the United States or of any state in the Union, shall be entitled in this state to the prior and exclusive use of such name, and the rights of such societies, associations or corporations, and of their individual members shall be fixed and determined accordingly.

See secs. 6716-6717.

### 2503. Illegal wearing of insignia prohibited.

SEC. 2. No person shall wear or exhibit the badge, button, emblem, decoration, insignia, or charm, or shall assume or use the name of any military, ex-military, patriotic, humane, fraternal or charitable corporation, incorporated under the laws of this or any other state, or of the United States, or shall assume or claim to be a member thereof, or of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable corporation, the name of which shall so nearly resemble the name of any other corporation existing prior to the organization of the corporation or association of which such person may claim to be a member, the name whereof may be calculated to deceive the people with respect to any such prior corporation, unless he shall be authorized under the laws, statutes, rules, regulations and by-laws of such former corporation, to wear such badge, button, emblem, decoration, insignia or charm or to use and assume such name as a member thereof.

### 2504. Injunction may issue, when.

SEC. 3. Whenever there shall be an actual or threatened violation of the above act, an application may be made to the court or judge having jurisdiction, to issue an injunction upon notice to the defendant of not less than five days, for an injunction so restraining such actual or threatened violation, or if it shall appear to such court or justice that the defendant is in fact using the name of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable corporation, incorporated as aforesaid, or a name so nearly resembling it as to be calculated to deceive the public, or is wearing or exhibiting the badge, insignia or emblem of such corporation without authority thereof, and in violation of the above act, an injunction may be issued by said court or justice enjoining or restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

### 2505. Penalties.

SEC. 4. Any person wilfully violating the provisions of sections 1 and 2 of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than fifty dollars (\$50), nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment.

See secs. 6716-6717.

## NATURALIZATION

Provisions of United States Revised Statutes relative to, sections 2506-2513.  
To establish a bureau of immigration and naturalization, sections 2514-2544.

### FEDERAL NATURALIZATION LAWS

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| 2506. Honorably discharged soldiers exempt from certain formalities. | 2510. Naturalization of Chinese prohibited.                             |
| 2507. Aliens of African nativity and descent.                        | 2511. Aliens honorably discharged from service in navy or marine corps. |
| 2508. Naturalization of alien enemies prohibited.                    | 2512. Certain defective certificates, how validated.                    |
| 2509. Alien seamen of merchant vessels.                              | 2513. Idem—Illinois.  |

In regard to the acquisition of citizenship by other means than naturalization, see secs. 1992 to 1995, inclusive, of the United States Revised Statutes. See, also, sec. 2172 of the Revised Statutes.

Subsection numbers refer to United States Revised Statutes.

#### 2506. Honorably discharged soldiers exempt from certain formalities.

SEC. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

#### 2507. Aliens of African nativity and descent.

SEC. 2169. The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent. *As amended, 1875.*

#### 2508. Naturalization to alien enemies prohibited.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

#### 2509. Alien seamen of merchant vessels.

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of

intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

#### 2510. Naturalization of Chinese prohibited.

SEC. 14. That hereafter no state court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed. *Twenty-Second Statutes at Large, p. 58.*

#### 2511. Aliens honorably discharged from service in navy or marine corps.

Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States navy or marine corps, and has served or may hereafter serve five consecutive years in the United States navy or one enlistment in the United States marine corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States navy or marine corps. *Twenty-Eighth Statutes at Large, p. 124.*

#### *An Act to validate certain certificates of naturalization.*

Approved June 29, 1906; Stat. 1905-6, Part I, p. 630

#### 2512. Certain defective certificates—How validated.

Naturalization certificates issued after the act approved March third, nineteen hundred and three, entitled "An act to regulate the immigration of aliens into the United States," went into effect, which fail to show that the courts issuing said certificates complied with the requirements of section 39 of said act, but which were otherwise lawfully issued, are hereby declared to be as valid as though said certificates complied with said section; *provided*, that in all such cases application shall be made for new naturalization certificates, and when the same are granted, upon compliance with the provisions of said act of nineteen hundred and three, they shall relate back to the defective certificates, and citizenship shall be deemed to have been perfected at the date of the defective certificate.

#### 2513. *Idem*—Illinois.

SEC. 2. All the records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the time when this act takes effect in or from the criminal court of Cook County, Illinois, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this act further validated or legalized.

#### *An Act to establish a bureau of immigration and naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States.*

Approved June 29, 1906; U. S. Stats. at Large, 1906, 596

2514. Immigration and naturalization bureau. 2516. Courts having jurisdiction to naturalize.  
2515. *Idem*—Additional offices—Employees. 2517. Procedure.

2518. Clerk to post notice of proceedings.  
 2519. Petitions, when may be filed—Unlawful to naturalize within thirty days of election.  
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 2538. Penal provisions of prior laws enforced.  
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 2540. Forms.  
 2541. Rules, power to make—Copies as evidence.  
 2542. Appropriation.  
 2543. Persons, who owe allegiance to United States—Modifications affecting.  
 2544. When act to take effect.

### 2514. Immigration and naturalization bureau.

The designation of the bureau of immigration in the department of commerce and labor is hereby changed to the "Bureau of Immigration and Naturalization," which said bureau, under the direction and control of the secretary of commerce and labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the said bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

### 2515. Additional offices, employees.

SEC. 2. The secretary of commerce and labor shall provide the said bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this act upon such bureau, fixing the compensation of such additional employees until July first, nineteen hundred and seven, within the appropriations made for that purpose.

### 2516. Courts having jurisdiction to naturalize.

SEC. 3. Exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any state, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any state or territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

The naturalization jurisdiction of all courts herein specified, state, territorial, and federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the bureau of immigration and naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau.

#### 2517. Procedure.

SEC. 4. An alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First—He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien; *provided, however*, that no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second—Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition; *provided*, that if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

*Provided further*, that any person belonging to the class of persons authorized and qualified under existing law to become a citizen of the United States who has resided constantly in the United States during a period of five years next preceding May first, nineteen hundred and ten, who, because of misinformation in regard to his citizenship or the requirements of the law governing the naturalization of citizens has labored and acted under the impression that he was or could become a citizen of the United States and has in good faith exercised the rights or duties of a citizen or intended citizen of the United States because of such wrongful information and belief may, upon making a showing of such facts satisfactory to a court having jurisdiction to issue papers of naturalization to an alien, and the court in its judgment believes that such person has been for a period of more than five years entitled upon proper proceedings to be naturalized as a citizen of the United States, receive from the said court a final certificate of naturalization, and said court may issue such certificate without requiring proof of former declaration by or on the part of such person of their intention to become a citizen of the United States, but such applicant for naturalization

shall comply in all other respects with the law relative to the issuance of final papers of naturalization to aliens.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the state, territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the department of commerce and labor, if the petitioner arrives in the United States after the passage of this act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition. *As amended, Stats. A. L. 1909-10, p. 831.*

Third—He shall, before he is admitted to citizenship, declare on oath in open court that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth—It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth—In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court

to which his application is made, and his renunciation shall be recorded in the court.

Sixth—When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration of intention.

**2518. Idem—Clerk to post notice of proceedings.**

SEC. 5. The clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned.

**2519. Petitions, when may be filed—Unlawful to naturalize within thirty days of election.**

SEC. 6. Petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition; *provided*, that no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien; to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

**2520. Anarchists and polygamists disqualified.**

SEC. 7. No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

**2521. Must speak English—Exceptions.**

SEC. 8. No alien shall hereafter be naturalized or admitted as a citizen of the United States who cannot speak the English language; *provided*, that this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States; *and provided further*, that the requirements of this section shall not apply to any alien who has prior to the passage of this act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration; *provided further*, that the requirements of section 8 shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

**2522. Hearings in open court.**

SEC. 9. Every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

**2523. Proof by depositions, when permitted.**

SEC. 10. In case the petitioner has not resided in the state, territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the bureau of immigration and naturalization and the United States attorney for the district in which said witnesses may reside.

**2524. Government may oppose petition.**

SEC. 11. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

**2525. Duties of clerks of courts.**

SEC. 12. It is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this act to keep and file a duplicate of each declaration of intention made before him and to send to the bureau of immigration and naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau. In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the bureau of immigration and naturalization, and shall account for the same to the said bureau whenever required so to do by such bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned

to the said bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

### 2526. Fees, disposal of.

SEC. 13. The clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the bureau of immigration and naturalization, and paid over to such bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the department of commerce and labor, who shall thereupon deposit them in the treasury of the United States, rendering an account therefor quarterly to the auditor for the state and other departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner; *provided*, that the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said bureau as in case of other fees to which the United States may be entitled under the provisions of this act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this act upon the clerks of courts from fees received by such clerks in naturalization proceedings.

And in case the clerk of any court exercising naturalization jurisdiction collects fees in excess of the sum of six thousand dollars in any fiscal year the secretary of commerce and labor may allow salaries, for naturalization purposes only, to pay for clerical assistance, to be selected and employed by that clerk, additional to the clerical force, for which clerks of courts are required by this section to pay from fees received by such clerks in naturalization proceedings, if in the opinion of said secretary the naturalization business of such clerk warrants further additional assistance; *provided*, that in no event shall the whole amount allowed the clerk of a court and his assistants exceed the one-half of the gross receipts

of the office of said clerk from naturalization fees during such fiscal year; *provided further*, that when, at the close of any fiscal year, the business of such clerk of court indicates in the opinion of the secretary of commerce and labor that the naturalization fees for the succeeding fiscal year will exceed six thousand dollars the secretary of commerce and labor may authorize the continuance of the allowance of salaries for the additional clerical assistance herein provided for and employed on the last day of the fiscal year until such time as the remittances indicate in the opinion of said secretary that the fees for the then current fiscal year will not be sufficient to allow the additional clerical assistance authorized by this act.

Payment for the additional clerical assistance herein authorized shall be in the manner and under such regulations as the secretary of commerce and labor may prescribe. *As amended, Stats. A. L. 1909-1910, p. 830.*

#### 2527. Declarations and petitions to be bound and numbered.

SEC. 14. The declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

#### 2528. Proceedings to set aside naturalization.

SEC. 15. It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancelation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the department of state, furnish the department of justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered

shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the bureau of immigration and naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the bureau of immigration and naturalization of such cancelation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

#### **2529. Punishment for issuing false certificates.**

**SEC. 16.** Every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.

#### **2530. Punishment for selling counterfeits.**

**SEC. 17.** Every person who engraves or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the secretary of commerce and labor, or other proper officer, and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made or executed, any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment.

#### **2531. Punishment for illegally issuing certificates.**

**SEC. 18.** It is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

#### **2532. Punishment for unlawful possession.**

**SEC. 19.** Every person who without lawful excuse is possessed of any blank certificate of citizenship provided by the bureau of immigration and

naturalization, with intent unlawfully to use the same, shall be imprisoned at hard labor not more than five years or be fined not more than one thousand dollars.

### 2533. Punishment for neglect to render accounts.

SEC. 20. Any clerk or other officer of a court having power under this act to naturalize aliens, who wilfully neglects to render true accounts of moneys received by him for naturalization proceedings or who wilfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

### 2534. Punishment for receiving illegal fees.

SEC. 21. It shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

### 2535. Punishment for false certification.

SEC. 22. The clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

### 2536. Punishment for other violations—Perjury.

SEC. 23. Any person who knowingly procures naturalization in violation of the provisions of this act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceedings, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

### 2537. Prosecutions must be begun within five years.

SEC. 24. No person shall be prosecuted, tried, or punished for any crime arising under the provisions of this act unless the indictment is found or the information is filed within five years next after the commission of such crime.

### 2538. Penal provisions of prior laws enforced.

SEC. 25. For the purpose of the prosecution of all crimes and offenses

against the naturalization laws of the United States which may have been committed prior to the date when this act shall go into effect, the existing naturalization laws shall remain in full force and effect.

### 2539. Acts repealed.

SEC. 26. Sections 2165, 2167, 2168, 2173 of the Revised Statutes of the United States of America, and section 39 of chapter 1012 of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed.

### 2540. Forms.

SEC. 27. Substantially the following forms shall be used in the proceedings to which they relate:

#### DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof.)

-----, ss:

I, -----, aged ----- years, occupation -----, do declare on oath (affirm) that my personal description is: Color -----, complexion -----, height -----, weight -----, color of hair -----, color of eyes -----, other visible distinctive marks -----; I was born in -----, on the ----- day of -----, anno Domini -----; I now reside at -----; I emigrated to the United States of America from ----- on the vessel -----; my last foreign residence was ----- . It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to -----, of which I am now a citizen (subject); I arrived at the (port) of -----, in the state (territory or district) of ----- on or about the ----- day of -----, anno Domini -----; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant) -----

Subscribed and sworn to (affirmed) before me this ----- day of -----, anno Domini -----.

[L. S.]

(Official character of attestor.)

#### PETITION FOR NATURALIZATION

----- Court of -----.

In the matter of the petition of ----- to be admitted as a citizen of the United States of America.

To the ----- court:

The petition of ----- respectfully shows:

First—My full name is -----.

Second—My place of residence is number ----- street, city of -----, state (territory or district) of -----.

Third—My occupation is -----.

Fourth—I was born on the ----- day of ----- at -----.

Fifth—I emigrated to the United States from -----, on or about the ----- day of -----, anno Domini -----, and arrived at the port of -----, in the United States, on the vessel -----.

Sixth—I declared my intention to become a citizen of the United States on the ----- day of ----- at -----, in the ----- court of -----.

Seventh—I am ----- married. My wife's name is ----- . She was born in ----- and now resides at ----- . I have ----- children, and the name, date, and place of birth and place of residence of each of said children is as follows: -----; -----; -----; -----.

Eighth—I am not a disbeliever in or opposed to organized government or

a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to \_\_\_\_\_, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth—I am able to speak the English language.

Tenth—I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit: since \_\_\_\_\_, anno Domini \_\_\_\_\_, and in the State (Territory or District) of \_\_\_\_\_ for one year at least next preceding the date of this petition, to wit: since \_\_\_\_\_ day of \_\_\_\_\_, anno Domini \_\_\_\_\_.

Eleventh—I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the \_\_\_\_\_ court of \_\_\_\_\_ at \_\_\_\_\_, and the said petition was denied by the said court for the following reasons and causes, to wit: \_\_\_\_\_, and the cause of such denial has been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the department of commerce and labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated \_\_\_\_\_ (Signature of petitioner) \_\_\_\_\_

\_\_\_\_\_, ss:

\_\_\_\_\_, being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, anno Domini \_\_\_\_\_.

[L. S.]

Clerk of the \_\_\_\_\_ Court.

AFFIDAVIT OF WITNESSES

\_\_\_\_\_ Court of \_\_\_\_\_

In the matter of the petition of \_\_\_\_\_ to be admitted a citizen of the United States of America.

\_\_\_\_\_, ss:

\_\_\_\_\_, occupation \_\_\_\_\_, residing at \_\_\_\_\_, and \_\_\_\_\_, occupation \_\_\_\_\_, residing at \_\_\_\_\_, each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known \_\_\_\_\_, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the state (territory or district) in which the above-entitled application is made for a period of \_\_\_\_\_ years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_.

[L. S.]

(Official character of attestor).



visions of section 3679 of the Revised Statutes of the United States shall not be applicable in any way to this appropriation.

**2543. Persons who owe allegiance to United States—Modifications affecting.**

SEC. 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

**2544. When act to take effect.**

SEC. 31. This act shall take effect and be in force from and after ninety days from the date of its passage; *provided*, that sections 1, 2, 28, and 29 shall go into effect from and after the passage of this act.

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## NEVADA HISTORICAL SOCIETY

*An Act to encourage the Nevada Historical Society.*

Approved March 20, 1907, 201

**2545. Made a state institution.**

SECTION 1. That the Nevada Historical Society, an organization now in existence (E. D. Kelley, president; G. F. Talbot, vice-president; Jeanne Elizabeth Wier, secretary; and A. E. Hershiser, treasurer, their associates and successors), be, and the same is hereby, recognized as a state institution.

**2546. Biennial report.**

SEC. 2. That it shall be the duty of the president and secretary of said institution to make a report biennially to the governor as required of other state institutions; said report to embrace the transactions, work, and expenditures of the organization.

**2547. Published by state—How distributed.**

SEC. 3. That said report shall be published at the expense of the state in the same number that reports of the secretary of state are published, and one-half thereof distributed as other official reports, the other half thereof to be furnished said society for its use and distribution. And, to enable the society to augment its collection by effecting exchanges with other societies and institutions, sixty bound copies each of the several publications of the state and of its societies and institutions, except the reports of the supreme court, shall be and the same are hereby donated to said society as they shall be issued, the same to be delivered to the society by the secretary of state or other officer having custody of the same, and to include also for deposit in its collections one set of all the publications of the state heretofore issued, not excepting the supreme court reports.

[Sec. 4, carrying appropriation, omitted.]

# NEGOTIABLE INSTRUMENTS

“The Negotiable Instruments Law,” sections 2548–2743.

To designate holidays to be observed in acceptance and payment of bills of exchange and promissory notes, section 2744.

## NEGOTIABLE INSTRUMENTS LAW

*An Act providing a general law on the subject of negotiable instruments, to be known as “The Negotiable Instruments Law.”*

Approved March 14, 1907, 112

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## TITLE I

## Negotiable Instruments in General

## ARTICLE I—FORM AND INTERPRETATION

## 2548. What constitutes negotiability.

SECTION 1. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;
2. Must contain an unconditional promise or order to pay a sum certain in money;
3. Must be payable on demand, or at a fixed or determinable future time;
4. Must be payable to order or to bearer; and,
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

## 2549. The sum payable.

SEC. 2. The sum payable is a sum certain within the meaning of this act, although it is to be paid—

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

## 2550. Unconditional order or promise.

SEC. 3. An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with—

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

## 2551. Payable at certain future time.

SEC. 4. An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable—

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

## 2552. Not negotiable, when.

SEC. 5. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

### 2553. Validity not affected by certain things.

SEC. 6. The validity and negotiable character of an instrument are not affected by the fact that—

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

### 2554. Payable on demand, when.

SEC. 7. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

### 2555. Payable to order, when.

SEC. 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

### 2556. Payable to bearer, when.

SEC. 9. The instrument is payable to bearer—

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank.

### 2557. Any clear terms sufficient.

SEC. 10. The instrument need not follow the language of this act; but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

### 2558. Date.

SEC. 11. Where the instrument or an acceptance of any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

**2559. Not invalid when wrongly dated.**

SEC. 12. The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

**2560. Holder may properly date.**

SEC. 13. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

**2561. May fill blanks—Effect.**

SEC. 14. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

**2562. Incomplete, when not valid contract.**

SEC. 15. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

**2563. Delivery.**

SEC. 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

**2564. Language ambiguous—How construed.**

SEC. 17. Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;
3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;
4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;
5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;
6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;
7. Where an instrument containing the words "I promise to pay," is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

#### 2565. Persons liable.

SEC. 18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

#### 2566. Signature by agent.

SEC. 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency.

#### 2567. Idem—Liability.

SEC. 20. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

#### 2568. Signature by "procuration."

SEC. 21. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

#### 2569. Corporation or infant—Liability.

SEC. 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

#### 2570. Forged or unauthorized signature.

SEC. 23. When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

### ARTICLE II—CONSIDERATION

#### 2571. Consideration presumed.

SEC. 24. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

**2572. "Value" defined.**

SEC. 25. Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

**2573. Holder for value.**

SEC. 26. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

**2574. Idem—Lien.**

SEC. 27. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

**2575. Absence of consideration.**

SEC. 28. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

**2576. Accommodation party.**

SEC. 29. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

**ARTICLE III—NEGOTIATION****2577. How negotiated.**

SEC. 30. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

**2578. Indorsement.**

SEC. 31. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

**2579. Idem—Must be of entire instrument.**

SEC. 32. The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

**2580. Special or in blank.**

SEC. 33. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

**2581. Special indorsement.**

SEC. 34. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

**2582. Blank indorsement may be converted.**

SEC. 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

**2583. Restrictive indorsement.**

SEC. 36. An indorsement is restrictive, which either—

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

**2584. Idem—Rights conferred.**

SEC. 37. A restrictive indorsement confers upon the indorsee the right—

1. To receive payment of the instrument;
2. To bring any action thereon that the indorser could bring;
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

**2585. Qualified indorsement.**

SEC. 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

**2586. Conditional indorsement, effect.**

SEC. 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

**2587. Special indorsement, effect.**

SEC. 40. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

**2588. When all must indorse.**

SEC. 41. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

**2589. Indorsed to bank officer.**

SEC. 42. Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

**2590. Misspelled or wrong name.**

SEC. 43. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

**2591. In representative capacity.**

SEC. 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

**2592. Negotiation presumed before maturity.**

SEC. 45. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

**2593. Indorsement presumed at place of instrument.**

SEC. 46. Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

**2594. Continues negotiable.**

SEC. 47. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

**2595. May cancel indorsement, when; effect.**

SEC. 48. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

**2596. Instrument payable to order—Transfer without indorsement, effect.**

SEC. 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

**2597. Instrument reissued, effect.**

SEC. 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

**ARTICLE IV—RIGHTS OF THE HOLDER****2598. Holder may sue.**

SEC. 51. The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

**2599. Holder in due course, who.**

SEC. 52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

**2600. When not holder in due course.**

SEC. 53. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

**2601. Holder in due course—Knowledge of infirmity.**

SEC. 54. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

**2602. Title defective, when—Fraud.**

SEC. 55. The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

**2603. Notice of infirmity, when deemed.**

SEC. 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

**2604. Holder in due course may enforce payment.**

SEC. 57. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

**2605. Defense in hands of other holder.**

SEC. 58. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were not negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

**2606. Every holder deemed holder in due course—Exception.**

SEC. 59. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims, acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

**ARTICLE V—LIABILITIES OF PARTIES****2607. Liability of maker.**

SEC. 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

**2608. Drawer admits existence of payee—May limit liability.**

SEC. 61. The drawer by drawing this instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to the subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

**2609. What acceptance engages and admits.**

SEC. 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits—

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
2. The existence of the payee and his then capacity to indorse.

**2610. What constitutes indorser.**

SEC. 63. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

**2611. Signature in blank—Liable as indorser.**

SEC. 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

**2612. What negotiator warrants.**

SEC. 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants—

1. That the instrument is genuine and in all respects what it purports to be;
2. That he has a good title to it;
3. That all prior parties had capacity to contract;
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision 3 of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

**2613. What indorsement without qualification warrants.**

SEC. 66. Every indorser who indorses without qualification, warrants to all subsequent holders in due course—

1. The matters and things mentioned in subdivisions 1, 2, and 3, of the next preceding section; and
2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

**2614. Indorser, liabilities.**

SEC. 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

**2615. Indorsers liable in sequence—Exception—Joint and several liability.**

SEC. 68. As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as

between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

#### 2616. Broker or agent, when liable.

SEC. 69. Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 65 of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

### ARTICLE VI—PRESENTMENT FOR PAYMENT

#### 2617. Presentment, when necessary.

SEC. 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

#### 2618. When must be made.

SEC. 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

#### 2619. When sufficient.

SEC. 72. Presentment for payment, to be sufficient, must be made—

1. By the holder, or by some person authorized to receive payment on his behalf;
2. At a reasonable hour on a business day;
3. At a proper place as herein defined;
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

#### 2620. How made.

SEC. 73. Presentment for payment is made at the proper place—

1. Where a place of payment is specified in the instrument and it is there presented;
2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;
3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

#### 2621. Instrument exhibited and delivered.

SEC. 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

#### 2622. During business hours.

SEC. 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

**2623. When person liable is dead.**

SEC. 76. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

**2624. When partners liable.**

SEC. 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

**2625. When not partners.**

SEC. 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

**2626. Not required. when.**

SEC. 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

**2627. Idem.**

SEC. 80. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

**2628. Made with reasonable diligence.**

SEC. 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**2629. Dispensed with. when.**

SEC. 82. Presentment for payment is dispensed with—

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made;
2. Where the drawee is a fictitious person;
3. By waiver of presentment, express or implied.

**2630. When dishonored by nonpayment.**

SEC. 83. The instrument is dishonored by nonpayment when—

1. It is duly presented for payment and payment is refused or cannot be obtained; or
2. Presentment is excused and the instrument is overdue and unpaid.

**2631. Immediate right of recourse.**

SEC. 84. Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

**2632. "Maturity" construed.**

SEC. 85. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

**2633. Time of payment, how determined.**

SEC. 86. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

**2634. Equivalent to order to pay.**

SEC. 87. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

**2635. Payment in due course.**

SEC. 88. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

**ARTICLE VII—NOTICE OF DISHONOR****2636. Notice of dishonor.**

SEC. 89. Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

**2637. How given.**

SEC. 90. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

**2638. Idem.**

SEC. 91. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

**2639. Notice for benefit of all parties.**

SEC. 92. Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

**2640. Idem.**

SEC. 93. Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

**2641. Notice of dishonor by agent.**

SEC. 94. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

**2642. Notice need not be signed—Misdescription.**

SEC. 95. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

**2643. Notice, either written or oral.**

SEC. 96. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

**2644. Notice, to whom given.**

SEC. 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

**2645. When party is dead.**

SEC. 98. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

**2646. When partners.**

SEC. 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

**2647. Joint parties not partners.**

SEC. 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

**2648. Bankrupts or insolvents.**

SEC. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

**2649. Notice, when given.**

SEC. 102. Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

**2650. Time allowed for giving notice.**

SEC. 103. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.
2. If given at his residence, it must be given before the usual hours of rest on the day following.
3. If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following.

**2651. Idem.**

SEC. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.
2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

**2652. Mailing deemed notice.**

SEC. 105. Where notice of dishonor is duly addressed and deposited in the

postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage of the mails.

**2653. Idem.**

SEC. 106. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter-box under the control of the postoffice department.

**2654. Notice to antecedent parties.**

SEC. 107. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

**2655. Notice to address, when given—Rule if otherwise.**

SEC. 108. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or
2. If he live in one place, and have his place of business in another, notice may be sent to either place; or
3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

**2656. Notice may be waived.**

SEC. 109. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be expressed or implied.

**2657. When waiver binding—Exception.**

SEC. 110. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

**2658. Waiver of protest.**

SEC. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

**2659. Notice dispensed with, when.**

SEC. 112. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

**2660. Delay excused, when.**

SEC. 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

**2661. Notice to drawer not required, when.**

SEC. 114. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;
2. When the drawee is a fictitious person or a person not having capacity to contract;

3. When the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment.

#### 2662. *Idem*—Indorser.

SEC. 115. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation.

#### 2663. Notice, when unnecessary.

SEC. 116. Where due notice of dishonor by nonacceptance has been given notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

#### 2664. Omission does not prejudice, whom.

SEC. 117. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

#### 2665. May be protested, when—Protest required in case of foreign bills of exchange.

SEC. 118. Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

### ARTICLE VIII—DISCHARGE OF NEGOTIABLE INSTRUMENTS

#### 2666. Instrument, how discharged.

SEC. 119. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
3. By the intentional cancelation thereof by the holder;
4. By any other act which will discharge a simple contract for the payment of money;
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

#### 2667. Secondary liability discharged, how.

SEC. 120. A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;
2. By the intentional cancelation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

#### 2668. Rights of persons secondarily liable.

SEC. 121. Where the instrument is paid by a party secondarily liable

thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—

1. Where it is payable to the order of a third person, and has been paid by the drawer; and
2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

### 2669. Rights renounced, how.

SEC. 122. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

### 2670. Unintentional cancelation inoperative—Burden of proof.

SEC. 123. A cancelation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancelation was made unintentionally, or under a mistake or without authority.

### 2671. Material alteration avoids—Exception.

SEC. 124. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to the original tenor.

### 2672. "Material alteration" defined.

SEC. 125. Any alteration which changes—

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

## TITLE II

### Bills of Exchange

#### ARTICLE I—FORM AND INTERPRETATION

### 2673. Bill of exchange defined.

SEC. 126. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

### 2674. Does not operate as assignment.

SEC. 127. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

**2675. Two or more drawees.**

SEC. 128. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

**2676. Inland bill defined.**

SEC. 129. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

**2677. Either bill of exchange or note, when may be so treated.**

SEC. 130. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

**2678. Referee in case of need.**

SEC. 131. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

**ARTICLE II—ACCEPTANCE****2679. Acceptance must be in writing.**

SEC. 132. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

**2680. Holder may require—Effect of refusal.**

SEC. 133. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and, if such request is refused, may treat the bill as dishonored.

**2681. Acceptance on separate paper does not bind—Exception.**

SEC. 134. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

**2682. Actual acceptance defined.**

SEC. 135. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

**2683. Time allowed drawee.**

SEC. 136. The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

**2684. Certain acts constitute acceptance.**

SEC. 137. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

**2685. Acceptance, when may be made.**

SEC. 138. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

**2686. Acceptance, general or qualified.**

SEC. 139. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

**2687. General acceptance—Particular place.**

SEC. 140. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

**2688. Qualified acceptance.**

SEC. 141. An acceptance is qualified, which is—

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
3. Local, that is to say, an acceptance to pay only at a particular place;
4. Qualified as to time;
5. The acceptance of some one or more of the drawees, but not of all.

**2689. Holder may refuse qualified acceptance—Effect of qualified acceptance.**

SEC. 142. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

**ARTICLE III—PRESENTMENT FOR ACCEPTANCE****2690. Presentment must be made, when.**

SEC. 143. Presentment for acceptance must be made—

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
2. Where the bill expressly stipulates that it shall be presented for acceptance; or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

**2691. Presentment or negotiation within reasonable time.**

SEC. 144. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged.

**2692. Presentment at reasonable hour.**

SEC. 145. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and—

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;
2. Where the drawee is dead, presentment may be made to his personal representative.
3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

**2693. When may be presented.**

SEC. 146. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 72 and 85 of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

**2694. Reasonable delay excused.**

SEC. 147. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.

**2695. When presentment excused.**

SEC. 148. Presentment for acceptance is excused, and a bill may be treated as dishonored by nonacceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.
2. Where, after the exercise of reasonable diligence, presentment cannot be made.
3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

**2696. Dishonored by nonacceptance.**

SEC. 149. A bill is dishonored by nonacceptance—

1. When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; or
2. When presentment for acceptance is excused, and the bill is not accepted.

**2697. Right of recourse lost, when.**

SEC. 150. When a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

**2698. Right accrues, when.**

SEC. 151. When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

## ARTICLE IV—PROTEST

**2699. Dishonor of foreign bill—Protest.**

SEC. 152. Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

**2700. What protest must specify.**

SEC. 153. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

**2701. Protest, by whom made.**

SEC. 154. Protest may be made by—

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

**2702. Protest on day of dishonor.**

SEC. 155. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

**2703. Where protested.**

SEC. 156. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

**2704. Subsequent protest.**

SEC. 157. A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

**2705. Bankrupt or insolvent.**

SEC. 158. Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

**2706. Protest dispensed with, when.**

SEC. 159. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**2707. Protest on copy.**

SEC. 160. When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

**ARTICLE V—ACCEPTANCE FOR HONOR****2708. Acceptance supra protest.**

SEC. 161. Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

**2709. Idem—Must be in writing.**

SEC. 162. An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

**2710. Honor of drawer.**

SEC. 163. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

**2711. Acceptor for honor liable.**

SEC. 164. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

**2712. Acceptor for honor—Liability.**

SEC. 165. The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

**2713. Idem—Maturity, how calculated.**

SEC. 166. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

**2714. Protest to precede presentment to acceptor for honor or referee in need.**

SEC. 167. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

**2715. Presentment for payment, how made.**

SEC. 168. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.
2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104.

2716. Provisions of section 81 apply.

SEC. 169. The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

2717. Dishonored by acceptor—Protest.

SEC. 170. When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

#### ARTICLE VI—PAYMENT FOR HONOR

2718. Who may pay for honor.

SEC. 171. Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

2719. Payment for honor must be attested.

SEC. 172. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

2720. Notarial act founded on declaration of payer.

SEC. 173. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

2721. Preference to payers.

SEC. 174. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

2722. Subrogation of payer.

SEC. 175. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid and [are] discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

2723. Right of recourse, when lost.

SEC. 176. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

2724. Payer entitled to documents.

SEC. 177. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

#### ARTICLE VII—BILLS IN A SET

2725. Bills in a set one bill.

SEC. 178. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

2726. *Idem*—True owner of bill.

SEC. 179. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the

rights of a person who in due course accepts or pays the part first presented to him.

**2727. Holder by indorsement liable on all parts.**

SEC. 180. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

**2728. Acceptance on one part only.**

SEC. 181. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

**2729. Acceptor liable after payment, when.**

SEC. 182. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

**2730. Whole bill discharged, when.**

SEC. 183. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

**TITLE III**

**Promissory Notes and Checks**

**ARTICLE I**

**2731. Negotiable note defined.**

SEC. 184. A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

**2732. Check is bill of exchange.**

SEC. 185. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

**2733. Presentation for payment.**

SEC. 186. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

**2734. Certification constitutes acceptance.**

SEC. 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

**2735. Drawer discharged, when.**

SEC. 188. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

**2736. Check not assignment.**

SEC. 189. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

**TITLE IV**  
**General Provisions**

**ARTICLE I**

**2737. Name of act.**

SEC. 190. This act shall be known as "The Negotiable Instruments Law."

**2738. Terms defined.**

SEC. 191. In this act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

**2739. Idem.**

SEC. 192. The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

**2740. Idem.**

SEC. 193. In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

**2741. Performance following holiday.**

SEC. 194. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

**2742. Provisions not retroactive.**

SEC. 195. The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof.

**2743. Other cases provided for.**

SEC. 196. In any case not provided for in this act the rules of the law merchant shall govern.

The citations following are based upon a former act (Stats. 1861, 4). They are here given as possibly of use in construing some of the provisions of the foregoing act:

negotiable promissory note, except by the payee or indorsee. *Van Doren v. Tjader*, 1 Nev. 380, 389.

A guarantor of a promissory note will not be discharged by the failure of the holder

There can be no strict indorsement of a

to demand payment and give strict notice of nonpayment. Reasonable notice of the dishonor of the note is all that he is entitled to. *Idem*.

Contract of guaranty, though made at the time of the principal contract and upon the same consideration, must, nevertheless, be in writing, signed by the party to be charged, and must express the consideration which sustains it. *Idem*.

When there is anything on the face of a note or bill of exchange showing that the party signing is acting for another, and not himself, parol testimony may be introduced to bind the principal. *Gillig v. Lake Bigler Road Co.*, 2 Nev. 214.

A party can only be bound on a note executed in a firm name who is actually a member of the firm executing the same, or has held himself out as a member so as to give the firm credit on his responsibility. *Sargent v. Collins*, 3 Nev. 260.

Where a note is made by A to B, and by B indorsed to C, B is a regular indorser and entitled to all rights, and only subject to the liabilities of an indorser, although it may have been agreed in advance of the execution of the note that A was to make, and B to indorse the note, for the benefit of C. *Heintzelman v. L'Amoureux*, 3 Nev. 377.

There must be two parties to every promissory note: a maker and a payee. If the payee is not in esse, there is no note. *Wayman v. Torreyson*, 4 Nev. 124.

Note payable to fictitious payee not good. *Idem*.

Notes of municipal corporation, when binding. *Douglass v. Virginia City*, 5 Nev. 147.

An order in the form of an inland bill of exchange not upon any particular fund is not, before acceptance, an assignment, and does not create any lien in favor of the holder upon funds of the drawer in the hands of the drawee. *Jones v. P. W. L. & F. Co.*, 13 Nev. 359, 373 (29 A. R. 308).

Consideration of note given by agent when sufficient. *Estis v. Simpson*, 13 Nev. 472.

Where a surety pays a promissory note, and has the same assigned to him, and commences an action under the note: Held, that he is entitled to maintain an action of implied assumpsit for the amount paid, but he cannot sustain an action upon the note. *Freyert v. Henry*, 14 Nev. 191.

Where the notes are given in the firm name the legal presumption is, that they were executed for a partnership purpose, and the burden of proof is upon defendants to establish the contrary. *Davis v. Cook*, 14 Nev. 265.

A pledgee of a negotiable note, as collateral security, is entitled to be protected as a bona fide holder to same extent as one who becomes the absolute owner, and may maintain suit therein in his own name as the real party in interest. The only difference between the rights of such parties is that the absolute owner may recover in full, while the pledgee, if there be equities, is

restricted to the extent of his advances. *Hayden v. Nicoletti*, 18 Nev. 290, 298 (3 P. 473).

A negotiable note, payable to two or more persons jointly, is no evidence that it is owned in partnership; nor is the fact that such note is in the actual possession of one of the payees such evidence. Evidence reviewed: Held, that no partnership or agency existed between the payees of the notes in question. *Idem*.

Title to a negotiable note, payable to order, passes only by indorsement and delivery. *Idem*.

A negotiable note, payable to two or more persons jointly, indorsed by only one of the payees, is subject to any equities in favor of the maker, the same as though it had not been indorsed by either. Such a note is payable to all the payees, or to their joint order, and cannot be transferred except by the joint indorsement of all the payees. *Idem*.

When the powers of a corporation to borrow money and to execute and put into circulation its negotiable paper are only implied and incidental, such powers are not to be likely inferred as existing in its officers, nor are such officers justified in exceeding their instructions from the board of trustees, or those contained in the by-laws. *Edwards v. Carson Water Co.*, 21 Nev. 469 (34 P. 381).

Evidence reviewed, and held that the note in suit does not bind respondent because it was executed without authority, and also because it was executed without any consideration received by respondent. *Idem*.

When affirmative authority from a board of trustees of a corporation is necessary to authorize its officers to execute its promissory note, the same character of authority is required to enable them to lawfully renew such note. *Idem*.

Where a note has been regularly endorsed and delivered by the payee to the endorsee, neither the maker of the note nor his creditors can challenge the right of the endorsee to receive payment thereof, upon the grounds that the endorsement was made *causa mortis*, and that the gift had been subsequently revoked by the recovery of the donor. Only the donor or his legal representatives could make such defense. *Hulley v. Chedic*, 22 Nev. 128 (58 A. S. 729, 56 P. 783).

In an action to recover on several promissory notes, defendants being liable on all of them, an error in applying a partial payment on a particular note is immaterial. *Springer v. Pritchard*, 22 Nev. 314 (39 P. 1009).

After reciting facts it was held that in an action on the notes claimed to have been fraudulently obtained, a verdict in favor of defendant was sustained by the evidence on the ground that plaintiff was not an innocent purchaser, without notice of the fraudulent representation. *Swinney v. Patterson*, 25 Nev. 411 (62 P. 1).

*An Act to designate the holidays to be observed in the acceptance and payment of bills of exchange and promissory notes.*

Approved October 30, 1861, 1

**2744. Holidays designated.**

SECTION 1. The following days, namely: The first day of January, Washington's Birthday, or the twenty-second day of February, the fourth day of July, Thanksgiving Day on the proclamation of the governor, the twenty-fifth day of December, commonly called Christmas Day, shall for all purposes whatsoever as regards the presenting for payment, or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, checks, and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace, shall be allowed, except on sight bills or drafts; and any one of the holidays specified in this act coming within the three days of grace shall be counted as one of such days.

## NOTARIES PUBLIC

Providing for appointment of notaries public and defining their duties, sections 2745-2761.

Providing for appointment of notaries public, fixing term of office and enlarging territory in which they may act, sections 2762-2764.

*An Act to provide for the appointment of notaries public, and defining their duties.*

Approved February 9, 1864, 46

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| 2745. Fees to be paid for commission.                 | 2754. Certified copy of record.                                     |
| 2746. Oath and bond.                                  | 2755. Protests of notes and bills of exchange<br>—Evidence of same. |
| 2747. Powers and duties—Relative to commercial paper. | 2756. Penalty for neglect of duty.                                  |
| 2748. May protest bills of exchange.                  | 2757. Removal, records delivered to recorder<br>for successor.      |
| 2749. Power to take and certify to acknowledgments.   | 2758. To deliver records to successor.                              |
| 2750. Depositions and affidavits.                     | 2759. Certified copies.   |
| 2751. Record to be kept.                              | 2760. Fees.   |
| 2752. Record of instruments.                          | 2761. Act repealed.   |
| 2753. Seal to be kept.                                |   |

[Section 1 repealed 1879, 45, see secs. 2385-2402.]

**2745. Fees to be paid for commission.**

SEC. 2. Each notary public, before he enters upon the duties of his office, and at the time he receives his commission, shall pay to the secretary of state the sum of ten dollars for the state library fund, and shall take the official oath as prescribed by law, which oath shall be endorsed on his commission, and shall enter into a bond to the State of Nevada in the sum of two thousand dollars, to be approved by the district judge of the county for which said notary public may be appointed. *As amended, Stats. 1865, 408; 1883, 82.*

**2746. Oath and bond.**

SEC. 3. The bond, together with his oath of office, shall be filed and recorded in the office of the county clerk of said county. *As amended, Stats. 1911, 361.*

**2747. Powers and duties relative to commercial paper.**

SEC. 4. Notaries public shall have authority to demand acceptance and payment of foreign and domestic bills of exchange, and to protest the same

for nonacceptance and nonpayment, and to exercise such other powers and duties as by the laws of nations, and according to commercial usages, or by the law of any state, territory, or country, may be performed by notaries public.

#### 2748. May protest bills of exchange.

SEC. 5. They may also demand acceptance of inland bills of exchange, and payment thereof, and of promissory notes, and may protest the same for nonpayment, or nonacceptance, as the case may require.

#### 2749. Power to take and certify to acknowledgments.

SEC. 6. Each notary public shall have power to take and to certify to the acknowledgment or proof of powers of attorneys, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance, or the instrument of writing executed by any married woman, or to give a certificate of such proof or acknowledgment, which certificate shall be indorsed on the said deed or other instrument, or attached thereto.

#### 2750. Depositions and affidavits.

SEC. 7. Each notary public shall also have power and authority to take depositions and to administer oaths and affirmations in all matters incident or belonging to the duties of his office, and to take affidavits to be used before any court, judge, or officer in this territory.

Secs. 7, 8, and 9 cited, *State v. Cal. M. Co.*, 13 Nev. 215.

#### 2751. Record to be kept.

SEC. 8. Each notary public shall keep a correct record of all his official acts, done and performed by him under and by virtue of the authority conferred by sections 4 and 5 of this act.

See secs. 1098-1099.

#### 2752. Record of instruments.

SEC. 9. Each notary public shall also keep a correct record, wherein he shall enter the name or character of any instrument acknowledged or proved before him, as provided in section 6 of this act, together with the date of the same and the parties thereto, as the same appears therein.

#### 2753. Seal to be kept.

SEC. 10. Each notary public shall provide a notarial seal, an impression of which shall be made on his official bond, on which shall be engraved the name of the county for which he is commissioned, and the initials of the territory, the name of the notary, and the words "Notary Public," with which he shall authenticate all his official acts, which seal together with the register and official documents, shall not be liable to be seized on execution.

#### 2754. Certified copy of record.

SEC. 11. Each notary public when required, shall give a certified copy of any record in his office to any person upon payment of the legal fees therefor; and any certificate or instrument, either printed or written, purporting to be the official act of a notary public under his seal and signature, shall be received in any county in this territory as prima facie evidence of the official character of such instrument, and of the truth of the facts therein set forth.

Where parties to a suit agreed that a deposition may be taken at a certain place during a certain month, before T, a notary public in another state, the deposition certified by T, made under his official seal as a notary, may be read by either party with-

out other proof that T was a notary when the deposition was taken. The seal is prima facie evidence of his official character (*Johnson, J.*, dissenting). *Sargent v. Collins*, 3 Nev. 280, 287, 288.

**2755. Protests of notes and bills of exchange—Evidence of same.**

SEC. 12. The original protests of a notary public, under his hand and official seal, of any bill of exchange or promissory note, for nonacceptance or nonpayment, stating the presentment by him of such bill of exchange or note for acceptance or payment, and the nonacceptance or nonpayment thereof, and the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note to whom the same was given, and the postoffice nearest thereto, shall be prima facie evidence of the facts contained therein. The certificate of a notary public, drawn from his record, stating the protest and the facts therein contained, shall be evidence of the facts in like manner as the original protest.

See secs. 2665, 2699-2717.

**2756. Penalty for neglect of duty.**

SEC. 13. For any misconduct or neglect in any of the cases in which any notary public appointed under the authority of this territory, is authorized to act, either by the law of this territory, or of any state, territory, or country, or by the law of nations, or by commercial usage, he shall be liable on his official bond to the parties injured thereby, for all the damages sustained; and for any wilful violation or neglect of duty, any notary public shall be subject to criminal prosecution, and may be punished by fine not exceeding two thousand dollars, and removal from office.

**2757. Removal—Records delivered to recorder for successor.**

SEC. 14. If any notary public die, resign, be disqualified, or removed from office, or remove from the county for which he is appointed, his records and all his public papers shall, within sixty days, be delivered on demand to the recorder of the county, whose duty it shall be to demand the same within that time, who shall deliver them to the successor of the said notary when qualified.

**2758. To deliver records to successor.**

SEC. 15. When the term of office of any notary public expires, and his successor is appointed and qualified, he shall deliver his records and public papers to such successor on demand.

**2759. Certified copies.**

SEC. 16. Any notary public having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor or predecessors could have done.

**2760. Fees.**

SEC. 17. Each notary public shall receive such fees for his services as may be allowed by law.

For fees of notary, see secs. 2004, 2018.

**2761. Act repealed.**

SEC. 18. An act concerning notaries public, approved November twenty-ninth, eighteen hundred and sixty-one, is hereby repealed, such repeal to take effect on the first day of March, eighteen hundred and sixty-four, on which day the commissions of the officers appointed under said law shall be revoked, and they shall deliver their records and all their public papers to the recorder of the county for which they may have been appointed.

*An Act providing for the appointment of notaries public, fixing their term of office, and enlarging the territory within which they may act.*

Approved February 26, 1907. 41

**2762. Number unlimited.**

SECTION 1. The governor is hereby authorized and empowered to appoint and commission notaries public in and for the several counties in this state, in any number in which applications may be made to him, without limit.

**2763. Term of office.**

SEC. 2. The term of office of a notary public shall be four years; *provided*, the governor may at any time, for cause, revoke the commission of a notary public.

**2764. Acts legal anywhere in state.**

SEC. 3. All notaries public may hereafter take acknowledgments of deeds, administer oaths and perform all other notarial acts and functions at any place within this state. All acts of any notary public hereafter performed anywhere within this state shall be of the same force and validity as if performed within the county for which he was appointed and in which he resides. The notaries heretofore appointed shall continue in office until the expiration of their terms under conditions of the existing law at the time of their appointment.

## OFFICERS GENERALLY

Relating to officers, their qualifications, times of election, terms, duties, resignations, removals, vacancies and modes of supplying the same, misconduct in office and to enforce official duty, sections 2765-2847.

Authorizing officers to appoint deputies, sections 2848-2850.

Providing for removal from office, sections 2851-2854.

Providing for examination and auditing of books and accounts of certain officers, sections 2855-2860.

To prevent drunkenness in office, sections 2861-2863.

To authorize fees and salaries of officers to be taken in attachment and execution, and to prohibit assignments to defraud creditors, sections 2864-2866.

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Approved March 9, 1866. 231

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**2765. What officers to be elected—Appointed officers.**

SECTION 1. There shall be elected the following officers, to wit: First—A governor and lieutenant-governor. Second—Two United States senators. Third—As many members of the house of representatives of the United States as this state may be entitled to. Fourth—As many presidential electors as this state may be entitled to. Fifth—Three justices of the supreme court. Sixth—One district judge for each judicial district into which the state is divided by law. Seventh—Senators and members of the assembly. Eighth—A secretary of state, state treasurer, state controller, attorney-general, and surveyor-general. Ninth—A clerk of the supreme court. Tenth—A state superintendent of public instruction. Eleventh—For each county, one county clerk, who shall be ex officio clerk of the board of county commissioners, and also clerk of the district court of his county; one sheriff; one district attorney; one public administrator, who shall be ex officio coroner; one assessor; one treasurer; one county surveyor; one county school superintendent; three county commissioners, except in counties having a voting population of four thousand and upwards, and in those counties five; one county recorder, who shall be ex officio county auditor; justices of the peace; and constables. The following officers shall be appointed, to wit: Notaries public, commissioners of deeds, for the respective states and territories of the United States and foreign countries, and all the officers which are not elective.

NOTE—In addition to the above-enumerated elective state officers, subsequent acts have provided for the election of a state printer, sec. 4328; state mining inspector, sec. 4239; and regents of the university, sec. 4640.

The office of county school superintendent no longer exists, the duties of that office being imposed on district superintendents, sec. 3245; county commissioners limited to three members, sec. 1546.

Cited, State ex rel. Perry v. Arrington, 18 Nev. 418, 423 (4 P. 735); State ex rel. Attorney-General v. Boyd, 19 Nev. 44 (5 P. 735); State ex rel. Howell v. LaGrave, 23 Nev. 374, 385 (48 P. 674).

The act of 1893, 32, providing that the secretary of state shall be ex officio clerk of the supreme court, while sufficient to

confer color of authority on the secretary of state acting as ex officio clerk, is without force as an amendment or repeal by implication of a clerk of the supreme court in the same manner as other state officers are elected. State ex rel. Josephs v. Douglass, 33 Nev. — (110 P. 177, 178).

**2766. Who eligible—Age qualifications.**

SEC. 2. No person who is not a qualified elector shall be eligible to any office of honor, profit, or trust, in and under the government and laws of this state. No person shall be eligible to the office of governor, lieutenant-governor, judge of the supreme court, secretary of state, state treasurer, state controller, attorney-general, surveyor-general, superintendent of public instruction, who, at the time of such election, has not attained the age of twenty-five years, and been a citizen resident of this state for two years next preceding the election; and to the offices of clerk of the supreme court, state senator, or assemblyman, who, at the time of such election, has not attained the age of twenty-one years, and been a citizen resident of this state one year next preceding the election. Any person over the age of twenty-five years shall be eligible to the office of district judge who is a qualified elector of the state and district in which he resides.

**2767. Presidential electors.**

SEC. 3. In each year when the election of president and vice-president of the United States is to take place, there shall be chosen as many electors of president and vice-president as this state may be entitled to at the time of such election.

**2768. Idem—Time and manner of election.**

SEC. 4. The qualified voters of the state shall meet at the places designated for holding the general election in the different counties in the state, on the Tuesday next after the first Monday in November, in each year when the election of president and vice-president is to take place, unless the Congress of the United States shall appoint a different day, and in that case, on such day as Congress shall appoint, and shall proceed to elect as many persons as the state shall then be entitled to elect as electors of president and vice-president.

**2769. Idem—Notice of election, how given.**

SEC. 5. Notice of the election of electors shall be given in the same manner as notice is required to be given of other elections, and the election thereof made in the same manner as is prescribed by law in regard to the election of representatives in Congress.

**2770. Electors, when and where to convene.**

SEC. 6. The electors so chosen shall convene at the seat of government on the first Wednesday in December next after their election, at two o'clock in the afternoon, and in case of the death or absence of any elector so chosen, or in case the number of electors shall, from any cause, be deficient, the electors then present shall forthwith elect, from the qualified electors of the state, so many persons as shall supply the deficiency. *As amended, Stats. 1869, 64.*

**2771. Duties when convened.**

SEC. 7. The electors, when convened on said first Wednesday in December, shall vote by ballot for one person for president and one person for vice-president of the United States, one of whom, at least, shall not be an inhabitant of this state. They shall name in their ballots the persons voted for as president, and in distinct ballots the persons 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 given for each, which list they shall sign and certify and transmit, sealed up, to the seat of government of the United States, directed to the president of the senate; and they shall, in all respects, proceed conformably to the constitution of the United States, and the laws of the United States in this behalf. *As amended, Stats. 1869, 64.*

**2772. Representatives in Congress.**

SEC. 8. At the general election in the year eighteen hundred and sixty-six, and at the general election in each second year thereafter, there shall be elected such number of representatives to the Congress of the United States as the State of Nevada may be entitled to.

**2773. State, county and precinct officers.**

SEC. 9. The governor, lieutenant-governor, secretary of state, justices of the supreme court, state treasurer, state controller, attorney-general, surveyor-general, clerk of the supreme court, and state superintendent of public instruction, shall be elected by the qualified electors of the state; members of the house of representatives of the United States, district judges, district attorneys, senators, members of the assembly, county commissioners, county school superintendents, sheriffs, county clerks, public administrators, recorders, assessors, county treasurers, and county surveyors, shall be elected by the qualified electors of their respective districts or counties. Justices of the peace and constables shall be elected by the qualified electors of their respective precincts or townships.

**2774. State officers, when chosen—Term of office—Residence and office at Carson City—Exception.**

SEC. 10. The governor, lieutenant-governor, secretary of state, state controller, state treasurer, attorney-general, and surveyor-general shall be chosen at the general election of the year eighteen hundred and sixty-six, and every fourth year thereafter, and shall hold their office for the term of four years from the time of their installment, and until their successors shall be qualified, and all of said officers, excepting the surveyor-general, shall keep their office and reside at the seat of government.

Lieutenant-governor not required to reside at seat of government, sec. 4249.

**2775. Justices of supreme court, when chosen—Chief justice—Oath—Commission.**

SEC. 11. One justice of the supreme court shall be chosen by the qualified electors of the state, at the general election of the year eighteen hundred and sixty-six, and one every second year thereafter, and shall hold his office for the term of six years from the first Tuesday after the first Monday in January next after his election. Each justice hereafter elected or appointed shall be commissioned by the governor, and before entering upon the discharge of his duties shall take the constitutional oath of office. The senior justice in commission shall be chief justice and in case the commission of any two or more of said justices shall bear the same date, they shall determine by lot who shall be chief justice.

See Const., sec. 318.

**2776. Clerk of supreme court.**

SEC. 12. At the general election in the year eighteen hundred and sixty-six, and at the general election every four years thereafter, the clerk of the supreme court shall be chosen by the qualified electors of the state, and shall hold his office for the term of four years from the first Tuesday after the first Monday in January next after his election, and until his successor is qualified.

Under the constitution, the office of clerk of the supreme court cannot be abolished by the legislature. State ex rel. Josephs v. Douglass, 33 Nev. —(110 P. 177, 178).

See ante, 290.

**2777. Superintendent of public instruction.**

SEC. 13. At the general election in the year eighteen hundred and sixty-six, and at the general election every four years thereafter, the state superintendent of public instruction shall be chosen by the qualified electors of the state, and shall hold his office for the term of four years from the first Monday of January next after the election, and until his successor is qualified.

**2778. District judges.**

SEC. 14. District judges shall be chosen by the qualified electors of their respective districts, at the general election of the year eighteen hundred and sixty-six, and shall hold their offices for the term of four years from the first Monday of January next after their election.

**2779. Assemblymen.**

SEC. 15. The members of the assembly shall be chosen by the qualified electors of their respective districts, at the general election of the year eighteen hundred and sixty-six, and shall hold their office for the term of two years from the day succeeding such election.

**2780. State senators.**

SEC. 16. The senators shall be elected by the electors of their respective districts, at the general election in the year eighteen hundred and sixty-six, and every two years thereafter, and shall hold their offices for four years from the day succeeding such general election.

**2781. County officers.**

SEC. 17. County clerks, sheriffs, county assessors, county treasurers, district attorneys, county surveyors, county recorders, county school superintendents, county commissioners, and public administrators, shall be chosen by the electors of their respective counties, at the general election in the year eighteen hundred and sixty-six, and at the general election every two years thereafter, and shall enter upon the duties of their respective offices on the first Monday of January subsequent to their election.

**2782. Justices of the peace and constables—Counties divided into townships.**

SEC. 18. The board of county commissioners of each county shall, from time to time, as the public good may require, divide said county into a convenient number of townships, and shall cause such division to be published. For each of such townships one justice of the peace shall be elected. The constables of the several townships of the state shall be chosen at the general election of the year eighteen hundred and sixty-six, and shall enter upon the duties of their offices on the first Monday of January next succeeding their election, and shall hold their offices for the term of two years thereafter, until their successors are elected and qualified. Justices of the peace of the several townships of the state shall be chosen at a general election, to be held for that purpose, on the Tuesday after the first Monday in November, in the year eighteen hundred and sixty-six, who shall hold their offices from the expiration of the term of the present incumbents until the first Monday of January, A. D. eighteen hundred and sixty-nine, and until their successors are elected and qualified.

Under Const., art. 6, sec. 8 (ante, 323), the legislature alone can determine the number of justices of the peace for each township, and the office must be filled by popular election. State ex rel. Bull v. Snodgrass, 4 Nev. 524, 525.

Although the power may exist in the legislature to provide otherwise than by election

for filling the office of justice of the peace in case of emergency or special occasion, such as a vacancy, or the creation of a new office, it cannot delegate the power to determine the number of justices for the townships, nor can it provide that the office is to be filled under general laws otherwise than by popular election. Idem.

**2783. New township.**

SEC. 19. When any justice of the peace, in the formation of a new township, shall be brought within the limits thereof, he shall be one of the justices of the peace allowed to such new township, and shall continue in office until the expiration of the term for which he was elected.

**2784. Justice of the peace in certain townships—Change of boundaries.**

SEC. 20. If, by annexing a part of one township to another, there should be more than the proper number of justices within the limits of the townships to which such addition shall have been made, any justice of the peace brought within such township shall, notwithstanding, hold and exercise his office therein until the expiration of his term of office, but no successor shall be elected to fill any vacancy in said office which may be occasioned by the expiration of said term, or otherwise. And whenever any township, in consequence of a part being taken to form a new township, or to be annexed to any other township, shall be deprived of its proper number of justices of the peace, the vacancy thus produced shall be supplied, as in other cases.

**2785. New township—Constable.**

SEC. 21. When any constable, by the formation of a new township, shall be brought within the limits thereof, he shall continue to act as constable to such new township, and shall continue in office until the expiration of the term for which he was elected.

**2786. Oath and bond—Term, when begins.**

SEC. 22. Members of the legislature, and all officers, executive, judicial and ministerial, shall, before entering upon the duties of their respective offices, provide the official bond required by law, when such bond shall be required, and take and subscribe to the official oath. All officers elected, except senators and representatives, shall qualify, and execute and deliver their official bonds (when required), as above provided, prior to the Tuesday after the first Monday in January ensuing their election; and all officers appointed to fill vacancies, in the cases provided by law, shall qualify and give bond (when required) within thirty days from the time of their appointment. The term of office of all officers, elected or appointed, shall begin from the time of their qualification, unless some other express provision is made by law.

Form of oath, secs. 370, 2891.

Where an officer on being reelected accepted a commission, and took the oath of office for the new term and presented a bond therefor, which, however, was not approved, and he failed to present a new bond in the time prescribed by law, it was held that he had relinquished all claim to continue to hold over under the former term. *State v. Rhoades*, 6 Nev. 353, 356.

It was also held that he was an officer de facto and holding as of the new term; and that the sureties on the new bond afterwards filed were estopped from denying that he was holding as of the new term de jure. *Idem*.

A person discharging the duties of a public office under color of right is an officer de facto and not a mere intruder, and he and his sureties are estopped by the recitals of his official bond from denying that he is entitled to the office. *Idem*.

A petition for a mandamus to compel the governor to approve or disapprove the bond of an officer required to give bond within thirty days from the time of his appointment, must show that the bond was presented to the governor within the prescribed time. *State ex rel. Laughton v. Adams*, 19 Nev. 370 (12 P. 488).

**2787. Oath indorsed on commission.**

SEC. 23. Said oath, except in cases specified in the next two sections, shall be indorsed on the commission or certificate of election of such officer, and signed by him, and certified by the officer before whom such oath or affirmation shall have been taken.

Cited, *State ex rel. Guinan v. Meder*, 22 Nev. 269 (38 P. 668).

Where a school trustee has in fact taken the oath of office, the failure to indorse such

oath on the certificate of his election does not affect his qualification, such requirement being merely directory. *State ex rel. Dixon v. Van Patten*, 26 Nev. 273, 277 (66 P. 822).

**2788. Members of legislature—Oath.**

SEC. 24. Members of the legislature shall take and subscribe to the official oath before they assume their seats as such members, and an entry thereof shall be made on the journal of the proper house.

**2789. Official oaths of governor and lieutenant-governor, when subscribed.**

SEC. 25. The governor and lieutenant-governor shall respectively take and subscribe to the official oath before the chief justice or one of the associate justices of the supreme court, on the first Monday of January next succeeding their election. *As amended, Stats. 1881, 22.*

**2790. Before whom oath taken.**

SEC. 26. The oath shall be taken, and, except in the cases prescribed in the two next preceding sections, may be subscribed before any judge of the supreme or district court or clerk thereof, county clerk, notary public, or justice of the peace, unless otherwise directed by law.

**2791. Oath taken at the time of reception of commission.**

SEC. 27. It shall be the duty of every officer, whose oath of office is required to be indorsed on his commission or certificate of election, to take and subscribe said oath at the time of the reception of said commission or certificate.

**2792. Deputies to take oath.**

SEC. 28. When any officer is authorized or required by law to appoint a deputy, such deputy, before he shall proceed to act, shall take the same oath as his principal.

**2793. Commissions, how issued.**

SEC. 29. All commissions of officers shall be in the name and by the authority of the State of Nevada, and shall be sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

**2794. Certificate of election and commissions.**

SEC. 30. Members of the legislature and all county and precinct officers elected by the people, shall receive certificates of election from the boards of county commissioners of their respective counties, and all state officers shall receive their commissions from the governor.

**2795. Election and qualification certified to secretary of state—Vacancies certified—District officers to file duplicate oath—Resignations.**

SEC. 31. It shall be the duty of the clerk of the board of county commissioners of each county in this state, within ten days after the election or appointment and qualification of any county officer (authorized by law to take acknowledgments or administer oaths), or justice of the peace, in their county, to certify, under seal, to the secretary of state (stating the election or appointment and qualification of any such officer), which certificate shall be filed in the office of the secretary of state as evidence of the official character of such officers. Said clerk shall, also, within ten days after a vacancy has occurred in any county office, or office of justice of the peace (by resignation or otherwise), certify to the secretary of state the fact of such vacancy. Each district officer, authorized by law to take acknowledgments or administer oaths, shall, within ten days after entering upon the discharge of the duties of his office, file a duplicate certificate of his official oath in the office of the secretary of state, which certificate shall be evidence of the official character of such officer; and all resignations of any officer, required to be made to the governor, shall be by him filed in the office of the secretary of state.

**2796. Commission or certificate of office.**

SEC. 32. Any officer elected or appointed to fill any vacancy shall be commissioned, or receive a certificate of election or appointment to such office.

An appointment to a public office must be in writing. State ex rel. Guinan v. Meder, 22 Nev. 264, 269 (38 P. 668).

**2797. Resignations and vacancies—Special election.**

SEC. 33. Any person who shall receive a commission, or a certificate of his election or appointment, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties or taken the requisite oath of office; and when any vacancy shall occur in the office of member of the senate or assembly, by death, resignation, or otherwise, and a session of the legislature is to take place before the next general election, the governor shall issue a writ of election, directed to the board of county commissioners of the county or district in which such vacancy shall occur, commanding such board to notify the several inspectors in their county or district to hold a special election to fill such vacancy or vacancies, at a time appointed by the governor.

Where a vacancy occurs in the office of state senator by reason of the appointment of such officer to a federal position, no proclamation of the governor is necessary to enable the people to legally fill such vacancy, where no session of the legislature is to take

place between the date of the occurrence of such vacancy and the next general election. State ex rel. McMillan v. Sadler, 25 Nev. 132, 173 (58 P. 284, 59 P. 546, 63 P. 128).

Independent of statute, an acceptance is

not necessary to effect a resignation. *State ex rel. Ryan v. Murphy*, 30 Nev. 409, 422, 423, 18 L. R. A. (N. S.) 1210, 97 P. 391.

A sheriff, who presented to the board of county commissioners his resignation to take effect on a designated future day, may before such day withdraw it, notwithstanding

ing the board's acceptance thereof. (*Talbot, C. J.*, dissenting.) *Idem*.

A public officer shall not be permitted to vacate an office and assume it again at will, and this he cannot do as a matter of law, independent of any question of public policy. *Idem*.

## 2798. Resignations, how made.

**SEC. 34.** Resignations of office shall be made as follows, to wit: First—The governor and lieutenant-governor shall transmit their resignations to the legislature, if in session, and if not in session, then to the secretary of state. Second—All state officers commissioned by the governor or elected by the legislature (except the officers of that body), shall resign their commissions to the governor. Third—Members of the legislature, when they resign their seats, shall deliver their resignations to the governor, and he shall immediately order an election to fill such vacancy. Fourth—By all county officers (except district judges, and they to the governor), to the board of county commissioners of their respective counties. Fifth—By all other officers holding office by appointment, to the officer, body, or board that appointed them.

A person holding a civil office under the United States can resign such office without the consent of the appointing power, or the acceptance by it of such resignation. It is not in the power of the executive to compel any civil officer to remain in office. *State ex rel. Nourse v. Clarke*, 3 Nev. 566.

A civil officer has the right to resign his office at his own pleasure and will, and the acceptance or rejection of such resignation can in no manner affect such right. *State*

*ex rel. Williams v. Beck*, 24 Nev. 92 (49 P. 1035).

A contingent resignation by a county official is subject to withdrawal by him at any time before the contingency happens, and the action of the governor in refusing to return the resignation, when required to do so, before such time, is of no effect. *Idem*.

See *State ex rel. Ryan v. Murphy*, under sec. 33 of this act.

## 2799. Vacancies, how occasioned.

**SEC. 35.** Every office shall become vacant upon the occurring of either of the following events before the expiration of the term of such office: First—The death or resignation of the incumbent. Second—The removal of the incumbent from office. Third—The confirmed insanity of the incumbent, found upon a commission of lunacy, issued to determine the fact. Fourth—A conviction of the incumbent of any felony or offense involving a violation of his official oath or bond. Fifth—A refusal or neglect of the person elected or appointed to take the oath of office, as prescribed in section 22 of this act; or, when a bond is required by law, his refusal or neglect to give such bond within the time prescribed by law. Sixth—The ceasing of the incumbent to be a resident of the state, district, county, city, or precinct, in which the duties of his office are to be exercised, or for which he shall have been elected or appointed. Seventh—The ceasing of the incumbent to discharge the duties of his office for the period of three months, except when prevented by sickness, or by absence from the state, upon leave, as provided by law. Eighth—The decision of a competent tribunal declaring the election or appointment void or the office vacant.

Where a district judge was pronounced insane and sent to an insane asylum under the provisions of the statute for the care of insane persons, and upon a certificate thereof, the governor appointed another person to fill his office as in case of a vacancy; Held, that the office was not vacant, and that the appointment of another judge was void. *O'Neale v. McClinton*, 5 Nev. 329.

The finding and declaration of an incumbent of the office of district judge to be insane, in accordance with the provisions

of the statute for the care of the insane does not create a vacancy in his office. *Idem*.

As the constitution (art. 7, sec. 3, ante, 336) provides for the removal from office of judges in a certain manner by the legislature, such provision is exclusive and prohibitory upon the legislature of other means for such removal. *Idem*.

An office presently filled cannot become vacant without a removal either voluntary or involuntary; when voluntary no judicial determination resulting in vacation is neces-

sary; when involuntary, such determination is essential, unless otherwise provided by the constitution or laws in pursuance thereof. *Idem.*

The argument of inconvenience can have no weight in the construction of a law; or at most, only in the case of a very doubtful point. *Idem.*

Under clause three above, two things are essential to create the vacancy: First, the insanity must be confirmed; and second, that fact must be found by the "commission of lunacy." *Idem.*

See State ex rel. Ryan v. Murphy, under sec. 33 of this act.

Where a new office is created and no per-

son appointed to fill it there is a vacancy. State ex rel. Clarke v. Irwin, 5 Nev. 112, 130.

See, also, ante, 301.

See State ex rel. Loughton v. Adams, 19 Nev. 370 (12 P. 488), under sec. 22 of this act.

Cited, State v. Rhoades, 6 Nev. 356.

Under clause five of this section it was held that the failure of a lieutenant-governor to give bond as ex officio state librarian did not create a vacancy in the former office; that the two offices are separate and distinct, and that respondent's failure to give a new bond as ex officio state librarian created a vacancy in that office. State ex rel. Davenport v. Loughton, 19 Nev. 204, 207 (8 P. 344).

## 2800. Vacancy, member of legislature.

SEC. 36. But when a vacancy shall occur in the office of a member of the legislature during the session thereof, such vacancy shall be notified to the governor, by the presiding officer of the house in which such vacancy shall have occurred.

## 2801. Removal—Vacancy, how filled.

SEC. 37. Whenever any officer shall be removed from office on impeachment and conviction, as declared in the constitution and laws of this state, it shall be the duty of the secretary of state to transmit a certified copy thereof to the officer (as the case may be), whose duty it shall be to order an election, or make an appointment to supply the vacancy caused by the removal of such officer from office.

See Const., secs. 334-336.

## 2802. When declared vacant.

SEC. 38. The governor shall declare vacant the office of every state officer, and the office of district judge; and the board of county commissioners shall declare the office of every county officer, except the district judge, required by law to execute an official bond, whenever a final judgment shall be obtained against such officer for a breach of the conditions of such bond, or whenever such officer shall be finally convicted of a felony, or any offense involving a violation of his official oath.

## 2803. Cause of vacancy certified to governor or commissioners.

SEC. 39. Whenever a vacancy occurs in any office, as specified in this act (except in cases of resignation made to the governor or legislature, or board of county commissioners, in which cases it is the duty of the governor and such boards of county commissioners to issue a writ of election, or make an appointment to fill such vacancy, as the case may be), the secretary of state, or clerk of the board of county commissioners of the county where such officer exercised the duties of his office, if confined to a single county; and if not thus confined, then the clerk of the board of county commissioners, where such officer last resided, previous to the occurring of such vacancy, shall certify to the governor, or such board of county commissioners, the cause of such vacancy, and if such vacancy occurs from the confirmed insanity of the incumbent, or from his conviction of a felony, or an offense involving a violation of his official bond or oath, the secretary of state, or clerk of such board of county commissioners, shall also accompany their certificate by a certified copy of a judgment found upon the commission of lunacy, or a certified copy of the record of conviction for such felony or offense as the case may be.

## 2804. Vacancies, how supplied.

SEC. 40. Whenever a vacancy shall occur, during the recess of the legis-

lature, in any office which the legislature is authorized to fill by election, or which the governor, subject to confirmation by the senate, is authorized to fill, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

Power of governor to appoint to vacancy—Power of legislature to fill new office—Vacancy in new office—Meaning of vacancy in constitution—Appointment to take effect at future day. *Clarke v. Irwin*, 5 Nev. 111.

See secs. 284, 290, 301, ante.

### 2805. When temporary appointments made.

SEC. 41. When, at any time, there shall be in either of the county or precinct offices (except the office of district judge) no officer duly authorized to execute the duties thereof, some suitable person may be temporarily appointed by the board of county commissioners to perform the duties of such offices, until they are filled by election or appointment, as provided by law; *provided*, that in case there is no board of county commissioners in such county, the governor may, on notice of such vacancy, create or fill such board.

A law authorizing the electors of a county biennially to elect a person to fill a certain office, does not, even by implication, authorize them at an intermediate election to choose a person to fill out an unexpired term of the same office; especially is this so where there

has been an appointment made to fill the vacancy by legal authority, and there is no law limiting this appointment to a period short of the expiration of the unexpired term. *Sawyer v. Haydon*, 1 Nev. 75.

### 2806. *Idem*—Duty to qualify.

SEC. 42. Any person so appointed, in pursuance of either of the last two preceding sections, shall, before proceeding to execute the duties assigned him, qualify in the same manner as required by law of the officer in whose place he shall be appointed; and he shall continue to exercise and perform the duties of the office to which he shall be so appointed until the election of his successor at the next session of the legislature, or the next general election, and the qualification of such successor thereafter.

### 2807. When powers of governor may devolve on lieutenant-governor.

SEC. 43. In case of the impeachment of the governor, or his removal from office, death, or inability to discharge the powers and duties of the office, resignation, or absence from the state, the powers and duties shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the state.

### 2808. When president pro tem. of the senate to act as governor.

SEC. 44. If, during the vacancy in the office of the governor, the lieutenant-governor shall die, be impeached, displaced, resign, or become incapable of performing the duties of his office, or be absent from the state, the president pro tem. of the senate shall act as governor until the vacancy shall be filled or the disability shall cease.

### 2809. When senate to elect a president.

SEC. 45. Whenever the government is administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senate shall elect one of its own members as president for that occasion.

### 2810. Vacancies to be filled by governor during recess of legislature.

SEC. 46. Vacancies that may occur in the office, the appointment of which is vested in the governor and senate, or in the legislature, shall be filled by the governor during the recess of the legislature, by granting commissions

which shall expire whenever the governor and senate, or the legislature, shall appoint a person or persons to fill said offices.

### 2811. Governor to apprise legislature of appointments.

SEC. 47. It shall be the duty of the governor to lay before the legislature, at the earliest day practicable, a statement of all appointments made by him since the preceding session to fill vacancies.

### 2812. Vacancies, state and judicial officers, filled by governor—Term.

SEC. 48. Whenever any vacancy shall occur in the office of justice of the supreme court or district judge, or any state officer, the governor shall fill the same by granting a commission, which shall expire at the next general election by the people and upon the qualification of his successor, at which election such officers shall be chosen for the balance of the unexpired term.

### 2813. Vacancies in county or township offices, how filled.

SEC. 49. When any vacancy shall exist or occur in the office of county clerk, or any other county or township office, except the office of district judge, the board of county commissioners shall appoint some suitable person to fill such vacancy until the next general election.

The provision of the act of 1865, 286, that a vacancy in the office of district attorney shall be filled by appointment for the "balance of the unexpired term," was repealed by this section. *State v. Wells*, 8 Nev. 105, 109.

The subject-matter of sections 50 to 57, inclusive, relating to bribery, embezzlement and other misconduct of officers, is covered by the act concerning crimes and punishments, and such sections are therefore omitted.

### 2814. Inspector or clerk of election—Trying to control vote—Penalty.

SEC. 58. If any inspector or clerk of an election, while acting as such, shall induce, or attempt to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector shall intend or desire to vote, such officer so offending shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

### 2815. Wilful neglect or corrupt conduct by officer.

SEC. 59. If the secretary of state, or any inspector, clerk of any election, register, or any other officer, on whom any duty is enjoined by this act, shall be guilty of any wilful neglect of such duty, or of any fraudulent or corrupt conduct in the execution of any such duty, he or they so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, to which may be added imprisonment in the county jail not exceeding one year.

### 2816. Duty of secretary of state upon failure to receive election returns—Evidence of failure.

SEC. 60. It is hereby made the duty of the secretary of state, after the expiration of thirty days from and after each election of governor, lieutenant-governor, representatives in Congress, and state and county officers, to certify to the proper district attorneys any and all failures and omissions of the boards of county commissioners, and their clerks and other officers, in their respective counties, to comply with the provisions of this act, in returning, or certifying the returns or certificates of any such election, to the office of the secretary of state, and every such certificate of the secretary of state, sealed with the state seal shall be sufficient presumptive evidence of any such failure or omission herein specified.

### 2817. Stealing, altering or defacing records.

SEC. 61. If any judge, justice of the peace, sheriff, public administrator, clerk, recorder, or any other public officer, or any other person whatsoever,

shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall, knowingly or wilfully, take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceedings whatever, of, or belonging to any public office within this state, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term of not less than one nor more than eleven years, and fined in any sum not exceeding five thousand dollars.

See secs. 6344-6349.

### 2818. Inhumanity to prisoners.

SEC. 62. Every sheriff, or jailer, or person who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and be removed from office.

### 2819. Refusing to deliver records—Applies to any person.

SEC. 63. If any officer, whose office shall be abolished by law, or who, after the expiration of the term for which he may be appointed or elected, or after he shall have resigned, or when legally removed from office, shall wilfully or unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending shall, on conviction thereof, be punished by imprisonment in the state prison for a term of not less than one nor more than eleven years. The provisions of this section shall apply to any person or persons who have such records, documents, papers, or other writings in his, her, or their possession, and shall wilfully mutilate, withhold, or detain the same, as aforesaid.

The subject-matter of sections 64 to 66, inclusive, is covered by the act concerning crimes and punishments, and such sections are therefore omitted.

### 2820. Officer refusing to receive or arrest.

SEC. 67. If any sheriff, public administrator, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with criminal offense, such sheriff, public administrator, jailer, constable, or other officer, so offending, shall, on conviction thereof, be fined in any sum not less than one thousand nor exceeding five thousand dollars, or imprisonment in the state prison not exceeding five years, and removed from office.

See secs. 6360-6361.

### 2821. Purchasing judgment, when misdemeanor.

SEC. 68. If any justice of the peace or constable of the same precinct shall, directly or indirectly, purchase any judgment, or any part thereof, on the docket of such justice, or any docket in his possession, he shall, upon conviction thereof, be fined for each and every offense so convicted of, in any sum not less than one hundred nor more than one thousand dollars.

### 2822. Granting authority to discharge duties of office—Penalty.

SEC. 69. Every person holding or exercising any office under the laws or constitution of this state, who shall, for any reward or gratuity paid, or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office (except his lawful deputies), shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding five thousand dollars, and shall be removed from office; and every such person who shall so give, or make any such agreement to give, any

reward or gratuity in consideration of such grant or authority, shall, upon conviction thereof, be fined in any sum not less than five hundred nor exceeding five thousand dollars.

See secs. 6317, 6331.

### 2823. Officers not preventing duel.

SEC. 70. If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention, on the part of any two persons, to fight with a deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

See secs. 6422-6426.

### 2824. Purchasing warrants and scrip—Certain officers forbidden to—Penalty.

SEC. 71. The state treasurer and controller, the several county, city, or town corporation officers of this state, are hereby expressly prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use and benefit of any person or persons whatever, any state, county, or city warrants, scrip, orders, demands, claim or claims, or other evidences of indebtedness against the state, or any county, city, or town thereof; and any such officer, for each and every offense so convicted of, shall be punished by fine not less than five hundred nor more than one thousand dollars, and shall be imprisoned in the state prison for a term not less than two months nor more than two years; such conviction shall operate as a forfeiture of office, and the party convicted shall forever be disqualified from holding any office of honor, profit, or trust in this state. [Any person giving information which shall lead to the conviction of any person, under the provisions of this section, shall be entitled to receive one-half of the fine adjudged against and collected from such officer.]

Portion in brackets unconstitutional, see sec. 355.

### 2825. Purchasing evidence of indebtedness—Certain officers forbidden to—Penalty.

SEC. 72. The state treasurer and controller, all county, city, or town corporation officers, are prohibited from purchasing or being interested, or receiving, or selling, or transferring, or causing to be purchased, received, sold or transferred, either in person, or by agent, or attorney, or by or through the agency or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness against the state, county, city or town corporation thereof, either directly or indirectly; nor shall any clerk or employee of any such officer or officers, nor the commissioners employed, or to be employed, to fund any county, city, or town corporation indebtedness, be allowed to make any such purchase, sale, or transfer, or to receive any agency from other parties to purchase, sell, transfer, or bargain, in any manner, for any state, county, city, or town corporation warrants, scrip, demands, or other evidence of indebtedness, against the state, or any county, city, or town corporation thereof. Any person guilty, and convicted of a violation of any of the provisions of this section, shall be punished for each and every offense so convicted of, as provided in the foregoing section.

[Sec. 73 unconstitutional under the provisions of sec. 355, and therefore omitted.]

### 2826. Idem—Provisions of foregoing sections, how construed.

SEC. 74. The provisions of said sections shall not be construed so as to prohibit any state officer from purchasing or selling county or city warrants,

or any county or city officer from purchasing the warrants of the state or of any other city or county, or to prevent any state, county, or city officer from selling or transferring such warrants or scrip as he may receive for his services, but none other.

### 2827. Unlawful for officer to have interest in contract.

SEC. 75. It shall not be lawful for any officer of state, or member of the legislature, alderman, or member of the common council of any city in this state, or for the trustees of any city, town, or village, or for any county commissioners of any county, to become a contractor under any contract or order for supplies, or any other kind of contract authorized by or for the state, or any department thereof, or the legislature, or either branch thereof, or by or for the aldermen or common council, board of trustees, or board of county commissioners of which he is a member, or to be in any manner interested, directly or indirectly, as principal, in any kind of contract so authorized.

See sec. 6331.

### 2828. *Idem*—In purchase or sale.

SEC. 76. It shall not be lawful for any town, city, county, or state officer, or member of the legislature, to be interested in any contract made by such officer, or legislature of which he is a member, or be a purchaser, or be interested in any purchase of a sale made by such officer in the discharge of his official duties.

See sec. 6331.

### 2829. *Idem*—Contracts may be declared void.

SEC. 77. All contracts made in violation of the provisions of the two preceding sections (or either of them) of this act, may be declared void, at the instance of the state, city, town, or village, or county interested, or of any other party interested in such contract, except the officers prohibited in said sections from making or being interested in such contract.

### 2830. *Idem*—Fine and forfeiture of office.

SEC. 78. Any person violating the provisions of sections 75 and 76 (or either of them) of this act, directly or indirectly, shall forfeit his office, and shall be punished by fine, not less than five hundred nor more than five thousand dollars, or by imprisonment.

See sec. 6331.

[Sec. 79, relating to the enforcement of sec. 6439, is covered by act concerning crimes and punishments, and is therefore omitted.]

### 2831. Governor required to offer reward in certain cases.

SEC. 80. If any person who has been sentenced to confinement in the state prison, by any court having competent authority within this state, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the governor is authorized and required, upon satisfactory evidence of the guilt of the accused, to offer a reward for his apprehension, which reward shall not exceed the sum of five thousand dollars, and shall be paid out of the general fund.

See secs. 3905-3907.

[Sec. 81, being covered by provisions of the act concerning crimes and punishments, secs. 6396-6397, is therefore omitted.]

### 2832. Mayor may order police force.

SEC. 82. The mayor or other officer having the direction of the police in a city, town, or village, shall order a force sufficient to keep the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

**2833. Officer may command assistance when resistance is apprehended.**

SEC. 83. When a sheriff, or other public officer authorized to execute process, shall find, or have reason to apprehend, that resistance will be made to the execution of his 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.

See sec. 6956.

**2834. To certify to court the names of resisters—Punished for contempt.**

SEC. 84. The officer shall certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they be proceeded against for their contempt of court.

[Sec. 85 is covered by sec. 6361, and is therefore omitted.]

**2835. Governor may order military force.**

SEC. 86. If it appear to the governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he shall, on the application of the sheriff, order such military force from any other county or counties as shall be necessary.

See secs. 3982, 4058.

**2836. Riotous assemblage—Command to disperse.**

SEC. 87. When six or more persons, whether armed or not, shall be unlawfully or riotously assembled in any city or town, the sheriff of the county and his deputies, the mayor and aldermen of the city, or the constable of the town, and the justices of the peace, shall go among the persons so assembled, or as near as possible, and shall command them, in the name of the people of the United States and the State of Nevada, immediately to disperse.

See secs. 6593-6596.

**2837. Idem—Arrest—Power of county.**

SEC. 88. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

[Sec. 89 is covered by sec. 6361, and therefore omitted.]

**2838. Refusing to use authority to suppress riot—Penalty.**

SEC. 90. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section 87, neglect or refuse to proceed to the place of 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 shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

[Sec. 91 is covered by sec. 6361, and is therefore omitted.]

**2839. Armed force to obey orders—Who may give.**

SEC. 92. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, it shall obey such orders in relation thereto as may have been made by the governor, or by a judge of a court of record, or the sheriff of the county, or by a magistrate, or any other officer authorized by law to make such order.

See secs. 3982, 4058.

**2840. Idem—May call out troops.**

SEC. 93. When there is an unlawful or riotous assembly, with the intent to commit a felony, or to offer violence to person or property, or to resist, by force, the laws of the state, and the fact is made to appear to the governor, or to a judge of the district court, or to the sheriff of the county, either of those officers may issue an order, directed to the commanding officer of a division, brigade, regiment, battalion, or company, to order his command, or any part thereof (describing the kind and number of troops), to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws.

See secs. 3982, 4058.

**2841. Commanding officer to obey orders.**

SEC. 94. The commanding officer, to whom the order is given, shall forthwith obey the same, and the troops so required shall appear at the time and place appointed, armed and equipped with ammunition as per inspection, and shall execute any order that they shall then and there receive, according to law.

**2842. When governor may declare county in insurrection—Proclamation.**

SEC. 95. When the governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county, by bodies of men, or that combinations to resist the execution or process by force, exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, of the district attorney, or district judge of the county, by proclamation, to be published in such papers as he shall direct, declare the county to be in a state of insurrection, and may order into the service of the state such number and description of volunteers, or uniformed companies, or other militia of the state, as he shall deem necessary, to serve for such term, and under the command of such officers as he shall direct.

**2843. May revoke proclamation.**

SEC. 96. The governor may, when he shall think proper, revoke the proclamation authorized by the last section, or declare that it shall cease at such time and in such manner as he shall direct.

**2844. Officers auditing accounts—Affidavit of officer filed.**

SEC. 97. It shall, in all cases, be the duty of all officers who may be called upon to audit and allow the accounts of either state, county, city, or town officers, to take and file an affidavit of said officers that they have not violated any of the provisions of this act, and for that purpose all officers authorized by law to audit and allow accounts, are hereby empowered and required to administer oaths and affirmations, which shall have the same force and validity in all actions for perjury, as if administered by a judicial officer.

**2845. When treasurer may refuse to redeem warrant.**

SEC. 98. It shall be the duty of the state treasurer, and the several county, city, or town corporation treasurers, of the state, to refuse to redeem any warrants, scrip, orders, or other evidence of indebtedness against the state, or any county, city, or town corporation thereof, whenever it shall come to their knowledge that such warrants, scrip, or other evidence of indebtedness have been purchased, sold, received, or transferred in violation of any of the provisions of this act.

**2846. May sell indebtedness for personal services rendered.**

SEC. 99. All public officers referred to in any of the sections of this act

shall have the right to sell or transfer any evidence of public indebtedness which may be issued according to law, for services rendered by them to the state, county, city, or town corporation, legally and justly due, and this act shall not be deemed to prevent the purchase, sale, or transfer of any funded public indebtedness whatever of the state, or of any county, city, or town corporation.

### 2847. Settlement or payment of persons violating act withheld—Prosecution.

SEC. 100. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidence of public indebtedness, when he shall be informed by affidavit of the violation of any of the provisions of this act, by any officer whose account is to be settled, audited, or paid by him, to withhold any settlement or payment of the same and to cause said officer to be prosecuted as for a felony, as provided in the foregoing sections of this act.

#### *An Act authorizing ministerial officers to appoint deputies.*

Approved February 19, 1864, 143

### 2848. Who may appoint deputies—Ex officio coroner.

SECTION 1. All prosecuting attorneys, county recorders, clerks of the several district courts, county clerks, sheriffs, assessors, collectors of taxes, constables and public administrators, are hereby authorized to appoint deputies, who shall have power to transact all official business appertaining to said officers, to the same extent as their principals; *provided*, that the deputy appointed by the public administrator may act as ex officio coroner. *As amended, Stats. 1905, 33.*

Full faith and credit should be given to all official acts certified either by the county clerk or his deputy. *Gillig v. Ind. G. & S. M. Co., 1 Nev. 250.*

The district attorneys of the several counties have authority to appoint deputies. *State v. Harris, 12 Nev. 414, 420.*

### 2849. Responsible for compensation and acts—May require bonds.

SEC. 2. Said officers shall be responsible for the compensation of said deputies, and shall be responsible on their official bonds for all official malfeasance or nonfeasance of the same. Bonds for the faithful performance of their official duties may be required of said deputies by said principals.

When the sureties on the official bond of a deputy assessor obligated themselves for the faithful performance by the officer of the duties of said office "during his continuance therein," it was held, that the obliga-

tion of the sureties was general for a term solely dependent upon the will of the assessor, and which would continue unless revoked during his entire term. *Kruttschnitt v. Hauck, 6 Nev. 163-165.*

### 2850. Appointments, how made.

SEC. 3. All appointments of deputies under the provisions of this act shall be in writing, and shall, together with the oath of office of said deputies, be filed and recorded in a book provided for that purpose in the office of the recorder of the county within which the principal legally holds and exercises his office. Revocations of such appointments shall also be filed and recorded as herein provided. From the time of the filing of said appointments or revocations therein, persons shall be deemed to have notice of the same.

The power of the county assessor to appoint deputies is limited only by the provision in the act of 1865, 346, that before such appointment he shall "divide the county into convenient districts, of which division

notice shall be given to the board of county commissioners." *Kruttschnitt v. Hauck, 6 Nev. 163-165.*

Cited, *State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 58.*

*An Act providing for the removal from office of public officers for malfeasance or nonfeasance in office, regulating the mode of procedure, and other matters properly connected therewith.*

Approved March 24, 1909, 293

[Secs. 1 to 20 covered by criminal practice act, chapters 4 and 5, secs. 6877-6907.]

**2851. Applies to all officers.**

**SEC. 21.** If any person now holding or who shall hereafter hold any office in this state, who shall refuse or neglect to perform any official act in the manner and form as now prescribed by law, or who shall be guilty of any malpractice or malfeasance in office, may also be removed therefrom as hereinafter prescribed.

**2852. Procedure for removal—Decree—Costs.**

**SEC. 22.** Whenever any complaint in writing, duly verified by the oath of any complainant, shall be presented to the district court, alleging that any officer within the jurisdiction of said court has been guilty of charging and collecting any 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 as prescribed by law, or has been guilty of any malpractice or malfeasance in office, it shall be the duty of the court to cite the party charged to appear before him on a certain day, not more than ten nor less than five days from the time when said complaint shall be presented, and on that day, or some subsequent day not more than twenty days from that on which said complaint is presented, shall proceed to hear, in a summary manner, the complaint and evidence offered by the party complained of, and if, on such hearing, it shall appear that the charge or charges of said complaint are sustained, the court shall enter a decree that said party complained of shall be deprived of his office, and shall enter a judgment for five hundred dollars in favor of the complainant and such costs as are allowed in civil cases.

**2853. Copy of decree transmitted—Vacancy filled.**

**SEC. 23.** It shall be the duty of the clerk of the court in which such proceedings are had to transmit, within three days thereafter, to the governor of the state, or board of county commissioners (as the case may be) of the proper county, a copy of any decree or judgment declaring any officer deprived of any office under this act; and it shall be the duty of the governor or such board of county commissioners (as the case may be) to appoint some person to fill said office until a successor shall be selected or appointed and qualified; and it shall be the duty of the person so appointed to give such bonds as security as are prescribed by law and pertaining to such office.

See secs. 2805, 2813.

**2854. Convicted official not to hold office during appeal.**

**SEC. 24.** In case judgment of the district court, as herein provided, shall be against the officer complained of, and an appeal taken from the judgment so rendered, the officer so appealing shall not hold the office during the pendency of such appeal; but such office shall be filled as in case of a vacancy.

*An Act providing for the examination and auditing of the books and accounts of certain officers, and providing penalties for its violation.*

Approved March 20, 1911, 276

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| 2855. Accounts of officials to be examined<br>semiannually. | 2858. Grand jury may order examinations—<br>Indict neglecting officials. |
| 2856. Expert accountant to be employed.                     | 2859. Penalty for neglect.   |
| 2857. Reports to go to grand juries.                        | 2860. Expenses of examination—How paid.                                  |

**2855. Accounts of officials to be examined semiannually.**

SECTION 1. It is hereby made the duty of the board of examiners and the boards of county commissioners of the various counties of this state, and the board of trustees, city council, or other governing body, of any incorporated city or town within this state, to audit and examine at least twice in each year the accounts of all officials, state, county or town, charged with the receipt, collection, disbursement or handling of any money, credits, effects, or property belonging to the state, county, city or town, or collected by such person under any law of this state, and for this purpose they shall have the power to employ a competent expert accountant to examine said books or accounts, of such officers, but the examination and auditing by the board of examiners shall be confined to state officers, the examination and auditing by the board of county commissioners to county or township officers, and the examination and auditing by the board of trustees, or city council, shall be confined to the town or city officers.

**2856. Expert accountant to be employed.**

SEC. 2. The accountant so employed shall report to the board employing him, the amounts of money in the various funds, the amounts collected, the amounts disbursed, the condition of the books, and the manner in which such accounts are kept, giving in detail the information thus required, and shall further certify to such board if the amounts collected and expended and on hand correspond, and to report to such board any shortage, misappropriation, or misapplication of any of the public moneys so collected, and shall give such further information as may be required by such board.

**2857. Reports to go to grand juries.**

SEC. 3. The reports of such accountant shall, by order of the district judge, be laid before the grand jury of each of the counties of this state for an examination by them, and to take such action upon such report as they shall deem necessary.

**2858. Grand jury may order examinations—Indict neglecting officials.**

SEC. 4. In case any board hereby required to audit and examine, or cause to be audited and examined, the accounts of the various officers herein enumerated, shall fail to cause such examination and report to be so made, then it shall be the duty of the grand jury of the county, to employ competent experts to make such examination and to report to such grand jury, and such grand jury shall also indict such officers as have failed, refused or neglected to audit and examine, or cause to be audited and examined, the accounts of such officers as required by this act.

**2859. Penalty for neglect.**

SEC. 5. The members of the board who are hereby required to examine and audit, or cause to be examined or audited, the accounts of the various officers herein mentioned, who shall fail, refuse or neglect to do so, as required by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars, nor more than one thousand dollars, and unless such fine be paid, shall be confined in the county jail at the rate of one day for each two dollars of such fine.

**2860. Expenses of examination, how paid.**

SEC. 6. All expenses incurred in the examination of the accounts of the state officers, for experts or otherwise, shall be a legal charge against the sum of \$2,400, which is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, and the controller is hereby authorized to draw his warrant, and the treasurer to pay the same upon the written order

of the board of examiners drawn in favor of the person making such examination; all costs for the examination of the county books shall be a legal charge against the county, and all costs incurred in the examination of the books of any incorporated city or town shall be a legal charge against such incorporated city or town, all such accounts to be paid by the county or incorporated city or town, the same as any other claims against such county, city or town.

*An Act to prevent drunkenness in office, fixing the penalty thereof and providing for the enforcement of the same.*

Approved February 17, 1887, 65

**2861. Drunkenness ground for removal—Gross misdemeanor.**

SECTION 1. Any civil officer in this state who shall, during his term of office, become intoxicated, or under the influence of alcoholic, malt or vinous liquors, so that he shall not at all times be in proper condition for the discharge of the duties of his office, shall be deemed guilty of a misdemeanor in office, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars or imprisonment not exceeding one year, and shall be subject to removal from office by impeachment, if he be a state officer, and if a county or township officer, shall be removed from office by the judgment of the court in which the conviction is had, as a part of the penalty in such conviction.

**2862. Duty of officers to prosecute—Court to specially charge grand juries.**

SEC. 2. It shall be the duty of the sheriff and his deputies, constable and his deputies, district attorneys and all other peace officers in this state, upon receiving information from any person that the provisions of this act have been violated, to immediately institute proceedings in the proper court against the person thus complained of, and prosecute the same with reasonable diligence to final judgment, and the provisions of this act shall be specially charged to the grand juries of the several counties of the state at each sitting of the district court.

**2863. Judgment roll certified to secretary of state in case of state officer.**

SEC. 3. In case of the conviction of any state officer under the provisions of this act, it shall be the duty of the prosecuting officer obtaining such conviction, to file a certified copy of the judgment roll with the secretary of state, and the secretary of state shall lay the same before the legislature at its next session after receiving said judgment roll.

*An Act to authorize fees and salaries of officers, and compensation of other persons, to be taken in attachment and execution, and to prohibit assignments to defraud creditors.*

Approved February 1, 1883, 26

**2864. Fees and salaries—Fraudulent assignments void.**

SECTION 1. The fees and salaries of all persons holding office or positions of profit under the government of the State of Nevada, or under any county, township, city town or school district within the state shall be subject to attachment and execution for all debts and liabilities created or incurred by such officials or other persons, and all assignments, sales or transfers of such fees and salaries, previous to becoming due, unless made in good faith and not to defraud creditors, shall be null and void as against all such debts and liabilities. *As amended, Stats. 1889, 118.*

**2865. Garnishment—May pay into court.**

SEC. 2. In case of the garnishment or attachment of any auditor, treasurer, or disbursing officer, under the provisions of this act, such officer so garnished or holding the funds or property attached, may pay the sum named, or deliver the property named in the garnishment or attachment, into the court issuing the same, taking the receipt of the court therefor, which shall be a full release of the disbursing officer from the garnishment or attachment.

**2866. Statute of limitations does not run during term.**

SEC. 3. The statute of limitations shall not run against any indebtedness of such officer or person, existing at the time of his entering upon the duties of his office or position, during the time such office or position shall be held.

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## OFFICIAL ADVERTISING

*An Act fixing the rates for official advertising by the State of Nevada and the several counties of the state.*

Approved March 16, 1897, 92

**2867. Rates fixed—Annual contracts.**

SECTION 1. All advertising ordered or required by the State of Nevada, or by the respective counties of the state shall be paid for by the state or the county ordering or requiring the same at the rate of two dollars per square of ten lines nonpareil measurement for the first insertion and one dollar per square for each subsequent insertion; an insertion to be held to be one publication per week whether the newspaper in which such advertising is ordered to be done be published daily or weekly; *provided*, that nothing herein contained shall prohibit boards of county commissioners from entering into annual contracts for the entire official printing and advertising of their respective counties when in their judgment a saving of public funds will be effected thereby.

A legislative act (Stats. 1887, 135) appropriating a certain sum "for the purpose of paying the expenses of the various counties of this state of the special election," does not create a fund applicable to the payment

of a demand for publishing proposed amendments to the state constitution, to be voted upon at such special election, as such demand is not chargeable against any of the counties. *Bragg v. State*, 20 Nev. 443, 444 (23 P. 427).

## OFFICIAL BONDS

Concerning official bonds, sections 2868–2879.

Providing for release of sureties, sections 2880–2884.

Concerning sureties on, sections 2885–2886.

Relating to official bonds, section 2887.

To provide surety bonds for officers, sections 2888–2890.

### *An Act concerning official bonds.*

Approved March 14, 1865, 401

2868. Form of official bond.

2869. Time in force—Subsequent law to apply—Condition to be expressed.

2870. Who may bring suit.

2871. Defect in bond not material.

2872. Approval—Record and filing.

2873. Additional bond, when required.

2874. Idem—Office vacant, when.

2875. Insufficient bond of state officer—Procedure.

2876. Force of additional bond.

2877. Number of sureties.

2878. Justification of sureties, how made.

2879. Sureties may become liable for portion only.

### 2868. Form of official bond.

SECTION 1. All official bonds required by law of officers shall be in form joint and several, and made payable to the State of Nevada, in such penal sum, and with such conditions, as may be required by law.

### 2869. Time in force—Subsequent law to apply—Condition to be expressed.

SEC. 2. Every official bond executed by any officer pursuant to law shall be deemed and taken to be in force, and shall be obligatory upon the principal and sureties therein, for any and all breach of the condition or conditions thereof, committed during the time such officer shall continue to discharge any of the duties of, or hold such office; and every such bond shall be deemed to be in force and obligatory upon the principal and sureties therein, for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition shall be expressed therein.

### 2870. Who may bring suit.

SEC. 3. Every official bond executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the State of Nevada, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his or her own name, without an assignment thereof.

### 2871. Defect in bond not material.

SEC. 4. Whenever any such official bond shall not contain the substantial matter, or condition or conditions required by law, or there shall be any defect in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be bound to the state or party interested, and the state or such party may, by action instituted in any court of competent jurisdiction, suggest the defect of such bond, or such approval or filing, and recover his proper and equitable demand or damages from such officer, and the person or persons who intended to become and were included in such bond as sureties.

### 2872. Approval, record and filing.

SEC. 5. The official bonds of officers shall be approved and filed as follows, to wit: The official bond of the secretary of state shall be approved by

the governor, and filed and recorded in the office of the county clerk of the county in which the seat of government is fixed. The official bond of all other state officers, required by law to give bond, shall be approved by the governor, filed and recorded in the office of the secretary of state. The official bond of all county and township officers shall be approved by the board of county commissioners, and filed and recorded in the office of the county clerk of their respective counties; *provided*, that the bond of the county clerk shall be filed and recorded in the office of the county recorder of the proper county.

If clerk is ex officio recorder, bond to be filed with treasurer, sec. 2887.  
Cited, State ex rel. Davenport v. Laughton, 19 Nev. 210 (8 P. 344).

### 2873. Additional bond, when required.

SEC. 6. Whenever the sureties, or any one of them, in the official bond of any county or township officer, shall die, remove without the state, become insolvent or insufficient, or the penalty of such bond shall become insufficient on account of recoveries had thereon, or otherwise, it shall be the duty of the board of county commissioners of the proper county, of their own motion, or on the showing of any person supported by affidavit, to summon any such officer to appear before them, at a time stated, not less than three days after service of such summons, and show cause why he should not execute an additional official bond with good and sufficient sureties.

### 2874. *Idem*—Office vacant, when.

SEC. 7. Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his absence. If, after examination, the board of county commissioners shall be of opinion that the bond of such officer has become insufficient, from any cause whatever, they shall require an additional bond, with such security as may be deemed necessary, which said additional bond shall be executed and filed within such time as the board of county commissioners may order; and if any officer shall fail to execute and file such additional bond within the time specified by such order, his office shall become vacant.

See secs. 2802–2803.

### 2875. Insufficient bond of state officer—Procedure.

SEC. 8. Whenever the official bond of any state officer shall become insufficient, from any cause whatever, the like proceedings may be had before the district court of the district in which said state officer holds his office, with reference thereto; *provided*, that such proceedings shall be commenced by a written motion, supported by affidavit.

### 2876. Force of additional bond.

SEC. 9. Every such additional bond shall be of like force and obligation upon the principal and sureties therein, and shall subject the officer and his sureties to the same liabilities as are prescribed respecting the original bonds of officers.

### 2877. Number of sureties.

SEC. 10. Unless otherwise expressly provided, there shall be at least two sureties upon the official bond of every officer.

Surety company may become, secs. 2888–2890.

### 2878. Justification of sureties, how made.

SEC. 11. In all cases where official bonds are required, or may be hereafter required from state, county or township officers, the officer or officers whose duty it is, or may be, to approve such bonds, shall not accept or approve any

such bonds unless the sureties thereon shall severally justify before an officer authorized to administer oaths, as follows:

First—On a bond given by a state officer that he is a resident and freeholder or householder within this state, and on a bond given by a county officer that he is a resident and freeholder or householder within such county.

Second—That he is worth the amount for which he becomes surety over and above all his debts and liabilities in property situated within this state which is not exempt from sale or execution. *As amended, Stats. 1889, 34.*

### 2879. Sureties may become liable for portion only.

SEC. 12. When the penal sum of any bond amounts to more than two thousand dollars, the sureties may become severally liable for portions not less than five hundred dollars of such penal sum, making in the aggregate at least two sureties for the whole penal sum.

See *State v. Rhoades*, 6 Nev. 352, also sec. 2786.

A surety upon a joint and several official bond cannot recover from his cosureties the full amount of damages he may have sustained by the wrongs of their common principal. *Alderson v. Mendes*, 16 Nev. 298.

### *An Act providing for the release of sureties on official bonds and undertakings.*

Approved February 13, 1867. 55

### 2880. Sureties may be released.

SECTION 1. Any surety on the official bond of any state, county, or city officer, or on the official bond of any executor, or administrator, or on the bond or undertaking of any person, where, by a law, a bond or undertaking is required, may be released from all liability thereon accruing, from and after proper proceedings had therefor, as provided in this act.

Cited, *State ex rel. Davenport v. Laughton*, 19 Nev. 204, 207, 210.

### 2881. Proceedings for release of surety.

SEC. 2. Any surety desiring to be released from liability on the bond of any state officer, shall file with the governor or secretary of state, a statement in writing duly subscribed by himself, or some one in his behalf, setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof. A notice containing the objects of such statement, shall be served personally on the officer, unless he shall have left the state, in which case the same may be served by publication for twenty days in some newspaper printed at the seat of government, or if none be printed there, then in such newspaper as shall be designated by the governor or secretary of state. Any surety desiring to be released from the official bond of any county officer, shall file and serve a similar statement. The statement, except when it concerns the county clerk personally, shall be filed with the clerk of the board of county commissioners, and when the county clerk is personally concerned, the statement shall be filed with the county auditor. Any surety desiring to be released from liability on the bond of a city officer, shall file and serve a similar statement with the city clerk or other proper officer. Any surety desiring to be released from an executor's or administrator's bond or undertaking, shall file and serve a similar statement with the clerk of the district court. Any surety desiring to be released from any other official bond or undertaking, shall file and serve a similar statement with the proper officer, person, or authority. All statements provided for in this section, must be served as in the first clause of this section provided; *provided*, the same, if served by publication, may be published in a newspaper in the same, and if no newspaper be published therein, then in an adjoining, or other county, without any order from any court, or other

authority; *provided, further*, in all cases for which publication is provided, a printed or written notice, posted in at least ten conspicuous places within the county, for the time specified, shall be deemed legal notice thereof.

See sec. 2886.

A notice served by the surety in the following form was held to be sufficient:

"Hon. \* \* \* You are hereby notified that I, as surety for the sum of \* \* \* on your official bond as ....., desire to be

relieved from further liability on account thereof, and withdraw and be discharged from said bond." State ex rel. Davenport v. Laughton, 19 Nev. 202.

**2882. Office vacant on failure to give additional bond—Coroner to succeed sheriff, when.**

SEC. 3. If any officer or person shall fail within ten days from the date of a personal service, or within thirty days from the date of the first insertion of a publication or posted service, to file a new or additional bond or undertaking, the office or appointment of the person or officer so failing shall become vacant, and such officer or person shall forfeit his office or appointment, and the same shall be filled as in other cases of vacancy, and in manner as provided by law, and the person applying to be released from liability on such bond or undertaking shall not be holden or liable thereon, after the date herein provided for the vacating and forfeiting of such office or appointment; *provided*, if a number of sureties on any such bond or undertaking, representing half the amount of the penalty thereof, shall unite in the same, or file and serve separate statements as herein provided, the right of such officer or person to exercise the duties and functions of his office, or appointment, shall immediately cease, until he shall file and have accepted and approved a new or additional bond or undertaking. Whenever by operation of this act, the functions of any sheriff shall become suspended, it shall be the duty of the clerk with whom the statement as hereinbefore provided shall have been filed, to notify the acting coroner of the county forthwith of such suspension; and upon being so notified, such coroner shall succeed to all the powers, and discharge all the duties of sheriff of his county, pending such suspension of the functions of the sheriff.

Cited, State ex rel. Davenport v. Laughton, 19 Nev. 204, 207, 210.

**2883. Unreleased sureties on original bond also liable.**

SEC. 4. In case a new or additional bond or undertaking be filed, the sureties on the original, not asking to be released, and on the new or additional bond or undertaking, shall be and continue liable for the official acts of such officer or person jointly and severally, the same as if all were sureties on one and the same instrument.

**2884. Penalty of new bond.**

SEC. 5. Whenever a statement is filed, or filed and served as herein provided, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed, and if no such order be made, then such new or additional bond or undertaking shall be executed for the same amount as the original.

*An Act concerning sureties on official bonds.*

Approved January 31, 1883, 25

**2885. Subscriptions, how taken.**

SECTION 1. Subscriptions to official bonds shall be taken singly, and for a liability not exceeding the amount subscribed.

**2886. Surety liable only for ratable proportion—How ascertained.**

SEC. 2. When the official bond of any state, county, or township officer

becomes insufficient by reason of the insolvency of any of the sureties thereon, or from any cause whatever, so that the same shall not contain at least two good and sufficient sureties for the whole penal sum named in the bond, and any liability occurs or becomes fixed by reason of the defalcation, omission, neglect, misconduct, or by any act of the officer who is the principal in such bond, then and in every such case, any surety or sureties, upon the payment of his or their ratable proportion of the liability on such bond, shall be released from all further liability thereon, so far as any loss to the state or county wherein such officer held office is concerned. Such ratable proportion shall be ascertained by considering all and each of the sureties on such bond as solvent, liable, and able to contribute his or their proportions of the whole amount of liability incurred on such bond. The state board of examiners, in the case of state officers, or the boards of county commissioners of the several counties of this state, in the case of county officers, are hereby authorized and required, in such cases, to make settlement with any or all such sureties who propose to pay and do pay their ratable proportions, as herein provided for, of the liability accrued on such bond. Any surety or sureties neglecting or refusing to pay such ratable proportions, or defending an action for the recovery of any liability on any official bond, shall be subject to such prosecution, judgments, and penalties as are now provided for by law; *provided*, that no judgment shall be rendered against such surety or sureties, for an amount above his or their pro rata liability on such bond, and costs of suit. *As amended, Stats. 1885, 81.*

See sec. 2881.

A previous act (Stats. 1881, 91), repealed by Stats. 1883, 13, was cited, *White Pine Co. v. Herrick*, 19 Nev. 36, 37 (5 P. 276).

### *An Act relating to official bonds.*

Approved March 19, 1891, 77

#### **2887. Bond of county clerk deposited with treasurer.**

**SECTION 1.** In all counties in this state wherein the county clerk is ex officio county recorder, the official bond of such officer shall be recorded in the manner and place now provided by law, and immediately thereafter shall be deposited for safe keeping in the office of the county treasurer.

### *An Act to provide surety bonds for state, county and precinct officers.*

Approved March 23, 1909, 187

#### **2888. Surety company may be surety.**

**SECTION 1.** That all state, county and precinct officers within the State of Nevada, who are now required by law, or who may hereafter be required by law, to give an official bond for the faithful discharge of the duties of such office, it shall be lawful for such officer or officers aforesaid to give security for the faithful discharge of the duties of their office by any surety company lawfully authorized to do business within the State of Nevada.

#### **2889. Counties to pay premium for treasurers.**

**SEC. 2.** In the case of each county treasurer of each county in the State of Nevada the premium of such surety bond for such treasurer shall be paid for by the county out of the general fund of each county.

#### **2890. Surety bond must be accepted—Proviso.**

**SEC. 3.** Whenever any of the aforesaid officials shall tender bonds of any surety company for approval to the county commissioners, or to any official board or person with whom such official bonds are required to be approved

and filed, it shall be the duty of such board, which is required by law to approve the same, to accept such bonds; *provided, however*, said surety company shall have first complied with the laws of the State of Nevada, and be duly authorized to transact business within this state.

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## OFFICIAL OATH

*An Act prescribing the official oath of the State of Nevada.*

Approved January 16, 1865. 96

### 2891. Who required to make oath—Form of.

SECTION 1. All persons, including presidents, secretaries, trustees or directors of mining, or other corporations, formed under the provisions of the laws of this state, members of the legislature, all officers, executive, judicial and ministerial, and all other persons who may be required by law (except witnesses in the courts of justice of this state), to make oath or affirmation shall, before they enter upon the duties of their respective offices, or other duties required of them, take and subscribe to the following oath, or affirmation: I, \_\_\_\_\_, do solemnly swear (or affirm), that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign; and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm), that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance since the adoption of the constitution of the State of Nevada; and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel during my continuance in office; and further, that I will, well and faithfully, perform all the duties of the office of \_\_\_\_\_, on which I am about to enter (if an oath), so help me God, (if an affirmation) under the pains and penalties of perjury.

See sec. 370.

The authority of an administrator cannot be attacked in a collateral proceeding because the oath required by the statute was not taken until after the letters were issued and was then taken before a notary; since

the letters, having been regularly issued, are valid until revoked, the irregularities complained of were cured by taking the oath before the proper officer before trial of the case. *Gallagher v. Holland*, 20 Nev. 164, 167 (18 P. 834).

## OPTOMETRY

*An Act to regulate the practice of optometry in the State of Nevada, and to fix the license therefor.*

Approved March 9, 1903, 72

2892. Qualifications required.  
2893. How certificate obtained.  
2894. Fees—License.

2895. Exceptions to application of act.  
2896. Penalty for violation—District attorney to prosecute.

### 2892. Qualifications required.

SECTION 1. All persons engaging in the optical profession or the practice of optometry in the State of Nevada shall be graduates of a regularly chartered optical college, possessing by virtue of its charter from the state in which it is located, authority to confer degrees and issue diplomas certifying to the efficiency of its graduates.

### 2893. How certificate obtained.

SEC. 2. Any person engaging in the optical profession or the practice of optometry in correcting ocular, muscular imbalances, errors of refraction, or other defects of vision, not requiring surgical treatment, shall appear before the state controller as an applicant for a license to engage in the aforesaid profession and practice, and produce to said officer a certificate of said applicant's graduation, and shall also make affidavit that the said applicant is the person named therein, and that such certificate has been issued by a regularly chartered college.

### 2894. Fees—License.

SEC. 3. In addition to the foregoing requirements, any person engaging in the optical profession or practice of optometry, shall pay to the State of Nevada the sum of ten dollars, on the payment of which the state controller shall issue to such person, a license duly certified, authorizing said person to engage in the profession and practice aforesaid.

### 2895. Exceptions to application of act.

SEC. 4. Nothing contained in this act shall be construed as applying to regularly qualified medical practitioners, nor to persons who have been engaged in the optical profession, or the practice of optometry in the State of Nevada for one year preceding the passage of this act.

### 2896. Penalty for violation—District attorney to prosecute.

SEC. 5. Any person violating any of the provisions of this act shall be fined in a sum not exceeding one hundred dollars, nor less than twenty dollars, and it shall be the duty of the district attorney of the county to prosecute such person.

## PARTNERSHIP

To authorize the formation of limited partnerships, sections 2897-2909.

Requiring partners transacting business to file certificate of partnership, sections 2910-2914.

### *An Act to authorize the formation of limited partnerships.*

Approved December 19, 1862, 55

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| 2897. Limited partnerships.         | 2904. Capital stock.                       |
| 2898. Responsibilities of partners. | 2905. In cases of general assignment.      |
| 2899. Terms of business.            | 2906. Idem—Publication of assignment.      |
| 2900. Acknowledged and recorded.    | 2907. Suits against general partners only— |
| 2901. Publication.                  | Exception.                                 |
| 2902. Renewal.                      | 2908. Dissolution of partnerships.         |
| 2903. General and special partners. | 2909. Liability and rights of partner.     |

### 2897. Limited partnerships.

SECTION 1. Limited partnerships, for the transaction of mercantile, mechanical, mining, or manufacturing business, within this territory, may be formed by two or more persons upon the terms and subject to the conditions and liabilities prescribed in this act; but nothing contained in this act shall authorize such partnerships for the purpose of banking or insurance.

### 2898. Responsibilities of partners.

SEC. 2. The said partnerships may consist of one or more persons, who shall be called general partners, who shall be jointly and severally responsible as general partners are by law, and of one or more persons who shall contribute to the common stock a specific sum, in actual cash payment, as capital, who shall be called special partners, and who shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned.

### 2899. Terms of business.

SEC. 3. The persons forming such partnerships shall make and severally sign a certificate, which shall contain the name or firm under which said partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted, and the time when the partnership is to commence and when it is to terminate.

### 2900. Acknowledged and recorded.

SEC. 4. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the partners before some officer authorized to take acknowledgment of deeds, and recorded in the office of the recorder 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 shall have places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it shall be recorded, shall be filed and recorded in like manner in the office of the recorder in every such county. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable, as general partners, for all the engagements thereof.

**2901. Publication.**

SEC. 5. The partners shall, for three successive weeks immediately after such registry, publish a copy of the certificate above mentioned in a newspaper printed in the county where their principal place of business is situated; and if no such paper be there printed, then in a newspaper in the territory nearest thereto; and in case such publication be not so made, the partnership shall be deemed general.

**2902. Renewal.**

SEC. 6. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded and published, in like manner as is provided in this act for the original formation of limited partnerships, and every such partnership which shall not be renewed in conformity with the provisions of this section, shall be deemed a general partnership.

**2903. General and special partners.**

SEC. 7. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, and the general partners only shall transact the business. If the name of any special partner shall be used in said firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership with any person except the general partner, he shall be deemed and treated as a general partner.

**2904. Capital stock.**

SEC. 8. During the continuance of any partnership, under the provisions of this act, no part of the capital stock thereof shall be withdrawn, nor any division of interests or profits be made so as to reduce such capital stock below the sum stated in the certificate before mentioned. If at any time during the continuance or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

**2905. In cases of general assignment.**

SEC. 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid unless it provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims.

**2906. Idem—Publication of assignment.**

SEC. 10. In case of such assignment, as provided for in the preceding section, the assent of the creditors shall be presumed, unless, within sixty days after notice thereof, they shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper printed in the county where the place of business of the party making it is situated; or if no newspaper be printed in such county, then in some newspaper printed in the territory nearest thereto, within fourteen days after the making such assignment.

**2907. Suits against general partners only—Exception.**

SEC. 11. All suits respecting the business of such partnerships shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this act that the special partners shall be deemed general partners, and that special partnerships shall be deemed gen-

eral partnerships, in which cases all the partners deemed general partners may join or be joined in such suits; and excepting, also, those cases where special partners shall be held severally responsible on account of any sums by them received or withdrawn from the common stock, as before provided.

### 2908. Dissolution of partnerships.

SEC. 12. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office in which the original certificate, or the certificate of renewal or continuation of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificates of the formation of such partnerships were published, according to the provisions of this act; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper in this territory nearest thereto.

### 2909. Liability and rights of partners.

SEC. 13. In all cases not otherwise provided for in this act, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

*An Act requiring partners transacting business in this state to file certificate of partnership with names of each individual comprising the same.*

Approved February 9, 1887, 46

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| 2910. File certificate with county clerk—<br>Publication of same.   | 2912. New certificate on change of partners.<br>2913. Clerk to keep register. |
| 2911. Certificate—Form of—Publication,<br>when—Penalty for failure. | 2914. Evidence of fact—Copies of entries of<br>county clerk to be.            |

### 2910. File certificate with county clerk—Publication of same.

SECTION 1. Every partnership transacting business in this state under a fictitious name or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which the said partnership is carrying on business, a certificate, stating the names in full of 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 be one, and if there be none in such county, then in a newspaper published in an adjoining county.

### 2911. Certificate—Form of—Publication, when—Penalty for failure.

SEC. 2. The certificate filed with the clerk, as provided in section 1 of this act, must be signed by the partners and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed and the publication made within two months after the passage of this act. Persons doing business as partners contrary to the provisions of this act, shall not maintain any action upon, 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.

### 2912. New certificate on change of partners.

SEC. 3. On every change in the members of a partnership transacting business in this state under a fictitious name or a designation which does not show the names of the persons interested as partners in its business, a new certificate must be filed with the county clerk, and a new publication made, as required in this act, on the formation of such partnership.

### 2913. Clerk to keep register.

SEC. 4. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this act, entering in alphabetical order the name of every such partnership and of each partner therein, and he shall charge for each name so entered the sum of twenty-five cents, to be collected as other fees, which shall be full compensation for filing and registration.

### 2914. Evidence of fact—Copies of entries of county clerk to be.

SEC. 5. Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication as herein directed made by the printer, publisher or chief clerk of a newspaper, are prima facie evidence of the facts therein stated; *provided*, that this act shall not apply to any incorporation duly created and existing under and by virtue of the laws governing and providing for the creation of incorporations in this state and now engaged or hereafter to be engaged in doing business in this state.

The following citations concerning partnerships, although not referring to the preceding acts, are here given as a matter of convenience:

Ultimate facts showing partnership as between partners. As between partners the ultimate facts whence a partnership is deduced are first, the agreement, and second, its execution; summed up as the executed agreement: there can be no partnership between parties, so far as they solely are concerned, without a consent thereto and a fulfillment thereof. *Groves v. Tallman*, 8 Nev. 178.

Partnership contracts joint. Partnership obligations are joint in their nature at least to the extent that one partner may always take advantage of the nonjoinder of his copartner in an action on a partnership contract. *Tinkum v. O'Neale*, 5 Nev. 93.

Judgment against one partner bars action against his copartner. A judgment against one partner upon a partnership contract merges the debt and constitutes a bar to a subsequent action for the same breach against his copartners. *Idem*.

Action against partner where copartner discharged in bankruptcy. Where one of two partners is discharged in bankruptcy, the other may be proceeded against alone. *Idem*.

Partnership in real estate—Burden of proof as to ownership. *Hogle v. Lowe*, 12 Nev. 286.

Real estate, when partnership property. *Idem*.

Power of partners to borrow money. A general partner in a mercantile business may borrow money for the benefit of the firm, and pledge its credit therefor, unless restrained by the articles of copartnership, of which the lender has notice. *Roney v. Buckland*, 4 Nev. 45.

Partners—Not bound by mortgage of copartner. *Arnold v. Stevenson*, 2 Nev. 234.

Real estate—Purchase of by one partner. The purchase of real estate may or may not be within the scope of the partnership business. *Davis v. Cook*, 14 Nev. 265.

Purchase in firm name binding. Plaintiff need not inquire as to consent of other partners. *Idem*.

Partners, joint tenants. Partners are quasi joint tenants, the survivor having a peculiar, qualified survivorship. *Whitmore v. Shiverick*, 3 Nev. 288.

A partner cannot sell his interest in partnership property so as to deprive his copartners of their lien thereon for partnership liabilities. Nor can a mortgage executed by one partner have such effect. *Idem*.

Partnership property may be sold without the right of redemption. Where the property of an insolvent partnership is ordered to be sold in order to pay the partnership debts, the right of redemption does not exist. *Rhoades v. Williams*, 12 Nev. 20.

Who not partners. *Jones v. O'Farrell*, 1 Nev. 354.

Liability as partners. Person sharing in profits as compensation for labor not liable. *Mason v. Hackett*, 4 Nev. 420.

Partners—When action at law may be maintained between. When balance has been found and agreed upon. *Wicks v. Lippman*, 13 Nev. 499.

Dissolution of copartnership—Relation of partners—Surety and principal debtor—Payment of indebtedness. Upon the dissolution of a copartnership where there is an agreement that one partner assumes and will pay all the debts of the firm, he thereby becomes

the principal debtor, and the other partner becomes his surety, as between themselves and all others dealing with them with knowledge of the facts, and the surety has the right to protect himself by settling the indebtedness for which he is liable, at any time, whether it is due or not. *Barber v. Gillson*, 18 Nev. 89 (1 P. 452).

**Partnership—Publication of notice of dissolution—Liability of party who holds himself out to the world as a partner.** If a retiring partner, after notice of dissolution is published in a newspaper, holds himself out to the world as a partner, he must, in order to relieve himself from liability on account of such publication, prove that knowledge of such notice of dissolution came to the actual knowledge of plaintiff. *Hixon v. Pixley*, 15 Nev. 475.

**Knowledge of dissolution—Lapse of time to be considered.** *Idem.*

**Dissolution of copartnership—Payment of taxes.** *Young v. Clute*, 12 Nev. 31.

**Allowance of costs in suit within the discretion of the court.** *Idem.*

**Surviving partner—Right of action.** A surviving partner is entitled to sue in his representative capacity for the amount due the partnership, and in his own name for the amount due to himself individually. The respective demands may be united in the same action, but should be separately stated. *Quillen v. Arnold*, 12 Nev. 234.

**Action by surviving partner—Sufficiency of allegation of copartnership.** *Reese v. Kinkead*, 17 Nev. 447 (30 P. 1087), and 18 Nev. 126 (1 P. 667).

**Mining partnership—Facts insufficient to constitute.** *Horton v. New Pass G. & S. M. Co.*, 21 Nev. 184 (27 P. 376).

**Surviving partner—Business carried on without authority by—Rights of representatives.** *Beck v. Thompson*, 22 Nev. 109 (36 P. 562).

What constitutes election. *Idem.*

Unauthorized improvements made by surviving partner, if ratified, cannot be repudiated. *Idem.*

Interest upon unpaid capital. *Idem.*

Money advanced by one member to, repaid by firm, debt canceled, no claim thereafter against firm or copartner concerning transactions. *Beck v. Thompson*, 22 Nev. 368 (40 P. 516).

Services rendered by one member of partnership to firm, compensation for. *Idem.*

Mining partnership—Statute of frauds. *Craw v. Wilson*, 22 Nev. 385 (40 P. 1076).

Tenancy in common—Partnership. *Vietti v. Nesbitt*, 22 Nev. 390 (41 P. 151).

Accounting—Bookkeeping—Liability of partner. *Folsom v. Marlette*, 23 Nev. 459 (49 P. 39).

Liability of partners—Conflict of evidence—Presumption. *Idem.*

Advancement for benefit of firm—Interest. *Idem.*

Right to show true value of property charged. *Idem.*

Property appropriated by one member of firm—Interest. *Idem.*

Compensation for services of partner. *Idem.*

Right to dispose of interest. *Robinson v. Kind*, 25 Nev. 262 (59 P. 863, 62 P. 705).

Mining partnerships—Rights and liabilities of partner. *McKenzie v. Coslett*, 28 Nev. 65 (78 P. 976).

Jury—Right to jury trial—Equity case. *Costello v. Scott*, 30 Nev. 43 (93 P. 1).

Legal and equitable issues. *Idem.*

Mining partnerships—Creation. *Idem.*

Grubstake contract. *Idem.*

Contract—Notification. *Idem.*

Appeal—Admission of evidence—Prejudice. *Idem.*

Fraudulent conveyances—Notice—Evidence. *Idem.*

Accounting—Judgment. *Idem.*

## POOR AND POOR LAWS

Relating to support of the poor, sections 2915–2925.

Concerning bringing of indigent, incompetent or incapacitated persons into the state or from one county into another county, sections 2926–2928.

Counties to provide for their own poor, Const. 367.

### *An Act relating to the support of the poor.*

Approved November 29, 1861, 178

2915. Commissioners to superintend.

2916. Relatives to support in certain cases—Intemperance.

2917. Relatives called upon for support.

2918. County support—When—How.

2919. County commissioners to apprentice minors.

2920. Sick paupers—Death and burial—Allowance.

2921. Satisfactory evidence of residence.

2922. When pauper entitled to relief—Temporary relief—Pauper removed—County of residence to afford relief—Liable for temporary relief.

2923. When not entitled to relief.

2924. County workhouses may be established.

2925. Penalty for transporting paupers.

### 2915. Commissioners to superintend.

**SECTION 1.** The boards of county commissioners of the several counties of this state are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

A former act "to establish and maintain a state asylum for the indigent poor and maimed" (Stats. 1879, 142), which attempted to repeal this act was held to be in plain conflict with constitution, art. 13, sec. 3 (ante, 367), and therefore void. *State ex rel. Keyser v. Hallock*, 14 Nev. 202, 208 (33 A. R. 559).

A laboring man who has always been able to make a living, and who, until his last illness, had never had occasion to ask or receive charity, is not a pauper, although without money or property with which to pay the expenses of that sickness. *Lander Co. v. Humboldt Co.*, 21 Nev. 415 (32 P. 849).

### 2916. Relatives to support in certain cases—Intemperance.

**SEC. 2.** Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they, or either of them, be of sufficient ability; and every person who shall fail to support his or her father, grandfather, mother, grandmother, child, grandchild, sister, or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relatives reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor, as aforesaid, before any justice of the peace, or any court having jurisdiction; *provided*, that when any person becomes a pauper from intemperance, or other bad conduct, he shall not be entitled to any support from any relation, except parent and child.

### 2917. Relatives called upon for support.

**SEC. 3.** The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor persons shall be next called upon, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grandchildren of such poor persons shall be called on, and then the grandparents; but married females, whilst their husbands live, shall not be liable to a suit, except that in cases where the grandchildren shall become paupers, the grandparents shall not be liable for but one-half the amount of such charge, or vice versa.

### 2918. County support—When—How.

**SEC. 4.** When any poor person shall not have relatives in any county in this state, as are named in the preceding section, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

### 2919. County commissioners to apprentice minors.

**SEC. 5.** When a minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents, or other relations, as aforesaid, are unable, or refuse, to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice, to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects, be to the tenor and effect as required in the act concerning apprentices, and in the absence of such law, in such manner as they shall deem for the best interests of said minor.

See secs. 482-497.

**2920. Sick paupers—Death and burial—Allowance.**

SEC. 6. When any nonresident, or any other person not coming within the definition of a pauper, shall fall sick in any county of this state, not having money or property to pay his board, nursing or medical aid, it shall be the duty of the commissioners of the proper county, on complaint being made, to give, or order to be given, such assistance to such poor person as they may deem just and necessary; and if such sick person shall die, then the said commissioners shall give, or order to be given, to such person, a decent burial; and the said commissioners shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

The liability of a county, for the relief and support of its indigent poor is purely statutory, and to render one county liable for such relief granted by another county to one of the former's indigent residents, the case must come fairly within the statute. *Washoe Co. v. Eureka Co.*, 25 Nev. 356 (60 P. 376); *Lander Co. v. Humboldt Co.*, 21 Nev. 416-418 (32 P. 849).

There are none of the elements of a contract, expressed or implied, in a demand for the relief or support of the poor. The liability exists only in the pursuance of the positive provisions of the statute. *Idem.*

A county in this state is only liable for relief furnished by another county to one of its indigent residents when such indigent is a pauper. *Idem.*

**2921. Satisfactory evidence of residence.**

SEC. 7. When an application is made by any pauper to the board of county commissioners of any county in this state, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he or she has been a resident of said county for six months immediately preceding the day upon which such application is made, or if such is not the case, satisfactory evidence in regard to where said pauper last resided for six months prior to arrival in the county where such application is made. *As amended, Stats. 1867, 116.*

**2922. When pauper entitled to relief—Temporary relief—Pauper to be removed—County of residence to afford relief—Liable for temporary relief.**

SEC. 8. When application is made by any pauper to the board of county commissioners aforesaid, and it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this act, said pauper shall be entitled to all of the relief provided by this act; but if, on the contrary, it shall appear to the satisfaction of said board, that such pauper has not been a resident of said county agreeable to the provisions of the foregoing section, but that said pauper, previous to removing to the said county, where said application is made, was a resident of some other county of this state, said board shall provide temporary relief for said pauper, and immediately notify the board of county commissioners of the county where said pauper last had a residence for six months, and said notice shall be in writing, duly attested by the clerk of the board of county commissioners, and deposited in the post-office, addressed to the board of county commissioners of said county, and it shall be the duty of the board of county commissioners receiving said notice to cause said pauper to be immediately removed to their county, and pay a reasonable compensation for the temporary relief afforded, and if said board of commissioners neglect or refuse to remove said pauper, the county affording relief shall have a legal claim against said county for all relief necessarily furnished, and may recover the same in a suit at law. *As amended, Stats. 1867, 117.*

*Cited, Lander Co. v. Humboldt Co.*, 21 Nev. 417 (32 P. 849).

When one county furnishes relief to a pauper resident of another county, the latter

county incurs no legal liability to the former therefor, unless the statutory notice is given. *Washoe Co. v. Eureka Co.*, 25 Nev. 356, 360, 361, 363 (60 P. 376).

The word "immediately" means as soon as practicable or without unnecessary delay. *Idem.*

It is essential to the validity of the notice that it shall emanate from the board of county commissioners who are charged with the care of the poor, and that it shall tend

to show that it is from that official body, and that it be attested by the clerk of such board. *Idem.*

An attestation by the county clerk, simply as such clerk, is not an attestation by the clerk of the board of county commissioners. *Idem.*

### 2923. When not entitled to relief.

SEC. 9. After service of such notice, as aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners shall deem it absolutely necessary.

### 2924. County workhouses may be established.

SEC. 10. The board of county commissioners of any county in this state may, if they think proper, cause to be built or provided in their respective counties, workhouses for the accommodation and employment of such paupers as may, from time to time, become a county charge, and said workhouse and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just.

### 2925. Penalty for transporting paupers.

SEC. 11. If any person shall bring and leave any pauper in any county in this state, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county in a civil action before any court having jurisdiction of the same.

See secs. 2926-2928.

*An Act concerning the bringing of indigent, incompetent or incapacitated persons into the state or from one county into another county of this state, and fixing the penalty therefor.*

Approved February 20, 1905, 25

### 2926. County to support poor, when.

SECTION 1. Every county shall relieve and support all pauper, incompetent, poor, indigent persons and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported or relieved by their relatives or friends, or by their own means, or by state hospitals or other state or private institutions.

See sec. 2925.

### 2927. Act construed—Terms defined.

SEC. 2. The term "residence," as used in this act, shall be taken to mean and shall be considered to mean the actual residence of each of such persons, or the place where each such persons were employed, or in case such persons were in no employment, then it shall be considered and held to be the place where such person made his or her home, or his or her headquarters.

### 2928. Bringing pauper into state misdemeanor—Penalty.

SEC. 3. Every person, firm or corporation, or the officers, agents, servants or employees of any person, firm or corporation, bringing into or leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person as hereinbefore mentioned, in any county in the State of Nevada, wherein such person is not lawfully settled or not lawfully residing as herein defined, knowing him to be such pauper, poor, indigent, or incapacitated or incompetent person, and for the purpose of imposing said person as a public charge on the county to which said person shall be taken as aforesaid shall be guilty of a misde-

meanor and on conviction thereof shall be fined in a sum not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail not more than sixty days, or by both such fine and imprisonment.

## PUBLIC DOCUMENTS AND REPORTS

Relating to public reports, sections 2929–2931.

Authorizing secretary of state to furnish printed public documents, statutes and reports to certain parties, section 2932.

To provide for free distribution of statutes and legislative journals to certain parties, section 2933.

Relating to distribution of law books, sections 2934–2936.

To regulate the sale of state law books, section 2937.

To provide for the preservation and sale of certain Nevada Reports, sections 2938–2940.

To provide for the republication and stereotyping of certain volumes of the decisions of the supreme court, section 2941–2946.

To provide for publication and distribution of Nevada Reports, sections 2947–2951.

*An Act relating to public reports and repealing all other acts in relation thereto.*

Approved February 17, 1893, 23

### 2929. Reports, when prepared and filed.

SECTION 1. All officers, boards of officers, commissioners, trustees, superintendents, regents, boards of control and directors required by law to make reports to the governor or legislature, except the state controller and the state treasurer, must send the original draft of such reports to the governor on or before the third day of January in the year eighteen hundred and ninety-five, and in every second year thereafter. The state controller must send his report to the governor before the second Monday in January in the year eighteen hundred and ninety-four, and in every year thereafter, and the state treasurer on or before the fifth day of January in eighteen hundred and ninety-four, and in every year thereafter. But the regents of the university shall submit to the governor on or before the third of January of each year, the register of the university containing the courses of study, registration of students, and such descriptive matter as may be deemed valuable. The board of control of the agricultural experiment station shall also report to the governor on or before the third day of January of each year the work of the station by departments and the receipts and expenditures of the station for the government fiscal year ending June 30th. *As amended, Stats. 1901, 43.*

### 2930. Edited and revised, how—Number printed.

SEC. 2. The governor shall, upon receipt of such reports, submit the same to the state board of examiners, who shall examine, edit and revise each of said reports, and shall order such a number of each of said reports, or part or parts of each of said reports, printed as in their judgment will meet the requirements of law; *provided*, that in no case shall a less number of copies than fifty nor a greater number of copies than fifteen hundred, be printed; but the board of examiners may, if they deem advisable, order two thousand copies of the university register and of the experiment station report to be printed. The board shall especially see that no matter shall be printed in more than one report, unless of great public interest. *As amended, Stats. 1901, 44.*

### 2931. State printer to print reports.

SEC. 3. The superintendent of state printing must print such reports, or such part or parts of said reports, as may be ordered by the state board of examiners, in the manner designated by said board, promptly after the receipt thereof, and distribute the same in accordance with the directions of said board.

[Secs. 4 and 5, repealing certain acts, omitted.]

*An Act authorizing the secretary of state to furnish the printed public documents, statutes, and reports to certain parties therein named.*

Approved February 2, 1871, 50

### 2932. To whom delivered.

SECTION 1. The secretary of state is hereby authorized and directed to deliver to the United States circuit judge for the ninth circuit, and to each of the judges of the United States district courts for Nevada, California, and Oregon, and to the librarian of the San Francisco law library, one full set of the reports of decisions of the supreme court of Nevada, and one full set of the legislative documents and statutes of Nevada, including such of the printed documents and statutes of the Territory of Nevada as may be in the state library for public distribution, and from time to time hereafter, as the same shall be published, to each of said judges one copy of the supreme court reports and one copy of the legislative documents and statutes of the state, and to said librarian two copies of each of said reports, documents, and statutes.

*An Act to provide for the free distribution of the statutes and legislative journals of the present and future sessions of the legislature of the State of Nevada to certain parties.*

Approved February 7, 1883, 32

### 2933. Newspapers to receive statutes and journals.

SECTION 1. It is hereby made the duty of the secretary of state to deliver, free of charge, the statutes of the present and each future session of the legislature of the State of Nevada, together with the assembly and senate journals for the present and subsequent sessions of legislature, to the publisher of any daily or weekly newspaper published in said state, who constantly furnishes the same for the use of the state library.

*An Act relating to the distribution of law books to the county and township officers.*

Approved March 21, 1901, 115

### 2934. Distribution of law books.

SECTION 1. It shall be the duty of the secretary of state to distribute the supreme court reports, the compiled laws and the session laws, when published, to county and township officers as follows: He shall mail to each county officer and justice of the peace, as provided by the statute, one copy and no more, said copy or volume to be kept in the office for the use of the office, and shall be by the officer receiving the same transferred to his successor in office, who shall give the retiring officer a receipt for all supreme court reports, compiled laws, statutes and other state documents on hand and also received from the secretary of state.

### 2935. Receipts for.

SEC. 2. The secretary of state shall take proper receipts for such books at the time of their distribution, and file the said receipts in his office, and in

no instance shall he supply a missing, or a second, volume other than at the statutory price for said volume.

See secs. 2945, 2952.

### 2936. Books to be stamped.

SEC. 3. The secretary of state shall stamp or mark all books to be distributed as provided by law to district judges, state officers, county and township officers as follows: "State property; to be turned over to your successor in office."

*An Act to regulate the sale of state law books.*

Approved March 5, 1907, 63

### 2937. Prices of state law books.

SECTION 1. The secretary of state is directed to sell Nevada law books at the following rates: Nevada Reports, two dollars and twenty-five cents a volume; Nevada and Sawyer's Digest (1878), one dollar a volume; Compiled Laws of Nevada (1861-1900), six dollars a volume; Statutes of Nevada, two dollars a volume during the two years immediately succeeding the date of publication, and at the expiration of two years, one dollar a volume; *provided*, that the secretary of state is not authorized to sell at one time to any one person or firm more than five copies of any one volume of said publications.

See Compilation, sec. 1015.

*An Act to provide for the preservation and sale of certain Nevada Reports.*

Approved March 5, 1875, 132

### 2938. Nevada reports for use of legislature.

SECTION 1. The secretary of state, shall keep on hand, for the exclusive use of the legislature, when in session, fifty copies of each volume of the Nevada Reports heretofore published.

See Compilation, sec. 1015.

### 2939. Receipt given.

SEC. 2. No copy of any such volumes shall be taken from said secretary's office until the person desiring the use of the same shall have deposited with said secretary his written receipt therefor.

### 2940. Return of copies, when made.

SEC. 3. All copies of said reports so taken from said secretary's office shall be returned thereto on or before the last day of any regular or special session of the legislature; and any person so failing to return said reports shall be liable for the value thereof, in any sum not less than ten dollars nor exceeding twenty-five dollars per volume, together with the costs of suit, to be recovered by suit, in the name of the State of Nevada, in any court of competent jurisdiction.

*An Act to provide for the republication and stereotyping of certain volumes of the reports of the decisions of the supreme court.*

Approved March 2, 1877, 112

2941. By whom and in what manner published.

2944. Who entitled to receive reports.

2942. Price per volume.

2945. Reports turned over to successor.

2943. Volumes retained.

2946. Points and authorities.

### 2941. By whom and in what manner published.

SECTION 1. There shall be published by the publishers of the current volumes of Nevada supreme court reports, from time to time, under the

direction and by the approval of the supreme court, all volumes of the reports of the decisions of said court which shall be out of print, or so nearly so as to make the republication thereof, in the opinion of the court, advisable; and such republication shall be edited by such person, learned in the law, as shall be selected or approved by said court, and in such manner, and with such reduction of the number of volumes as said court shall, by its order, direct; the entire cost of such editing to be paid by the publishers, and the numbers and pages of the present volumes to be preserved in such new edition; and the plates of all such volumes of reports as shall be republished under this act shall be stereotyped, and four hundred copies of each volume thereof, the same to be of the same style and quality as to paper and binding as volume 10 of Nevada Reports, and to contain seven hundred and fifty pages or more, as the supreme court may determine, shall be delivered to the secretary of state. And upon furnishing to the secretary of state such copies, and satisfactory proof of having stereotyped the plates of such volumes, the said publishers shall receive from the state the price of two dollars and fifty cents (\$2.50) per copy for each volume of Nevada Reports so republished and furnished to the state, to be audited by the state board of examiners, and paid by the state treasurer, on the warrant of the state controller, out of any money not otherwise appropriated; *provided*, that when two volumes of said reports shall be printed and bound in one volume, by direction of the supreme court, the price to be paid by the state shall be five dollars (\$5) per copy; *and, provided further*, that the said publishers shall enter into a contract, to be approved by the justices of the supreme court, and filed in the office of the secretary of state, stipulating that they will faithfully perform all the acts and conditions in this act required to be performed by them, and particularly will, at all times, keep for sale, and sell to the State of Nevada, and to the residents of the state, copies of the volumes to be so republished, at the rate herein fixed; and said publishers shall give bond, for the fulfillment of said contract, in the sum of ten thousand dollars, which bond shall be filed with the secretary of state and approved by the justices of the supreme court, or a majority thereof.

See secs. 4897-4899.

#### 2942. Price per volume.

SEC. 2. The said publishers shall sell said volumes at a price not exceeding two dollars and fifty cents (\$2.50) per volume for each and every volume of Nevada Reports so republished, to all residents of this state, and no greater price shall be demanded or received by them, or their agents, or assigns, or either of them.

#### 2943. Volumes retained.

SEC. 3. The secretary of state is hereby authorized to sell any copies of the volumes to be so republished, which the state may now have on hand exceeding fifty copies of each volume, which he shall retain for the use of the state, at the rate of two dollars and fifty cents (\$2.50) per volume.

#### 2944. Who entitled to receive reports.

SEC. 4. It shall be the duty of the secretary of state, upon the republication of these reports as herein provided, to ascertain to whom the early reports have been supplied, as per act of February twentieth, eighteen hundred and seventy-five, and supply, when he finds deficiencies, the following parties with all the reports of the supreme court of Nevada: To each state and territory, one copy; to each of the heads of departments at Washington, one copy; to the library of Congress and the Nevada state library, two copies; to each of the United States circuit and district courts in the States of Nevada, California and Oregon, one copy; to each state officer, justice of the supreme

court, clerk of the supreme court, district judge, district attorney, county clerk, and justice of the peace in this state, one copy; and to each public library and literary association within this state, one copy. He shall, also, from time to time, distribute said reports to such literary and scientific institutions, publishers, and authors as, in his opinion, may secure an interchange of works which may be properly placed in the state library. The remaining copies shall be kept in the office of the secretary of state for the use of the legislature when in session; *provided*, that no distribution shall be made to any party or parties outside of the state when there may be less than one hundred copies of any given volume on hand.

**2945. Reports turned over to successor.**

SEC. 5. All reports distributed to state, district, and other officers in this state, shall be for the use of the office, and shall be, by the person receiving the same, turned over to his successor in office; and the secretary of state shall take proper receipts for such reports.

See secs. 2935, 2952.

**2946. Points and authorities.**

SEC. 6. All volumes of reports republished under this act, except volumes 1 and 2, shall contain a brief citation of the points made and authorities cited by the attorneys.

*An Act to provide for the publication and distribution of Nevada Reports.*

Approved March 1, 1883, 78

2947. Size of volumes.

2948. Extra copies.

2949. Title of volumes.

2950. Compensation to clerk—May employ attorney.

2951. To distribute certain copies—Price of others.

**2947. Size of volumes.**

SECTION 1. The decisions of the supreme court of the State of Nevada shall be published in volumes of the size, as nearly as may be, of the volume heretofore published, and containing not less than five hundred pages..

[Sec. 2 superseded by secs. 4897-4899.]

Cited, State ex rel. Josephs v. Douglass, 33 Nev.— (110 P. 178).

Sections 2 and 3 of this act were not repealed in so far as they provide compensation for the clerk's services as reporter, by Stats. 1891, 104 (post, 4393), and Stats. 1893, 32 (post, 4110). State ex rel. Howell v. La Grave, 23 Nev. 373 (48 P. 674).

The offices of secretary of state, as ex officio clerk of the supreme court and as reporter of its decisions, are separate and distinct, and their being vested in the same person does not change their nature in this respect. Idem.

**2948. Extra copies.**

SEC. 3. To provide against an insufficiency in the number of said reports, the superintendent of state printing shall cause to be printed three hundred extra copies of each form thereof, and store the same away, unbound, subject to the order of the secretary of state.

**2949. Title of volume.**

SEC. 4. The title of each volume shall be "Nevada Reports," which title, together with the name of the reporter and the number of the volume, shall be printed on the back of each book.

**2950. Compensation to clerk—May employ attorney.**

SEC. 5. Said clerk of the supreme court shall receive for his compensation as reporter of said decisions the sum of six hundred dollars per year, payable out of the same fund and in the same manner that the salaries of the other state officers are paid \* \* \*.

Omitted portion of above section is repealed by secs. 4897-4899.

Cited, State ex rel. Howell v. LaGrave, 23 Nev. 373, 379-381 (48 P. 674).

### 2951. To distribute certain free copies—Price of others.

SEC. 6. On the receipt of each volume of said report from the superintendent of state printing, the secretary of state shall distribute them in the following manner: To each state and territory, one copy; to each of the heads of departments at Washington, one copy; to the Library of Congress, two copies; to each of the judges of the United States circuit and district courts in the States of Nevada, California, and Oregon, one copy; to the Nevada state library, two copies; to each state officer, justice of the supreme court, clerk of the supreme court, district judge, district attorney, county clerk, and justice of the peace in this state, one copy; and to each public library and literary association within this state, one copy. He shall distribute to such literary and scientific institutions, publishers, and authors as in his opinion may secure an interchange of works, which may properly be placed in the state library. The remaining copies shall be held for sale at the price of two dollars per volume; *provided*, that a sufficient number be kept in the office of the secretary of state for the use of the legislature when in session.

[Sec. 7, providing that reports distributed to officers shall be turned over to successors in office, omitted. See secs. 2935, 2945.]

Distribution of revised laws of 1911, see sec. 1015.

## PUBLIC HEALTH

To create a state board of health, defining duties, prescribing manner of appointments of its officers, fixing their compensation and establishing county boards of health, sections 2952-2980.

To create a county board of health, sections 2981-2982.

To provide for recording of births and deaths, sections 2983-2987.

To prohibit bringing of diseased animals within this state and to prevent selling of diseased animals by butchers, merchants and others, sections 2988-2995.

To provide for preventing the spread of contagious diseases, sections 2996-3003.

*An Act to create a state board of health, defining their duties, prescribing the manner of the appointments of its officers, fixing their compensation, making an appropriation for the support of said board, establishing county boards of health, requiring certain statements to be filed, defining certain misdemeanors and providing penalties therefor and other matters relating thereto.*

Approved March 27, 1911, 392

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| 2952. State board of health.                         | 2967. Physicians, midwives and undertakers to register names and addresses with local health officer.   |
| 2953. Meetings of board.                             | 2968. Superintendents of hospitals, to record statistics of inmates.  |
| 2954. Duties of president—Salary.                    | 2969. State board of health to furnish necessary blanks—Various duties of secretary.  |
| 2955. Duties of secretary.                           | 2970. Local health officer to supply blanks—To issue burial permits—Birth certificates, duties regarding—To keep complete record.               |
| 2956. Duties of third member—Salary.                 | 2971. Certified copies issued, when—Fee for same.   |
| 2957. Local health officer—Duties—Salary.            | 2972. Penalties for possession—Penalty for undertaking—Penalty for local health officer—General penalties—Penalty for transportation companies. |
| 2958. Certificate of death, regulations regarding.   |   |
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| 2960. Duties of undertaker.                          |   |
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| 2965. What birth certificate must contain.           |   |
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2973. Duties of local health officer and state board—Duties of district attorney and attorney-general.  
 2974. Burial certificate must issue, when.  
 2975. Still-birth recorded, how.

2976. Salary of secretary and office expenses.  
 2977. Appropriation.  
 2978. State board supreme in health matters.  
 2979. Sections declared independent.  
 2980. Printing—State printer to furnish.

### 2952. State board of health.

SECTION 1. A state board of health is hereby created, consisting of a president, secretary and one other member.

The president and secretary shall be appointed by the governor for a term of four years; said appointee shall have been engaged in the regular practice of medicine in the State of Nevada, for a period of at least five years before being eligible to appointment on said board of health; the third member of the board shall be appointed by the governor and the president and secretary; the requirement as to the five years' practice shall not apply in his case.

### 2953. Meetings of board.

SEC. 2. The state board of health shall meet at Carson City on the first Tuesday in January and the first Tuesday in July in each year, and at such other times as the president may deem advisable.

### 2954. Duties of president—Salary.

SEC. 3. The duties of the president are to preside over all meetings of the board, and to perform such other acts as may be fixed and determined by the state board of health. He shall receive the sum of twenty dollars per day for each day's session of the board of health, together with necessary traveling expenses.

### 2955. Duties of secretary.

SEC. 4. The secretary shall keep a record of all vital statistics, tabulate and issue semiannual bulletins and make out and file with the governor a biennial report, showing in detail, the work of the board. He shall carefully compile the reports of the various health officers of this state as hereinafter provided, keep the minutes of all meetings of the board and attend to all correspondence in carrying out the provisions of this act. He shall, when called upon by the local health officer in case of any epidemic, proceed immediately to such locality and render such assistance in his power to eradicate and prevent a recurrence of such epidemic and shall investigate any epidemic when called upon so to do by the state board of health.

### 2956. Duties of third member—Salary.

SEC. 5. The third member of the board shall attend all the semiannual meetings of the board, and such other meetings as may be called by the president, and consult and advise with the board whenever called upon so to do. He shall receive for each day's attendance at a meeting of the board the sum of twenty dollars and for his necessary traveling expenses.

### 2957. Local health officer—Duties—Salary.

SEC. 6. The local health officer in each county shall act as a collector of vital statistics and is empowered to appoint such deputy or deputies as may be necessary with the approval of the board of county commissioners. For collecting and compiling the vital statistics of the county he shall receive from the county a sum not less than twenty-five dollars per month, and the board of county commissioners are directed to allow a claim for this or for such greater sum as they may deem proper for the work performed; the deputies appointed by the local health officer with the approval of the county commissioners, shall be paid in the same manner a sum not to exceed twenty-five dollars per month, for registering and compiling the data prescribed by the state board of health and by this act. The deputy health officers shall

file with the local health officer monthly reports not later than the fifth day of each month, which said reports, shall be compiled by the local health officer and forwarded to the secretary of the state board of health, not later than the tenth day of each month. He shall file a copy of said report with the county recorder.

#### 2958. Certificate of death, regulations regarding.

SEC. 7. The certificate of death that shall be used is of the United States standard form as approved by the bureau of the census. The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts. The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such. The medical certificate shall be signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause), and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, indicating only symptoms of disease or conditions resulting from disease, will not be held sufficient for issuing a burial or removal permit; and any certificate containing only such terms as defined by the state board of health shall be returned to the physician for correction and more definite statement. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. And in deaths in hospitals, institutions, or of nonresidence, the physician shall furnish the information required under this head and may state where, in his opinion, the disease was contracted.

#### 2959. In cases of death without medical attendance.

SEC. 8. That in case of any death occurring without medical attendance, it shall be the duty of the undertaker to notify the local health officer of such death, and refer the case to him for immediate investigation and certification prior to issuing the permit; *provided*, where there is no qualified physician in attendance, and in such cases only, the local health officer is authorized to make the certificate and return from the statements of relatives or other persons having adequate knowledge of the facts; *provided, further*, that if the death was caused by unlawful or suspicious means, the local health officer shall then refer the case to the coroner for investigation and certification. And any coroner whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or if, from external causes (1) the means of death; and (2) whether (probably) accidental, suicidal or homicidal; and shall, in either case, furnish such information as may be required by the state board of health in order properly to classify the death.

#### 2960. Duties of undertaker.

SEC. 9. That the undertaker, or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the local health officer, or his deputy, in the district in which the death occurred, and for securing a burial or removal permit, prior to any disposition of the body. He shall obtain the personal and statistical particulars required from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer, or coroner, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in sections

7 and 8. And he shall then state the facts required relative to the date and place of burial over his signature and with his address, and present the completed certificate to the local health officer, in order to obtain a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the transit containing the registration removal permit to the box containing the corpse when shipped by any transportation company; said permit to accompany the corpse to its destination, where if within the State of Nevada, it shall be delivered to the sexton or to any other person in charge of the place of burial.

#### 2961. Burial permit, what to contain.

SEC. 10. That if the interment or other disposition of the body is to be made within the state, the wording of the burial permit may be limited to a statement by the local health officer, and over his signature that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove or otherwise dispose of the deceased, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state board of health.

#### 2962. Body not to be interred without proper permit.

SEC. 11. That no sexton or person in charge of any premises in which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal or transit permit, as herein provided. And each sexton, or person in charge of any burial ground, shall endorse upon the permit the date of interment, over his signature and shall return all permits so endorsed to the local health officer of his district, within ten days from the date of interment, or within the time fixed by the local health officer or by the state board of health. He shall also keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial, and name and address of undertaker; which record shall at all times be open to public inspection.

#### 2963. Births to be registered.

SEC. 12. That all births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided.

#### 2964. Duties of physician or midwife.

SEC. 13. That it shall be the duty of the attending physician or midwife to file a certificate of birth, properly and completely filled out, giving all the particulars required by this act, with the local health officer, of the district in which the birth occurred, within ten days after the date of birth. And if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institutions in which the birth occurred, to notify the local health officer, within ten days after the birth, of the fact that a birth has occurred. It shall then be the duty of the local health officer to secure the necessary information and signature to make a proper certificate of birth; *provided*, that in cities the certificate of birth shall be filed at a less interval than ten days after birth, if so required by municipal ordinance or regulations now in force or that may hereafter be enacted.

#### 2965. What birth certificate must contain.

SEC. 14. That the certificate of birth shall contain the following items:

(1) Place of birth, including state, county, township, or town, village or city. If in a city, the ward, street, and house number; if in a hospital or

other institution, the name of the same to be given, instead of the street and house number.

(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words "died unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

(3) Sex of child.

(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural birth, giving number of child in order of birth.

(5) Whether legitimate or illegitimate.

(6) Full name of father, except for illegitimate children.

(7) Residence of father.

(8) Color or race of father.

(9) Birthplace of father; state or foreign country.

(10) Age of father at last birthday, in years.

(11) Occupation of father.

(12) Maiden name of mother.

(13) Residence of mother.

(14) Color or race of mother.

(15) Birthplace of mother; state or foreign country.

(16) Age of mother at last birthday, in years.

(17) Occupation of mother.

(18) Number of child of this mother, and number of children of this mother now living.

(19) Born at full term?

(20) The certificate of attending physician or midwife as to attendance at birth, including statement of year, month, day and hour of birth, and whether the child was alive or dead at birth. This certificate shall be signed by the attending physician or midwife, with date of signature and address; if there is no physician or midwife in attendance, then the father or mother of the child, householder or owner of the premises, or manager or superintendent of public or private institution, or other competent person, whose duty it shall be to notify the local health officer of such birth, as required by section 13 of this act.

(21) Exact date of filing in office of local health officer attested by his official signature, and registered number of birth, as hereinafter provided.

All certificates, either of birth or death, shall be written legibly, in unfading black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for herein, or satisfactorily account for their omission.

**2966.** Given name of child, special blank for.

**SEC. 15.** That when any certificate of birth of a living child is presented without the statement of the given name, then the local health officer shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local health officer as soon as the child shall have been named.

**2967.** Physicians, midwives and undertakers to register names and addresses with local health officer.

**SEC. 16.** That every physician, midwife and undertaker shall, without delay, register his or her name, address and occupation with the local health officer of the district in which he or she resides, or may hereafter establish a residence; and shall thereupon be supplied by the local health officer with

a copy of this act, together with such rules and regulations as may be prepared by the state board of health relative to its enforcement. Within thirty days after the close of each calendar year each local health officer shall make a return to the state board of health of all physicians, midwives or undertakers who have been registered in his district during the whole or any part of the preceding calendar year; *provided*, that no fee or other compensation shall be charged by local health officers to physicians, midwives or undertakers for registering their names under this section or making returns thereof to the state board of health.

**2968. Superintendents of hospitals to record statistics of inmates.**

SEC. 17. That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this act, that are required in the forms of the certificates provided for by this act, as directed by the state board of health; and thereafter such records shall be, by them, made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

**2969. State board of health to furnish necessary blanks—Various duties of secretary.**

SEC. 18. That the state board of health shall prepare, print and supply to all local health officers all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this act; and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. And no other blanks shall be used than those supplied by the secretary of the state board of health. He shall carefully examine the certificates received monthly from the local health officer, and if any such are incomplete or unsatisfactory he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants or undertakers, and all other persons having knowledge of the facts, are hereby required to furnish such information as they may possess regarding any birth or death upon demand of the secretary of the state board of health, in person, by mail, or through the local health officer. He shall further arrange, bind and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; the cards to show the name of child or deceased, place and date of birth or death, number of certificate, and the volume in which it is contained. He shall inform all health officers what diseases are to be considered as infectious, contagious, or communicable and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent the spreading of dangerous diseases.

**2970. Local health officer to supply blanks—To issue burial permits—Birth certificates, duties regarding—To keep complete record.**

SEC. 19. That it shall be the duty of the local health officer to supply

blank forms of certificates to such persons as require them. Each local health officer shall carefully examine each certificate of birth or death when presented for record, to see that it has been made out in accordance with the provisions of this act and the instructions of the state board of health; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold issuing the burial or removal permit until they are corrected. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; *provided*, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the local health officer, except under such conditions as may be prescribed by the state board of health. If a certificate of birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained. He shall then number consecutively the certificates of birth and death, in two separate series, beginning with the number 1 for the first birth and the first death in each calendar year, and sign his name as health officer, in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and death certificate registered by him in a record book supplied by the state board of health to be permanently preserved in his office as the local record, in such manner as directed by the state board of health. And he shall, on the tenth day of each month, transmit to the state board of health, all original certificates registered by him during the preceding month. And if no births or deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state board of health, on a card provided for this purpose.

#### 2971. Certified copies issued, when—Fee for same.

SEC. 20. That the state board of health shall, upon request, furnish any applicant a certified copy of the record of any birth or death registered under provisions of this act, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. And any such copy of the record of a birth or death, when properly certified by the secretary of the state board of health to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made the state board of health shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, to be paid by the applicant. And the state board of health shall keep a true and correct account of all fees received under these provisions.

#### 2972. Penalties for physician, undertaker, and health officer.

SEC. 21. That any physician who was in medical attendance upon any deceased person at the time of death who shall neglect or refuse to make out and deliver to the undertaker, sexton or other person in charge of the interment, removal or other disposition of the body, upon request, the medical certificate of the cause of death, hereinbefore provided for, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars. And if any physician shall knowingly make a false certification of the cause of death, in any case, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars.

And any physician or midwife in attendance upon a case of confinement, or any other person charged with responsibility for reporting births, in the order named in section 13 of this act, who shall neglect or refuse to file a proper certificate of birth with the local health officer within the time required

by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars.

And any undertaker, sexton, or other person acting as undertaker, who shall inter, remove, or otherwise dispose of the body of any deceased person, without having received a burial or removal permit as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty dollars nor more than one hundred dollars.

And any local health officer, or his deputy, who shall neglect or fail to enforce the provisions of this act in his district, or shall neglect or refuse to perform any of the duties imposed upon him by this act or by the instructions and directions of the state board of health, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars.

And any person who shall wilfully alter any certificate of birth or death, or the copy of any certificate of birth or death, on file in the office of the local or state board of health shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding sixty days, or suffer both fine and imprisonment, in the discretion of the court.

And any other person or persons who shall violate any of the provisions of this act, or who shall wilfully neglect or refuse to perform any duties imposed upon them by the provisions of this act, or shall furnish false information to a physician, undertaker, midwife, or informant, for the purpose of making incorrect certification of births or deaths, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than one hundred dollars.

And any transportation company or common carrier transporting or carrying, or accepting through its agents or employees for transportation or carriage, the body of any deceased person, without an accompanying permit issued in accordance with the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars; *provided*, that in case the death occurred outside of the state and the body is accompanied by a burial, removal, or transit permit issued in accordance with the law or board of health regulations in force where the death occurred, such burial, removal or transit permit may be held to authorize the transportation or carriage of the body into or through the state.

### 2973. Duties of local health officer and state board—Duties of district attorney and attorney-general.

SEC. 22. That each local health officer is hereby charged with the strict and thorough enforcement of the provisions of this act in his registration district, under the supervision and direction of the state board of health. And he shall make an immediate report to the state board of health of any violation of this law coming to his notice, by observation or upon complaint of any person or otherwise. The state board of health is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and with supervisory power over local health officers, to the end that all of its requirements shall be uniformly complied with. They shall have authority to investigate cases of irregularity or violation of the law, personally or by an accredited representative, and all local health officers shall aid him, upon request, in such investigations. When they shall deem it necessary, they shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the county, with a statement of the facts and circumstances; and when any such case is reported to him by the state board of health, the prosecuting attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or

corporation responsible for the alleged violation of law. And upon request of the state board of health, the attorney-general shall likewise assist in the enforcement of the provisions of this act.

#### 2974. Burial certificate must issue, when—Proviso.

SEC. 23. That the body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, removed from or into any registration district or be held temporarily pending a further disposition more than seventy-two hours after death, until a permit for burial or removal or other disposition thereof shall have been properly issued by the local health officer of the registration district in which the death occurred. And no such burial or removal permit shall be issued by any local health officer, until a complete and satisfactory certificate of death has been filed with him as hereinbefore provided; *provided*, that when a dead body is transported by a common carrier into a local health district in Nevada, for burial, then the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, when said death occurs outside of the State of Nevada, shall be accepted by that local health officer of the district, into which the body has been transported for burial or other disposition, as a basis upon which he shall issue a local burial permit, in the same way as if the death occurred in his district; he shall plainly enter upon the face of the burial permit the fact that it was a body shipped in for interment, and gave the actual place of death; but a burial permit shall not be required from the local health officer of the district in which interment is made, when a body is removed from one district in Nevada to another in this state, for purpose of burial or other disposition, either by common carrier, hearse, or other conveyance, and no local health officer shall require from undertakers or persons acting as undertakers any fee for the issue of burial or removal permits under this act.

#### 2975. Still-birth recorded, how.

SEC. 24. That still-born children or those dead at birth shall be registered as births and also as deaths, and a certificate of both the birth and death shall be filed with the local health officer, in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "still-birth." The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "still-born," with the cause of the still-birth, if known, whether a premature birth, and, if born prematurely, the period of uterine gestation, in months if known; and a burial or removal permit in the usual form shall be required. Midwives shall not sign certificates of death for still-born children; but such cases, and still-births occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in section 8 of this act.

#### 2976. Salary of secretary, and office expenses.

SEC. 25. The secretary shall receive for his services a salary of fifteen hundred dollars per year, payable in equal monthly payments, and when necessary, he shall be allowed the sum of three hundred dollars a year for a stenographer; he shall also be allowed a sum not to exceed one hundred dollars a year to provide a suitable office for the conduct of the affairs of the state board of health.

#### 2977. Appropriation.

SEC. 26. For the purpose of carrying out the provisions of this act the sum of five thousand dollars is hereby appropriated out of any money in the general fund not otherwise appropriated, and the state controller is hereby authorized

to draw his warrant on the state treasury for the amount of these claims or other necessary expenditures, when approved by the state board of health, and the state treasurer is hereby directed to pay the same.

### 2978. State board supreme in health matters.

SEC. 27. The state board of health is hereby declared to be supreme in all health matters and they are empowered to remove any deputy or local health officer for any violation of any of the provisions of this act.

### 2979. Sections herein declared independent.

SEC. 28. Each section of this act and every part of each section thereof is hereby declared to be independent sections and parts of sections and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or part thereof.

### 2980. Printing—State printer to furnish.

SEC. 29. The state printer shall supply to the state board of health all stationery, blanks and bound books that may be required on a requisition of the secretary of said board.

### *An Act to create a county board of health in each of the several counties of the State of Nevada.*

Approved March 2, 1905, 64

### 2981. Composition of board.

SECTION 1. Each of the several counties of the State of Nevada shall establish a county board of health to consist of the county physician, the sheriff and board of county commissioners of said county, and the county physician to act as chairman of said board.

### 2982. Duties—Proviso.

SEC. 2. It shall be the duty of the said county board of health to oversee all sanitary conditions of the respective county in which the board is created, and to supervise, control and enforce such health regulations as will best subserve the health and cleanliness of their respective counties. Said board shall act in conjunction with, and under the supervision of the state board of health; *provided, however*, that in cases of emergency, possibly [possible] contagion or those demanding speedy and immediate attention the said board may act independently, and shall report at once to the state board of health. And any person, firm, association, or corporation, refusing or neglecting, within five days after having been duly notified in writing, to comply with the requirements of such regulations, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for a period not less than twenty-five days nor more than one hundred days, or by both such fine and imprisonment.

### *An Act to provide for the recording of births and deaths in the several counties of the State of Nevada.*

Approved February 26, 1887, 89

2983. Record of births—Form.

2984. Record of deaths—Form.

2985. Shall be filed and recorded.

2986. Penalty for failure to comply.

2987. Penalty for false certificate.

### 2983. Record of births—Form.

SECTION 1. Every person who shall officiate at the birth of a child shall make a record thereof, and within three months after such birth shall make and deliver to the recorder of deeds of the county wherein the birth took

place, a certificate under his hand containing the facts of such birth. The certificate may be in the following form:

State of Nevada, County of \_\_\_\_\_, ss. This is to certify that the undersigned, a physician (or midwife, as the case may be) did, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_, officiate at the birth, to the wife of \_\_\_\_\_, of a son (or daughter, as the case may be), in the presence of \_\_\_\_\_ and \_\_\_\_\_, witnesses. A. B., physician (or midwife).

#### 2984. Record of death—Form.

SEC. 2. Every person who shall officiate at the burial of any deceased person shall make a record thereof, and within two weeks after such death shall make and deliver or send by due course of mail or express, or by such other manner as will insure safe transit to the recorder of deeds of the county wherein such death took place a certificate under his hand containing particulars of such death. The certificate may be in the following form:

State of Nevada, County of \_\_\_\_\_, ss. This is to certify that the undersigned, an undertaker (or whatever his occupation may be), did, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_, officiate as undertaker at the burial of \_\_\_\_\_ (or of a man or of a woman whose name is unknown), a native of \_\_\_\_\_ (or whose nativity is unknown), aged \_\_\_\_\_ years (or whose age is unknown), in the presence of \_\_\_\_\_ and \_\_\_\_\_, witnesses. A. B., undertaker.

#### 2985. Shall be filed and recorded.

SEC. 3. All certificates provided for in sections 1 and 2 of this act shall be filed and recorded by the said recorder in a book to be kept by him for that purpose; and for each certificate so recorded the recorder shall receive a fee of fifty cents, to be paid from the general county fund in the same manner that other claims against said fund are allowed and paid. The board of county commissioners of the several counties shall provide blank certificates, to be paid for by the county, to be furnished to physicians, midwives and undertakers to enable them to carry out and comply with the requirements of this act.

#### 2986. Penalty for failure to comply.

SEC. 4. Every person officiating at a birth or a death, as provided in this act, who shall neglect to make and deliver to the recorder a certificate thereof, within the time specified in sections 1 and 2, shall forfeit for such neglect a sum not less than twenty dollars nor more than fifty dollars, and any recorder who shall neglect to record such certificate so delivered shall forfeit a like penalty; such penalties to be recovered in any court of competent jurisdiction, on complaint of any person who feels aggrieved by such neglect.

#### 2987. Penalty for false certificate.

SEC. 5. If any person shall wilfully make any false certificate of any birth or death, such person shall forfeit for every such offense a sum not to exceed five hundred dollars or be confined in the county jail for any period not to exceed six months, or by both such fine and imprisonment, in the discretion of the court.

*An Act to prohibit the bringing of diseased animals within this state, and to prevent the selling of diseased animals, poultry, fish, game and other articles, by butchers, merchants and others, to the general public.*

Approved March 10, 1891. 34

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| 2988. Stock not to be brought into state, when—To procure certificate from state board of health. | 2993. Article or animal forfeited.   |
| 2989. Not to expose for sale as food, what.   | 2994. State board of health to issue certificate, when—Veterinary surgeon to be employed, when—Damages and method of recovery. |
| 2990. Diseased animal not to be sold.   | 2995. Penalty for violation.   |
| 2991. Calf must be at least four weeks old.   |  |
| 2992. What deemed offered for sale.   |  |

**2988. Stock not to be brought into state, when—To procure certificate from state board of health.**

SECTION 1. It shall be unlawful for any person, either for himself or as the agent, manager or employee of any person, partnership, company, association or corporation or for any partnership, company, association or corporation, to do or cause to be done any or either of the following prohibited acts, to wit:

First—To bring or drive or cause to be brought or driven into the State of Nevada, any sheep, cattle or horses having any infectious or contagious disease, or which have been herded or brought into contact with any other sheep, cattle or horses having such disease, at any time within ninety days immediately prior to their importation into the State of Nevada.

Second—To bring or drive or cause to be brought or driven into the State of Nevada between the last day of March and the first day of November, in any year, any sheep, cattle or horses from any state, territory or country, situated south of the 36° parallel of north latitude, unless such sheep, cattle or horses have been held at some place north of the said parallel of latitude for the period of at least ninety days immediately preceding their importation into the State of Nevada, or unless the person, partnership, company, association or corporation owning, transporting or having charge of such sheep, cattle or horses, shall procure from the state board of health a certificate or bill of health to the effect that said sheep, cattle or horses are all entirely free from every infectious or contagious disease, or shall prove to the satisfaction of said state board of health, and secure its certificate that none of such sheep, cattle or horses have been exposed, at any time within the ninety days immediately prior thereto, to any of such diseases. The expense of any inspection connected herewith shall be paid by the owner or owners or managers or transporters of such sheep, cattle or horses. *As amended, Stats. 1895, 90.*

**2989. Not to expose for sale as food, what.**

SEC. 2. No person shall bring, expose or offer for sale, or sell in any city, town or hamlet within this state for human food, any—

1. Blown, meager, diseased or bad meat, poultry or game; or
2. Unsound, diseased or unwholesome fish, fruit, vegetables or other market produce.

**2990. Diseased animal not to be sold.**

SEC. 3. No person shall bring, expose or offer for sale, or sell in any city, town or hamlet within this state—

1. Any sick or diseased animal, or
2. The flesh of any animal which, when killed, was sick or diseased, or that died a natural or accidental death.

**2991. Calf must be at least four weeks old.**

SEC. 4. No person shall slaughter, expose for sale or sell, or bring or cause to be brought into any city, town or hamlet within this state, for human food, any calf unless it is in good, healthy condition and four weeks of age.

**2992. What deemed offered for sale.**

SEC. 5. Any article or animal that shall be offered or exhibited for sale, in any part of this state, in any market or elsewhere, as though it was intended for sale, shall be deemed offered and exposed for sale, within the intent and meaning of this act.

**2993. Article or animal forfeited.**

SEC. 6. Any person or persons who, in violation of the preceding sections of this act, shall bring within this state, city, town or hamlet, slaughter or

sell, or expose for sale any article or animal (therein prohibited from sale) which is unfit or unsafe for human food shall forfeit the same to the authorities.

2994. State board of health to issue certificate, when—Veterinary surgeon to be employed, when—Damages and method of recovery.

SEC. 7. It is hereby made the duty of the state board of health to issue, upon the application of any person, partnership, company, association, or corporation, named in this act, after satisfactory proof and examination of any sheep, cattle or horses found to be entirely free from all the diseases and dangers in this act specified, to issue to such person, partnership, company, association or corporation, a certificate or bill of health certifying such good health and freedom from dangerous contact of such sheep, cattle or horses as is mentioned in section 1 of this act, and it is hereby made the duty of any sheriff, constable, policeman or other peace officer or any member of said board of health to forthwith remove, and they and each of them are hereby authorized and empowered, whenever he or they shall become aware of the existence thereof, any of the animals or articles named in section [two] of the act of which this act is amendatory, at the expense of the owner or owners thereof, in a manner that will insure safety and protection to the public. It shall be the duty of the state board of health, in cases of diseased stock, to employ a competent veterinary surgeon to inspect and investigate such stock. (SEC. 3.) If any person, partnership, company, association or corporation shall bring or cause to be brought into this state, any sheep, cattle or horses, in violation of the provisions of section 1 of this act, or shall by false representation procure a certificate of health as provided in section 2 of this act, he or they shall be liable to a civil action in any court of competent jurisdiction within the State of Nevada, by the party injured for all damage sustained on account of disease communicated by or from such sheep, cattle or horses, and action therefor is hereby authorized to be brought in the same manner as other suits for damage in a civil action in this state; and the judgment for damages in any such action, shall include the costs of action and such judgment shall be a lien upon all such sheep, cattle or horses, and a writ of attachment may issue in the first instance, and the court rendering such judgment may order the sale of said sheep, cattle or horses, or so many thereof as may be necessary to satisfy said judgment and accruing costs. Such sale shall be conducted as other sales under execution. *As amended, Stats. 1895, 91.*

2995. Penalty for violation.

SEC. 8. Every person violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceed [ing] five hundred dollars, nor less than twenty dollars or by imprisonment in the county jail for a term not more than six months, nor fewer than twenty days. *As amended, Stats. 1895, 91.*

*An Act to provide for preventing the spread of contagious diseases.*

Approved March 12, 1903, 85

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| 2996. Contagious diseases—Duty of county commissioners.     | 3001. Lawful to confine patient or person violating quarantine regulations. |
| 2997. Quarantine officers to be appointed.                  | 3002. State board of health may adopt quarantine regulations.               |
| 2998. Object of act.  | 3003. Misdemeanor—Penalty.  |
| 2999. Failure to obey act, misdemeanor.                     |   |
| 3000. Quarantine regulations, failure to obey, misdemeanor. |   |

2996. Contagious disease—Duty of county commissioners.

SECTION 1. Whenever it shall come to the knowledge of the county com-

missioners of any county in the State of Nevada, or to any one of them, that any case of smallpox or any other highly contagious disease exists in such county, said county commissioners shall meet and take all necessary and proper steps to prevent the spread of such disease. The commissioner living nearest the place at which such disease first appears shall act for the board of county commissioners till a meeting can be held, but shall notify the other members of the board immediately, by telegraph if possible, requesting a meeting, and when such meeting shall be held, he shall report his actions, which shall be confirmed by such board if found to be reasonable and necessary to prevent the spread of such disease.

#### 2997. Quarantine officers to be appointed.

SEC. 2. The board of county commissioners may, and it shall be their duty, to adopt and enforce quarantine regulations in any and all cases of contagious disease appearing in their county, including the placing under quarantine of buildings, ranches, or towns; and upon the appearance of a highly contagious disease, they shall appoint whatever quarantine officers may be needed, and provide whatever buildings, medicines, disinfectants, and provisions may be required, and shall arrange for the payment of all debts or charges so incurred from any funds available; *provided, however, each patient shall, if able, pay for his own food, medicines, clothes, and medical attendance.*

#### 2998. Object of act.

SEC. 3. The object of this act is to prevent the spread of any and all contagious diseases among human beings, from the place of origin in each county and from one county into another, and it shall be so construed by the various boards of county commissioners and by the courts within this state, in order to protect the inhabitants thereof.

#### 2999. Failure to obey act, misdemeanor.

SEC. 4. Failure by any person to obey the provisions of this act, or any of them, shall be a misdemeanor.

#### 3000. Quarantine regulations, failure to obey, misdemeanor.

SEC. 5. Failure to obey the quarantine regulations adopted by the board of county commissioners in any county in this state shall be a misdemeanor. The board of county commissioners shall, however, when formulating such regulations, consult with the county board of health, if there be any, or with the county physician, if there be any, or with the state board of health when practicable, but, when there is need of prompt action, shall act upon their own judgment temporarily at least.

#### 3001. Lawful to confine patient or person violating quarantine regulations.

SEC. 6. It shall be lawful to confine any patient for a reasonable time, or any other person who violates the quarantine regulations made by the board of county commissioners, if such confinement is thought to be necessary to prevent the spread of disease.

#### 3002. State board of health may adopt quarantine regulations.

SEC. 7. The state board of health may adopt reasonable quarantine regulations for the guidance of the boards of county commissioners, and such regulations shall be enforced as supplementary to the provisions of this act.

#### 3003. Misdemeanor—Penalty.

SEC. 8. Any person convicted of a misdemeanor under the provisions of

this act shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

## PUBLIC HIGHWAYS

In relation to public highways, sections 3004-3010.

Act concerning road districts, road funds and opening of roads, sections 3011-3016.

In relation to erection and maintenance of bridges, sections 3017-3021.

To provide for better preservation of, sections 3022-3025.

To provide for erection of guide boards on, sections 3026-3028.

To create office of road inspector and to provide for work on public roads, sections 3029-3036.

Providing for election of road supervisors, sections 3037-3040.

Providing for appointment of road supervisors in certain counties, sections 3041-3044.

To protect public highways from damage by water, sections 3045, 3046.

Relating to toll roads and bridges, sections 3047, 3048.

To compel owners of toll roads to keep same in repair, section 3049.

To provide for constructing and maintaining toll roads and bridges, sections 3050-3062.

Convicts may be employed on public roads, sections 7596-7601.

Abatement of nuisance on, in unincorporated towns, sections 919-921.

To provide for improvement of streets and alleys in unincorporated towns and villages, sections 922-939.

Streets and alleys, dedication of for public service, sections 955-956.

Franchises for railways and pole lines, sections 2129-2141.

Toll roads to report amount of tolls to treasurer, section 3757.

Toll roads to be kept in repair, section 3759.

Duty of toll-road companies to file topographical maps with surveyor-general, section 4353.

### *An Act in relation to public highways.*

Approved March 9, 1866, 252

3004. Highways, what are.

3005. Road and street work, how let—Exception.

3006. Road fund created.

3007. Disbursement of same.

3008. Duties of county commissioners as to opening lands—Viewers to be appointed—Damages.

3009. Fine for obstructions.

3010. Office of road supervisor abolished.

### 3004. Highways, what are.

SECTION 1. All public roads, and the streets and alleys in incorporated cities and towns in this state, now used or lawfully entitled to be used as such, and all such roads, streets, and alleys as the board of commissioners of the county in which they are situate shall hereafter lawfully cause to be opened, are hereby declared to be public highways; *provided*, that nothing in this act shall be deemed or construed to injure or abridge the rights of any toll road; but all roads shall be entitled to all the protection and benefits arising from this act. *As amended, Stats. 1867, 72.*

### 3005. Road and street work, how let—Exception.

SEC. 2. All work hereafter done upon highways, streets or alleys, whether in opening, improving, or keeping the same in repair, shall, when the probable cost of such contemplated work shall exceed five hundred dollars, be done by contracts let to the lowest responsible bidder, and public notice of at least five days shall be given, describing the work to be done, the time and place that bids will be received, and the means of paying for such work. Such bids shall be sealed, may all be rejected, and if any are accepted it shall be that of the lowest bidder who is responsible, or will give satisfactory security.

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In cases of emergency, it shall be discretionary with the board of commissioners to let contracts for repairs without giving the five days' notice as is contemplated in this section. But no contract shall be let for an amount to exceed five hundred dollars without written notice. *As amended, Stats. 1911, 357.*

No officer, excepting the board of county commissioners, is given any authority to obligate the county for bridges, or for work upon public highways, and it is clear that the board is not authorized to let contracts in excess of \$100 for the construction or repair of bridges or roads, except to the lowest bidder, after giving notice, or in cases of emergency. *Lund v. Washoe Co., 31 Nev. 227, 233 (101 P. 550).*

### 3006. Road fund created.

SEC. 3. To provide funds for paying the expenses of such work, the board of commissioners, at the time of levying other state and county taxes, may levy a tax not exceeding one-fourth of one per cent upon the taxable property of their county, to be assessed, collected, and paid in the same manner that state and county tax is collected; and all moneys so collected shall be paid into a fund to be called the road fund.

See Prison (convict labor) secs. 7596-7601.

### 3007. Disbursement of same.

SEC. 4. In disbursing the moneys of such road fund, the board of commissioners shall regard the interests of each road district, distributing upon the highways most beneficial to each road district the proportion of tax by it paid.

### 3008. Duties of county commissioners as to opening roads—Viewers to be appointed—Damages.

SEC. 5. If twenty-four freeholders in any township of any county containing one hundred or more legal voters, or twelve freeholders of any county containing less than one hundred legal voters, shall petition the board of county commissioners of such county for the location, opening to the public use, reestablishment, change or vacation of any road or highway to connect with any highway heretofore established, or any street or alley in any unincorporated town in such county, setting forth in such petition the beginning, course and termination of such road, highway, street or alley proposed to be located, open to public use, reestablished, changed or vacated, together with the names of the owners or occupants of the land through which the same may pass; the auditor of such county shall lay such petition before the board of county commissioners at their next session thereafter and thereupon such board of county commissioners may, within twenty days thereafter, proceed to locate, open to public use, reestablish, change or vacate such road, highway, street or alley; *provided*, that any public highway laid out or opened under the provisions of this act shall be at least four rods wide. Before opening any new road, street or alley through any property, it shall be condemned to public use as follows: The board of county commissioners shall appoint two disinterested persons to view, lay out and locate such new road, street or alley, and such two persons in conjunction with two others, chosen by any owner or occupant, or by the several owners or occupants of the property to be traversed by such road, street or alley, shall ascertain the damage done to any property so traversed, after deducting any advantage arising from such road, street or alley, to the owner or occupant of such property. If such four persons cannot agree as to such damages, then they shall choose a fifth, and the decision of a majority of them shall govern, and be reported to the board of county commissioners. If the owner or owners or occupants of any property so condemned shall not acquiesce in the amount of damages so reported, an examination may be had before the board and witnesses be examined for the state and such owner or owners or occupants, and the decision of the board shall be final, unless such owner or owners or occu-

pants appeal from the decision of the board within thirty days after such decision to the district court, which he or they may do in the same manner that appeals are taken from justices' courts to the district court. Upon finally determining such damages, the board shall provide for the payment of such damages, either by the person interested in such road, street or alley, or pay the same out of the county treasury as other claims are paid, and after such payment is made the board shall then cause such road, street or alley to be opened. *As amended, Stats. 1887, 56; 1895, 75.*

For condemnation of property, see secs. 5606-5629.

Where the board of county commissioners closed a public road upon a petition signed by only fourteen persons, the petition being silent as to the number of legal voters in the county, it was held that the action of the board was in excess of its powers and completely null and void. *State ex rel. Twaddle v. Washoe Co., 12 Nev. 17, 19.*

When a bill is filed restraining county commissioners from opening a road on the ground that they have not assessed the damages and provided for the payment thereof, it is error to grant a perpetual injunction. The commissioners should only be restrained until they have complied with the preliminary requirements of the statute. *Champion v. Sessions, 2 Nev. 271, 273, 274.*

### 3009. Fine for obstructions.

SEC. 6. Any person or persons who shall, in any manner, obstruct any road, street, or alley, or, in any manner, injure the same, or prevent travel thereon, or who shall obstruct, dam, or divert any stream or water so as to throw the same, or cause the flowage thereof, upon, across, or along the pathway of any road, highway, street, or alley, shall, upon conviction thereof, be fined in any sum not less than twenty, nor more than five hundred dollars, and the court before which such conviction shall be had, shall order the sheriff, or any constable of the county, to abate, as a nuisance, any fence or other obstruction, to the free and convenient use and travel of such road, street, or alley, or any obstruction from such stream, so as to allow the same to flow in its natural bed.

### 3010. Office of road supervisor abolished.

SEC. 7. The office of road supervisor is hereby abolished; and an act entitled "An act concerning roads and highways," approved November twenty-ninth, eighteen hundred and sixty-one, and all other acts, or parts of acts, in conflict with the provisions of this act, are hereby repealed; *provided*, that nothing in this act shall be construed to repeal any other provisions of an act entitled "An act to provide for the improvement of streets and alleys in unincorporated towns and villages in the State of Nevada," approved March tenth, eighteen hundred and sixty-five.

### *An Act entitled an act in relation to public highways.*

Approved March 15, 1875, 159

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| 3011. Road districts, how created—District to remain until disorganized. | 3014. Road fund, how created and maintained—Tax may be levied—Tax may be worked out.      |
| 3012. Transfer of moneys from road district to school fund.              | 3015. Petition to open roads—Viewers, how selected—Parties aggrieved may commence action. |
| 3013. Moneys, how expended.  | 3016. Width of roads.   |

### 3011. Road districts, how created—District to remain until disorganized.

SECTION 1. Whenever a majority of the taxpayers of any township or townships in any county of this state, whose names shall appear on the last previous assessment roll, shall petition the board of county commissioners of such county to divide such township or townships into a road district, or road districts, it shall be the duty of said county commissioners to so divide such township or townships, and to create such road district or districts (fixing the boundaries thereof and having the same recorded). \* \* \* When such

road district or districts shall once be created they shall remain the same, and have the rights and be subject to the duties herein given and imposed, until a majority of the taxpayers of such district shall petition the board of county commissioners of the county to disorganize the same, when it shall be the duty of such board to disorganize said district. *As amended, Stats. 1877, 141.*

[Omitted sections and portion of sections of this act refer to powers and duties of road supervisors, which office was abolished by Stats. 1887, 99.]

### 3012. Transfer of moneys from road fund to school fund, when to be made.

SEC. 5. All moneys remaining in the road fund belonging to any road district at the end of every year, or belonging to any district that may disorganize, as provided by this act, may, on petition of a majority of the taxpayers therein, be applied by the county commissioners to the building of any bridge or special improvement of any highway in said district, or the county in which said district is situated, or upon such petition said moneys may be transferred to the school fund, and applied to the public school or schools of said district.

### 3013. Moneys, how expended.

SEC. 7. The moneys constituting the fund of said road district shall first be used in the payment of \* \* \*; any surplus may be used in the payment of other demands allowed on said road fund by the board of county commissioners, including building and repairing bridges, aqueducts, and highways of the district to which said fund belongs. And no money shall be drawn from the road fund without the order and approval of said board of county commissioners.

### 3014. Road fund, how created and maintained—Tax may be levied—Tax may be worked out.

SEC. 8. To create a road fund for the district[s] hereby authorized to be created, the said county commissioners are required to set off to said fund the net proceeds of the county's proportion of all poll taxes collected from citizens residing in such road district; also, when they deem it expedient, they may levy a property tax not to exceed one-fourth of one per cent on all the property of the county, annually, to be levied, assessed, and collected as other taxes, and assigned by them to the funds of the several road districts, as they may deem for the best interest of the county; also, when a majority of the property holders of any road district shall petition to the county commissioners in favor of an additional special tax for the benefit of such district, the commissioners shall levy a tax on all property within such district, at a rate not to exceed three dollars upon each one thousand dollars valuation, which tax shall be collected by the road supervisors, as hereinafter provided, and paid into the treasury for the road fund of such district; *provided*, that any person owing the last-named property tax, may pay a part or all of the same by labor on the roads of the district, under the direction of the supervisor thereof, at the rate of three dollars for each full day's work and implements of labor, four dollars per day for each team of two animals, and one dollar per day for each additional animal. *As amended, Stats. 1877, 142.*

A previous act in relation to public highways (Stats. 1873, 130), so far as it provides for a road tax upon individuals, was held void as obnoxious to the constitutional provision relating to poll taxes (*ante*, 256). *Hassett v. Walls*, 9 Nev. 387, 392.

The levy of service upon an individual for road purposes is an emanation from the taxing power. *Idem*.

A road tax, whether regarded as a levy in money or service, is a capitation or poll tax. *Idem*.

### 3015. Petition to open roads—Viewers, how selected—Parties aggrieved may commence action.

SEC. 10. At any time when a majority of the resident taxpayers of a

road district, according to the last previous assessment roll, shall petition the county commissioners of their counties, for the location, opening for public use, establishment, change or vacation of any public road or highway, or road to connect with any highway heretofore established, any street or alley in any unincorporated town in such county, setting forth in such petition the beginning, course and termination of such road, or highway, street or alley proposed to be located and opened for public use, established, changed or vacated, together with the names of the owner or owners of the land through which the same will pass, said petition may be presented to the county clerk of said county, and the clerk shall lay said petition before the board of county commissioners, at their next meeting after the reception of said petition, and thereupon said board of commissioners shall, within thirty days thereafter, proceed to locate, open to public use, establish, change or vacate such road, highway, street or alley. Before opening any new road, street or alley, or changing same through private property, such property shall be condemned for public use as follows: The board of county commissioners shall appoint one disinterested person, and the owners or agents of the land through which said highway may run, shall select one such person; and the two shall proceed to view out such road, street or alley, and shall ascertain and make estimates of damages done to any property through which it may be located, changed or vacated, after deducting any advantage arising from such location, change or vacation of such road, street or alley, to the owner or owners of such property; *provided*, if the owner or owners shall refuse or neglect, for a period of ten days after receiving notice from said board of its said appointment, to appoint such person on their part, it shall be the duty of said board to appoint such person for them; *and provided further*, that if there shall be more than one owner of land through which said highway may run they shall unite in such appointments. If the two viewers cannot agree as to such damages, then they shall choose a third person, and the three persons so selected as viewers shall be authorized to administer oaths, compel the attendance of witnesses before them as road viewers, and their decision in the matter shall be final; *and provided further*, that said viewers shall take an oath prior to entering upon the discharge of their duties, before some person authorized to administer oaths, to faithfully discharge the duties of their trust in accordance with the provisions of this act; *and provided further*, that the parties aggrieved by the decision of such road viewers may commence action in the district court within twenty days from the date of such decision to set aside their award; and upon the final award and decision of such damages, the board of county commissioners shall order the road supervisor of the district to open, establish, change or vacate, as the case may be, such road, street or alley, according to the petition aforesaid; *provided*, that in no case shall the commissioners cause any road or street to be opened where the same shall run diagonally through any lands or lot, so as to greatly impair it in shape, or through an orchard four years old, without the consent of the owner or owners thereof; and in all cases they shall follow legal subdivisional lines of the government surveys or of town plats, where the same is practicable. *As amended, Stats. 1879, 142; 1895, 35.*

For condemnation of property, see secs. 5606-5629.

A board of county commissioners granted a petition for the establishment of a public road which did not disclose the names of the owners of land through which the road was to pass, nor did the records of the board show that they had found that a majority of the resident taxpayers of the district, according to the last previous assessment roll, had signed a petition. It was held, that

compliance with the statute was a jurisdictional fact, which must appear, and the action of the board was null and void. *Godchaux v. Carpenter*, 19 Nev. 416, 417 (14 P. 140).

A petition for the vacation of a road failing to show that the petitioners constitute a majority of the resident taxpayers in the district according to the last assessment is

insufficient. State ex rel. Dangberg v. Douglas Co., 27 Nev. 469-475 (77 P. 984).

The word "shall" preceding "within thirty days thereafter," should be construed to mean "may." Idem.

On the presentation of a petition signed by two persons, who constitute a majority and the only taxpayers in the road district, for the vacation of a road, the duty of the board is discretionary and not mandatory. Idem.

### 3016. Width of roads.

SEC. 11. The width of all public highways hereafter constructed shall be regulated and established by the boards of county commissioners; *provided*, no such highways shall exceed in width sixty feet. *As amended, Stats. 1885, 49; 1877, 143.*

The omitted sections and portions of sections are rendered void by the act of 1887, 99, abolishing the office of road supervisor.

### *An Act in relation to erection and maintenance of bridges.*

Approved February 21, 1877, 81

3017. Maintenance of bridges.

3018. May be maintained from general fund or special tax.

3019. Commissioners must advertise for bids, when.

3020. Freeholders may petition—Advertisement.

3021. Commissioners to decide necessity and character of bridge.

### 3017. Maintenance of bridges.

SECTION 1. All public bridges, not otherwise specially provided for, are maintained by the road district in which they are situated, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the road overseers and board of county commissioners; the expense of constructing, maintaining, and repairing the same being primarily payable out of [the] road fund of the district or districts in the hands of the county treasurer.

### 3018. May be maintained from the general fund or special tax.

SEC. 2. Whenever it appears to the board of county commissioners that any road district is or would be unreasonably burdened by the expense of constructing or maintenance and repair of any bridge, they may, in their discretion, cause all or a portion of the aggregate cost or expense to be paid out of the general county fund, or a portion out of that fund, or out of any other fund in the county, except school and judges' salary, in which there is a surplus uncalled for; or, they may levy a tax therefor, not to exceed one-fourth of one per cent on the taxable property of the county, annually, till the amount appropriated is raised and paid.

### 3019. Commissioners must advertise for bids, when.

SEC. 3. No bridge shall be constructed or repaired except on the order of the board of county commissioners, or unless a petition as provided for in section 4 of this act be filed. When the cost of construction or repair of any bridge will not exceed the sum of five hundred dollars, the board of county commissioners shall have the power to let a contract for such construction or repair without advertising or otherwise calling for bids therefor. When the cost of such construction or repair shall exceed the sum of five hundred dollars the contract therefor shall be let to the lowest responsible bidder after notice given by the board of county commissioners, in a county newspaper, for a period of at least two and not more than four weeks' publication, and if there be no such newspaper, then by three posted notices—one at the courthouse, one at the point to be bridged, and one at some other neighboring public place. The bids must be sealed, opened, and the contract awarded at the time specified in the notice; *provided*, that the board of county commis-

sioners shall have the right to reject any and all bids, in which event new notice shall be given in manner and form as above set forth. The contract and bond to perform the work must be entered into and approved by the board of county commissioners. *As amended, Stats. 1911, 369.*

### 3020. Freeholders may petition—Advertisement.

SEC. 4. When a bridge, the cost of which will exceed one hundred dollars, is necessary, any five or more freeholders of the road district interested therein, may petition the board of county commissioners for the erection of such needed bridge; the board must thereupon advertise such application, giving the location and other facts, for two weeks, in a newspaper printed in the county; if none, then by posters, one at the proposed location, one at the court house, and one at some other public place in the county, and notify the overseer to attend at a certain time and place to hear the application.

### 3021. Commissioners to decide necessity and character of bridge.

SEC. 5. On the day fixed to hear the application, proof of the notice given being made satisfactory, the board must hear the petition, examine witnesses, and determine whether or not a bridge is necessary to be constructed or repaired as petitioned for. If found necessary, the board must determine the character of bridge to be constructed or repairs to be made, prepare plans and specifications, invite bids or otherwise let the contract for the construction or repair of same as in this act provided. *As amended, Stats. 1911, 369.*

*An Act to provide for the better preservation of public roads and highways.*

Approved March 5, 1885, 65

### 3022. Persons conducting water across highways to construct and maintain bridges and culverts.

SECTION 1. All persons conducting water across any public road or highway, or across any street or alley in any unincorporated town in this state, for domestic, mining, agricultural or manufacturing purposes, are hereby required to construct and maintain, at their own expense, good and substantial culverts or bridges, as the case may be, over such crossings, and shall in no case allow any stream of water, diverted from its natural channel for such purposes by them, to flood or wash any public road or any street or alley in any unincorporated town of this state.

See secs. 7596-7601.

### 3023. Notice to be given commissioners to have work done.

SEC. 2. It is hereby made the duty of the road supervisor, in each and every road district of this state, and in case there be no regularly elected and qualified road supervisor, then it is hereby made the duty of the chairman of the board of county commissioners, to at once notify the party or parties violating the provisions of this act to make such construction or repair as may be necessary, and if such persons shall refuse or neglect to make the same for a period of five days, then it shall be the duty of the road supervisor, or in case of his absence, the chairman of the board of county commissioners, to immediately cause the necessary construction or repairs to be made, and to submit in duplicate to the board of county commissioners and to the district attorney, itemized bills of the expense so incurred, which shall be allowed and paid as other bills against the road fund of the district in which said construction or repairs were made, and in case there be no moneys in the said fund, then out of any moneys in the general county fund not otherwise appropriated.

Office of road supervisor abolished, sec. 3010.

**3024. Duties of district attorney.**

SEC. 3. It shall be the duty of the district attorney receiving such bill of expense, as provided in section 2 of this act, to immediately commence an action in any court of competent jurisdiction, for the recovery of such an amount as set forth in the itemized bill of expense aforesaid, together with costs of suit.

**3025. Disposal of moneys collected.**

SEC. 4. All moneys so collected, after paying costs of suit, shall be returned and paid into the fund from which the original bill of expense named in section 2 of this act shall have been allowed and paid by the board of county commissioners.

*An Act to provide for the erection of guide-boards on public roads and highways.*

Approved February 21, 1879, 44

**3026. Guide-boards—Style of board.**

SECTION 1. It is hereby made the duty of the board of county commissioners in each county of this state, within ninety days after the passage of this act, to cause to be put up, and to be thereafter kept up, at each crossing or forks of any public roads, or highways in such county, and at each place where a public road or highway crosses or diverges from any private or toll road, a guide-board, having thereon an index or pointer, and the words "to (naming the place or first point of any importance on such road, and the number of miles, as near as may be, thereto) miles." Such number of guide-boards shall be put up and so placed at all such points as to enable travelers to readily understand therefrom the road they may wish to travel, in order to arrive at the desired destination.

**3027. Owners of toll roads to erect posts.**

SEC. 2. The owner or owners of any toll road in this state, having one or more lateral branches, are hereby required, at their own expense, to comply with the provisions of section 1 of this act.

**3028. Misdemeanor to deface guide-board.**

SEC. 3. Any county commissioner or county commissioners or any owner or owners of such toll road or roads who shall wilfully neglect to carry out the provisions of this act before the 1st day of June, 1895, and every person or persons, who shall wilfully tear down, dig up, or in any manner deface, destroy or carry away any such guide-board as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months or by both such fine and imprisonment. *As amended, Stats. 1895, 40.*

*An Act to create the office of road inspector, to provide for work on public roads and to limit the compensation therefor.*

Approved February 27, 1897, 25

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| 3029. Duties of road inspector.                  | 3033. Compensation fixed by board of county commissioners. |
| 3030. Board of county commissioners may appoint. | 3034. Payment for work on public roads.                    |
| 3031. Relative to compensation.                  | 3035. Day's work.  |
| 3032. Paid from road fund.                       | 3036. Elko county rate.                                    |

**3029. Duties of road inspector.**

SECTION 1. The office of road inspector is hereby created. The duties of

the office shall be to order, superintend, inspect and approve, if properly done, all work upon the public roads in the road district for which he may be appointed, as well as that to be done by supervisors, if any there be, as that done by other persons; to report thereon to the board of county commissioners, and to approve all proper bills for road work before they are presented to said board for allowance.

**3030. Board of county commissioners may appoint.**

SEC. 2. The board of county commissioners in each county may appoint one road inspector for each road district now existing or which may hereafter be created in any county of this state, to hold office at the will of said board.

**3031. Relative to compensation.**

SEC. 3. The office of road inspector shall be without compensation, and no money shall be paid from public funds to defray any expenses incurred therein, or thereby, unless by order of the board of commissioners there shall be especially prescribed a limit of compensation for said office in each road district, which order shall especially name the road district wherein said compensation may be given; and no road inspector shall receive any compensation as such officer, unless such compensation shall have been fixed by the board of commissioners within the limit aforesaid, in and for such road district, previously to his appointment as such road inspector.

**3032. Paid from road fund.**

SEC. 4. When a compensation is given it shall be paid to the road inspector from the road fund of the district in and for which any services by him are performed.

**3033. Compensation fixed by board of county commissioners.**

SEC. 5. Such compensation shall be a daily wage and shall not exceed the limit especially prescribed by law for that county; and shall be fixed by the board of county commissioners before the appointment of the road inspector or inspectors who are to receive it. The compensation so fixed shall be in full for all services and expenses of all kinds of said road inspector or inspectors.

**3034. Payment for work on public roads.**

SEC. 6. Compensation to others than road inspector shall be not to exceed three dollars for a day's work on the public roads by one man, or not to exceed six dollars by one man and a span of two draft animals, and one dollar and fifty cents additional for each such additional span. The person so compensated shall, without additional charge, furnish such tools, implements, vehicle, and other necessary equipment, as may be necessary to his work. *As amended, Stats. 1911, 368.*

**3035. Day's work.**

SEC. 7. A day's work on the public roads shall consist of at least eight hours actual labor, exclusive of the time spent in going to and returning from the work, and in no case shall pay be given for more than one day's time between sunrise and sunset of the same day, to or for the same person.

**3036. Elko county rate.**

SEC. 8. The rate of compensation for road inspector for the county of Elko shall not exceed the sum of two dollars per day for each day actually, necessarily, and economically employed.

*An Act providing for the election of road supervisors, for the subdivision of counties into road districts, and matters properly relating thereto.*

Approved March 19, 1901, 89

### 3037. Road districts established in certain counties.

SECTION 1. The county commissioners of each county polling at the last general election eighteen hundred votes or over shall for the purpose of supervision of roads, divide the county into road districts, each appropriately designated.

### 3038. Supervisor to be elected.

SEC. 2. At every election of county officers, there shall also be elected one road supervisor in each road district, whose duty it shall be to supervise all work upon the roads in his district, and to attest to the propriety of all bills for such work, and to direct the expenditure of all sums set apart for his district by the county commissioners.

### 3039. Compensation, how fixed.

SEC. 3. The compensation of road supervisors shall be fixed by the county commissioners.

### 3040. Duty of county commissioners.

SEC. 4. On or before the fifteenth day of April, nineteen hundred and one, the county commissioners shall appoint one road supervisor for each road district to serve and hold office until their successors have been elected and installed.

*An Act providing for the appointment of road supervisors in counties polling three thousand votes or over, for the subdivision of said counties into road districts, and matters properly relating thereto, and to repeal all other acts and parts of acts in conflict therewith.*

Approved March 24, 1911, 355

### 3041. Road supervisor in certain counties.

SECTION 1. The county commissioners of each county in this state polling at the last general election three thousand votes or over, to be determined by the vote cast for secretary of state, shall, for the purpose of supervision of roads, divide the county into road districts, each appropriately designated.

### 3042. Commissioners to appoint.

SEC. 2. The board of county commissioners of said counties shall, at its first regular meeting in January, 1913, appoint and fix the compensation of one road supervisor in each road district, to serve during the pleasure of the board of county commissioners.

### 3043. Duties of road supervisors.

SEC. 3. It shall be the duty of road supervisors appointed under the provisions of this act to supervise all work upon the roads in his district, to attest to the propriety and correctness of all bills for such work, and to direct the expenditures of all sums set apart for his district by the board of county commissioners; *provided*, that no bills shall be contracted nor any money expended by said road supervisor, unless he shall have first obtained the consent and approval of said board of county commissioners.

### 3044. To take official oath.

SEC. 4. Each road supervisor appointed under the provisions of this act shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a bond to the State of Nevada, to be approved by the

board of county commissioners, in the penal sum of one thousand dollars; which bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the office of the county clerk.

*An Act to protect public roads and highways from damage by water, and to provide a penalty for a failure to do so.*

Approved March 18, 1911, 96

### 3045. All persons and corporations to prevent damage by water to public roads and streets.

SECTION 1. From and after the passage of this act, all persons, corporations or associations conducting water across any public road or highway, or across any street or alley in any unincorporated town in this state, for domestic, mining, agriculture or manufacturing purposes, shall construct and maintain, at their own expense, good and substantial culverts or bridges, over such crossing, and shall in no case allow any stream of water, diverted from its natural channel for such purposes by them, to flood or wash any public road or any street or alley in any unincorporated town of this state.

### 3046. Penalties.

SEC. 2. Any person, corporation or association which shall fail or refuse to construct and maintain culverts and bridges as in section 1 of this act specified, or which shall fail, after five days' written notice, served upon them by the proper authorities to repair all damages by them caused by flooding any road or highway shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for the first offense be fined not less than twenty-five dollars, nor more than fifty dollars, and for each subsequent offense shall be fined not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a term not less than thirty days nor exceeding six months.

*An Act relating to toll roads and bridges in Nevada Territory.*

Approved February 18, 1864, 71

### 3047. Toll keepers not to charge the military.

SECTION 1. Hereafter no toll-gate or toll-bridge keeper or proprietor, or other person, shall be permitted to charge or collect any toll from any soldier, teamster, or other person in the military service of the United States government.

### 3048. Penalty.

SEC. 2. Any person charging or collecting, or attempting to charge or collect, any toll from any of the persons named in this act, shall be deemed guilty of a misdemeanor, and may, on conviction thereof, before any justice of the peace, be fined in any sum not less than fifty nor more than one hundred dollars.

*An Act to compel the owners of toll roads within this state to keep the same in repair.*

Approved March 9, 1865, 271

### 3049. When right to maintain deemed forfeited.

SECTION 1. If, after the passage of this act, any toll road in this state shall not at all times of the year be kept in good condition and repair, without break or interval between the points of beginning and terminus, by the owner or owners of the same, such owner or owners shall be deemed to have forfeited his or their right to maintain such road, and all the rights, privi-

leges, and franchises belonging or in anywise appertaining to the same. The question as to whether a forfeiture has accrued under the provisions of this act, shall be determined in the manner provided in an act entitled "An act regulating proceedings upon quo warranto and informations in the nature thereof," approved February twenty-first, one thousand eight hundred and sixty-five.

See secs. 5656-5682.

*An Act to provide for constructing and maintaining toll roads and bridges in the State of Nevada.*

Approved March 8, 1865, 254

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| 3050. Certificate acknowledged and recorded—Contents—When work commenced.                                  | 3055. Proportion of receipts to county.                            |
| 3051. Rights and privileges.   | 3056. Provision on expiration of charters—Proviso.                 |
| 3052. May enter upon private lands—Eminent domain—Value, how ascertained—Tender of appraised value—Appeal. | 3057. Exorbitant toll, how remedied.                               |
| 3053. Penalty for failure to keep road in repair—Quo warranto.   | 3058. Franchises heretofore granted may be located under this act. |
| 3054. Using road without paying toll, punishment.  | 3059. Toll bridges.  |
|  | 3060. Limit of right of way.                                       |
|  | 3061. Not interfere with road now in use.                          |
|  | 3062. "Person" defined.  |

**3050. Certificate acknowledged and recorded—Contents—When work commenced.**

SECTION 1. Any person or persons desiring to construct and maintain a toll road within any one or more of the counties of this state, shall make, sign and acknowledge, before some officer entitled to take acknowledgments of deeds, a certificate specifying, first, the name by which the road shall be known; and, second, the names of the places which shall constitute the termini of said road. Such certificate shall be accompanied with a plat of the route of the proposed road, and shall be recorded in the office of the county recorder of the county or counties within or through which such road is proposed to be located; and the record of such certificate and plat shall give constructive notice to all persons of the matters therein contained. The work of constructing such road shall be commenced within thirty days of the time of making the certificate above mentioned, and shall be continued with all reasonable dispatch until completed.

Cited (on another point), State ex rel. Ford v. Hoover, 5 Nev. 141-145.

At the expiration of a toll-road franchise, the control for such road reverts to the sovereign, and in the absence of other special disposition, a free use of such road would be thereafter in the people. State ex rel. Boardman v. Lake, 8 Nev. 276-283.

The fact that the holder of an expired toll-road and bridge franchise has acquired the fee of the land on which the ends of the bridge rest and both sides thereof, does not give him any rights to a continuance of the franchise—the possession by the public of the easement of traveling the road being in no sense antagonistic to his possession of the title to the land. Idem.

Sections 1 and 2 of this act apply only to new roads, and give no right to the owner

of an old road whose franchise is about expired to locate it as a new road. Idem.

A bridge over a navigable stream can only be lawfully built or used for taking tolls by authority of the legislature. Idem.

Where a toll-road franchise, granted in 1864, was by judicial action in May, 1865, declared forfeited; and in June, 1865, the holder sought to acquire the right to collect tolls on it by compliance with this act, it was held, that as the statute provided that no toll road constructed under its provisions or otherwise should "interfere with any road or highway in general use by the traveling public," no right could, in that manner, be acquired to collect such tolls. State ex rel. Buckley v. Curry, 6 Nev. 75-77.

**3051. Rights and privileges.**

SEC. 2. On complying with the provisions of the preceding section said person shall be deemed to have the franchise for the use of said road,

together with the following rights and privileges and subject to the following restrictions:

First—To construct, complete and maintain a toll road over the route and between the termini mentioned in said certificate;

Second—To have the use of the right of way over which said road is constructed, together with fifteen feet on each side of the center of such road.

Third—To establish rates of toll over the whole and the various sections of such road, and to establish and fix different rates of toll for the different character of animals, vehicles and conveyances that use such road, as he may deem proper;

Fourth—To charge and collect from a person using such road, and in advance of its use, the toll at the rate fixed and established;

Fifth—To prevent the use of such road or any part thereof by any person who fails or refuses to pay in advance the tolls and charges as fixed and established; and for such purpose and, in the event of the continued or threatened use of such road by any person without paying the toll fixed and provided, to obtain an injunction;

Sixth—To enter upon and appropriate private lands for the use of said road and right of way as in said act provided; such person or persons shall tender to such owner or owners the appraised value of such lands; they shall be entitled to proceed in the construction of the road over the land so appraised, notwithstanding such tender may be refused; *provided*, that such tender shall always be kept good by such person or persons; and *provided further*, that an appeal may be taken by either party from the finding of the appraisers to the district court of the district within which the land so appraised shall be situated at any time within three months after such appraisalment.

Seventh—To post on a bulletin board at the termini of said road the rates of toll so fixed and established, written, painted or printed in a plain and legible manner, together with the address of the place or office where said tolls are payable; to place along said road, not to exceed two miles apart, sign boards with the words "Toll Road" written, printed or painted thereon.

Eighth—To deliver to a person paying the required toll a ticket, authorizing the use of such road by the party so paying such toll, said ticket to show upon its face the place of issue, the destination on the road of the user, such date to be so set as to give the user sufficient time to reach his destination on said road. *As amended, Stats. 1905, 254; 1907, 404.*

See *Southern Dev. Co. v. Douglass*, under sec. 7 of this act.

### 3052. May enter upon private lands—Eminent domain—Value, how ascertained—Tender of appraised value—Appeal.

SEC. 3. Any person or persons proposing to construct a toll road under the provisions of this act, shall have the right to enter upon private lands for the purpose of examining and surveying the same; and where such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of said road may be appropriated by said person or persons, after making compensation therefor, as follows. Said person or persons shall select one appraiser, and said owner or owners shall select one, and the two so selected shall select a third, who shall appraise the lands sought to be appropriated, after having been first sworn before some officer entitled to administer oaths to make a true appraisalment thereof, according to the best of their knowledge and ability. If such person or persons shall tender to such owner or owners the appraised value of such lands, they shall be entitled to proceed in the construction of the road over the lands so appraised, notwithstanding such tender may be refused; *provided*, that such tender shall always be kept good by such person or persons; and, *provided further*, that an appeal may be taken by either

party from the finding of the appraisers, to the district court of the district within which the land so appraised shall be situated, at any time within three months after such appraisal.

For condemnation of property, see secs. 5606-5629.

### 3053. Penalty for failure to keep road in repair—Quo warranto.

SEC. 4. The owner or owners of any toll road constructed or maintained under the provisions of this act, shall at all times keep the same in as good condition and repair as may be practicable; and if such owner or owners shall fail to keep the same in such condition and repair, such failure shall work a forfeiture of all rights, privileges, and franchises, belonging to such owner or owners, or any person having any interest therein. Such franchise may be also declared forfeited on information in the nature of a quo warranto, in the manner provided by law; and the owner or owners of any road on which tolls are collected under the provisions of this act, shall be liable for all the damages sustained by parties passing over such road, in consequence of the carelessness or negligence of the owner or owners in keeping their road in proper repair.

Quo warranto, secs. 5656-5682.

### 3054. Using road without paying toll, punishment.

SEC. 5. Any person who shall go upon or travel over said road or any part thereof with animal, vehicle or conveyance without having first paid or tendered the toll or charges for the use of said road, as established and fixed by the owners, to the person designated to receive the same, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding fifty dollars, or imprisoned in the county jail where such offense is tried not exceeding five days, or by both such fine and imprisonment. Failure of such person to have in his possession the ticket provided for in section 2 of said act shall raise the presumption that such person has not paid or tendered the required toll. Any person who shall obstruct, injure or destroy said road or any part thereof, or shall interfere with the removal of obstruction or repair or maintenance of said road, shall be deemed [guilty] of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed fifty dollars, or imprisoned in the county jail where such offense is tried not exceeding five days, or by both such fine and imprisonment. All fines collected under the provisions of this section shall be paid into the treasury of the county wherein such convictions shall have been had for the benefit of the school fund; but in no case shall the county be responsible for the costs of any prosecution under this section. *As amended, Stats. 1875, 156; 1907, 405.*

### 3055. Proportion of receipts to county.

SEC. 6. The owners of any toll road constructed under the provisions of this act shall cause to be kept an accurate account of the gross receipts and expenditures of such road, and make a quarterly report thereof under oath to the state controller. Such owners shall pay to the county treasurer of each county through which said road is constructed such county's pro rata portion of two per cent of the gross proceeds of said road, such ratio to be as the number of miles of said road in a certain county is to the whole length of such road. The receipts for such moneys from the county treasurers shall accompany the reports to the state controller. The county treasurers shall credit such moneys to the general road fund of the county; *provided*, that if in three years after the completion of any road, the net proceeds shall exceed fifty per cent per annum on the cost of construction, then all such excess of fifty per cent shall be paid into the general state school fund in the same manner as provided in this section for the payment of the two per cent on the gross proceeds. *As amended, Stats. 1907, 406.*

### 3056. Provision on expiration of charters—Proviso.

SEC. 7. Upon the expiration or forfeiture of any toll-road franchise granted under the provisions of this act, and in case of the expiration or forfeiture of any toll-road franchise granted under the provisions of any other act, whether the same shall have already happened or may hereafter happen, the ownership of said road, with all the rights and privileges theretofore belonging to the same, shall vest in the county or counties in which said road shall be located; and whenever the same shall have happened, or may hereafter happen, the county commissioners of the proper county may declare so much thereof as is within their county a free highway; *provided*, that in all cases falling within this section, the county commissioners of the proper county may give a lease at a nominal rental of any such road whereon tolls are now collected, either under the provisions of any act of the legislature of this state, or by and with the consent of the county commissioners aforesaid, to the proprietors, their successors or assignees, of such road, for a term of not to exceed five years, giving to such lessee the right to collect tolls on such road, subject, however, to all the provisions of this act; and upon the expiration or forfeiture of any such lease, and whenever and as often as the time shall happen, the county commissioners of the proper county, if they deem it expedient, may give a new lease of such road upon the like terms and conditions, for a further period of not to exceed five years, to the original or any other lessee, unless said road passes through two or more counties, in which case the original lessee, or his assigns, shall have preference. *As amended, Stats. 1875, 156; 1877, 74.*

See Boardman v. Lake, under sec. 1 of this act.

Where the franchise of a toll road previously granted, became or was judicially declared forfeited, it was held that the road became the property of the county, and that, if the county commissioners took no action for the collection of tolls, it became a free highway. *State ex rel. Buckley v. Curry, 6 Nev. 75-77.*

By allowing travelers to pass over a road, and by collecting tolls thereon, a toll-road proprietor dedicated the same to the public use. *State v. Toll Road Co., 10 Nev. 155, 160, 162.*

County commissioners made an order granting a lease to the proprietors of a toll road; but they did not then accept its con-

ditions or agree to perform them, and the board subsequently refused to execute the lease submitted for that purpose and later made an order rescinding its original order therefor. It was held, that in making the later order the board did not exercise judicial functions and hence certiorari would not lie to set the same aside. *Southern Dev. Co. v. Douglass, 26 Nev. 50, 53 (63 P. 38).*

Under this section, the commissioners cannot grant a lease to a toll road constructed in 1882, since the phrase "whereon tolls are now collected," limited the commissioners' power to grant extensions to such roads only as were then in operation. *Southern Dev. Co. v. Douglass, 26 Nev. 230, 239-241 (66 P. 66).*

### 3057. Exorbitant toll, how remedied.

SEC. 8. Whenever ten taxpayers in any county through which a road is located and constructed under the provisions of this law are convinced that tolls charged on said road are unreasonably high, they shall have the right to petition the board of county commissioners to have said rate reduced, which petition shall be accompanied by an affidavit, setting forth wherein said rates of toll should be reduced, and thereupon the county commissioners shall immediately notify the owners of the road so complained of, who shall select three men to act with three county commissioners, and the six shall select a seventh man, and the seven so selected shall have power to fix the rates of toll to be charged on any road thus complained of, which rates shall not be reduced for a period of five years thereafter, except by petition of ten taxpayers to the county commissioners. *As amended, Stats. 1907, 406.*

### 3058. Franchises heretofore granted may be located under this act.

SEC. 9. All franchises granted for toll roads by the first legislature of this state may be located under the provisions of this act.

See Boardman v. Lake, under sec. 1 of this act.

**3059. Toll bridges.**

SEC. 10. Toll bridges may be established and maintained, subject to all the provisions of this act.

**3060. Limit of right of way.**

SEC. 11. Nothing in this act shall be so construed as to give a right of way to exceed in width forty-five feet.

**3061. Not to interfere with road now in use.**

SEC. 12. No toll road constructed under the provisions of this act, nor otherwise, shall interfere with any road or highway, now in general use by the traveling public, or the emigration from the east.

[Sec. 13, omitted as unconstitutional.]

See Buckley v. Curry, under sec. 1 of this act.

This includes toll roads—there being no such roads and common highways. State ex difference in the sense of the statute between rel. Boardman v. Lake, 8 Nev. 276.

**3062. "Person" defined.**

SEC. 14. Whenever the word "person" is used in said act it shall be construed to mean and include persons, corporations, partnerships and associations. *Added, Stats. 1907, 407.*

## PUBLIC LANDS

Carey act and state legislation in relation thereto, sections 3063-3097.

Reclamation act and state legislation in relation thereto, sections 3098-3114.

Homestead entries, sections 3115-3149.

Desert entries, sections 3150-3162.

Timber and stone entries, sections 3163-3167.

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320-acre limitation, sections 3169, 3170.

Rights of way for canals, tramways, reservoirs, and electric power lines, sections 3171, 3172.

Unlawful inclosure of public lands, sections 3173-3176.

Act to protect locators of oil and gas lands, section 3178.

Grants of lands, sections 3179-3195.

State lands, sections 3196-3226.

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### THE FEDERAL ACT

3063. Conditional grant of 1,000,000 acres.

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3065. Selection and disposal of land, where vested—Surveyor-general—Register.

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3087. Commission to make and enforce rules.
3088. Department of Carey act lands established—State register of lands under the Carey act—Duties—May appoint deputy—Compensation.
3089. Fees.
3090. Services of state engineer, how paid—Expenses and report—Authorized agent of state—Deputy.
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3092. Annual report—Distribution—Pending proceedings not to be made public.
3093. Proceeds of sale of lands under control of the commission—Carey act trust fund—Proceeds of sale, how applied—Money appropriated from treasury for use of commission—Reimbursement—Examiner to approve disbursements.
3094. Provisions nonapplicable to prior transactions—Provisions applicable—Proviso.
3095. Certain contracts subject to these provisions.
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#### THE CAREY ACT

#### Synopsis of the General Features of the Carey Act and the Procedure Which Has Grown Up in the Western States in Applying it to the Reclamation of Desert Lands.

Congress, in 1894, passed an act granting to each of the arid-land states one million acres of desert lands, situate within each such state, subject to the state's selection from any of the unappropriated public domain. There were certain conditions and requirements attached to the original grant and these have been modified to some extent by three subsequent acts of Congress and also interpreted by the regulations of the department of the interior. These laws and regulations define the government's part in the procedure, every detail of which must be complied with.

In carrying out the government requirements, the states have had to pass laws to afford a statutory procedure which the applicant for Carey act lands must follow in order to fulfill the government requirements, as well as to afford the states the benefits which Congress intended should accrue to them.

No land is acquired by any person, company or corporation conducting a Carey act project. Carey act projects are, per se, reclamation projects, undertaken to supply water for the irrigation of a given tract of land, and when completed the person, company or corporation conducting the same derives his or its profits from the sale of the water rights to settlers.

When the irrigation system is prepared to deliver water to settlers, the lands are thrown open for entry, in allotments of not exceeding 160 acres to each entryman. Entrymen must be citizens of the United States, over the age of twenty-one years (including married and unmarried women), who have not previously exhausted their rights under the provisions of the act. The entryman pays the state by installments for the land and pays the reclamation company likewise for the water right. On completing payment to the state, patent is issued for the land, and on completing payments for the water right the settler acquires full title to the same. Once the project is initiated, the cost of the water right attaches as a lien upon the land and the lien is not lifted until the final payment for the water right.

The lien of the cost of the water right upon the land serves to complete the security of the contractor for the construction of the irrigation works and the profits expected from the enterprise. When the lands are finally sold and the payments for the water rights completed, the contracting company is eliminated from the enterprise and the settler is in possession.

The Carey act lands of Nevada are under the control and jurisdiction of the State Commission of Industry, Agriculture and Irrigation.

The act of the legislature of March 23, 1909, is superseded by the act of March 17, 1911, hereinafter contained, except in the cases specified in section 31.

*An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes.*

Approved August 18, 1894, 28 U. S. Stats. 377-422

3063. Secretary of the interior, with approval of the president, authorized to contract and agree to patent to the State of Nevada and other states, not to exceed 1,000,000 acres of desert lands, under certain conditions—State to file map and plan—State may make contracts—Patents to issue to state, when—160-acre limitation—Time limitation for state action—Liens in favor of state—United States not liable for lien—Lands may be withdrawn—Additional 1,000,000-acre grant to Nevada—Amendments.

SEC. 4. That to aid the public land states in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers, the secretary of the interior with the approval of the president, be, and hereby is authorized and empowered, upon proper application of the state to contract and agree, from time to time, with each of the states in which there may be situated desert lands as defined by the act entitled "An act to provide for the sale of desert land in certain states and territories," approved March third, eighteen hundred and seventy-seven, and the act amendatory thereof, approved March third, eighteen hundred and ninety-one, binding the United States to donate, grant, and patent to the state free of cost for survey or price such desert lands not exceeding one million acres in each state as the state may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty-acre tract cultivated by actual settlers, within ten years next after the passage of this act, as thoroughly as is required of citizens who may enter under the said desert land law.

Before the application of any state is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the secretary of the interior, the state shall file a map of the said land proposed to be irrigated which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the secretary of the interior may make necessary regulations for the reservation of the lands applied for by the states to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any state contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the state shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement.

As fast as any state may furnish satisfactory proof according to such rules and regulations as may be prescribed by the secretary of the interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the state or its assigns for said lands so reclaimed and settled; *provided*, that said states shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any state from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such state. That to enable the secretary of the interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated out of any moneys

in the treasury, not otherwise appropriated, one thousand dollars. 28 U. S. Stats. 373.

That under any law theretofore or hereafter enacted by any state, providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section 4 of an act entitled "An act making appropriations for the sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the state to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells, or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such state without regard to settlement or cultivation; *provided*, that in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part. *As amended*, 29 U. S. Stats. 434.

That section 4 of the act of August eighteenth, eighteen hundred and ninety-four, entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," is hereby amended so that the ten years' period within which any state shall cause the lands applied for under said act to be irrigated and reclaimed, as provided in said section as amended by the act of June eleventh, eighteen hundred and ninety-six, shall begin to run from the date of approval by the secretary of the interior of the state's application for the segregation of such lands; and if the state fails within said ten years to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the secretary of the interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain. *As amended*, 31 U. S. Stats. 1134, sec. 3.

That to aid in carrying out the purposes of section 4 of the act of August eighteenth, eighteen hundred and ninety-four, entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending eighteen hundred and ninety-five, and for other purposes," it shall be lawful for the secretary of the interior, upon application by the proper officer of any state or territory to which said section applies, to withdraw temporarily from settlement or entry areas embracing lands for which the state or territory proposes to make application under said section, pending the investigation and survey preliminary to the filing of the maps and plats and application for segregation by the state or territory; *provided*, that if the state or territory shall not present its application for segregation and maps and plats within one year after such temporary withdrawal the lands so withdrawn shall be restored to entry as though such withdrawal had not been made. *As amended*, 36 U. S. Stats. 237.

An additional one million acres of arid lands within the State of Nevada is hereby made available and subject to the terms of section 4 of an act of Congress entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895," approved August 18, 1894, and by amendments thereto, and the State of Nevada is allowed under the provisions of said acts said additional area, or so much thereof as may be necessary for the purposes and under the provisions of said acts. *As amended*, Act of March 4, 1911.

## THE STATE ACT

*An Act in relation to the act of Congress known as the Carey act, and all acts amendatory thereof and supplemental thereto, and governing the state commission of industry, agriculture and irrigation as heretofore or may be hereafter created and established by law in the control of the selection, management and disposal of all lands granted the state under the provisions thereof.*

Approved March 17, 1911, 84

### 3064. Conditions of Carey act accepted.

SECTION 1. That the State of Nevada hereby accepts the terms and conditions of section 4 of the act of Congress approved August eighteenth, eighteen hundred and ninety-four (28 U. S. Stat. 372-422), commonly known as the "Carey Act," and all acts amendatory thereof or supplemental thereto, heretofore, or which may be hereafter, passed by the Congress of the United States, together with all the grants of land heretofore made, or which may hereafter be made, to the state by the general government under the provisions thereof.

By act of the legislature of March 20, 1895, the State of Nevada "accepted the provisions and conditions of section 4 of the act of Congress \* \* \* approved August 18, 1894, together with all grants of land to the State of Nevada under the provisions of said act" (Stats. 1895, 111).

### 3065. Selection and disposal of land, where vested—Surveyor-general register.

SEC. 2. The selection, management and disposal of said land shall be vested in the state commission of industry, agriculture and irrigation as is or may be heretofore created and established by law, and the surveyor-general is hereby designated as state register of lands under the Carey act.

### 3066. Applications for temporary withdrawals—Procedure—Rules and regulations.

SEC. 3. Any person or persons, association, company or corporation constructing, having constructed, or desiring to construct, impounding dams, canals, ditches or other irrigation works, pumping plants, or artesian wells, to reclaim lands under the provisions of this act, may file with said commission an application for the temporary withdrawal of such lands under the provisions of the act of Congress of March fifteenth, nineteen hundred and ten (public 87), designating the same by legal subdivisions. Such application shall be prepared and submitted in accordance with such general rules and regulations as the commission may adopt and prescribe, and which shall be in conformity with any regulations of the department of the interior, and shall be accompanied by the certificate of the state engineer that application for permit to appropriate water therefor has been filed in his office.

### 3067. Idem—Filing fee.

SEC. 4. A filing fee of one cent per acre for the total number of acres requested to be temporarily withdrawn shall accompany such application.

### 3068. State engineer to report on applications—Approval—Withdrawal.

SEC. 5. All such applications, prepared and submitted in accordance with the rules and regulations of the commission and of the department of the interior, shall be referred to the state engineer who shall submit a written report thereon, and which shall cover such information regarding water supply, feasibility of project, status of the water right, and other data necessary to enable the state register of lands under the Carey act to make the proper application and certification required by the general land office in such cases. No application on which the state engineer has reported adversely shall be

approved by the commission, but if the state engineer report favorably thereon, said commission shall, at its earliest convenience, consider the same, and if a majority of the members approve the application (or approve a modification of such application, in which case, on the acceptance by the applicant of such modification), said commission shall direct the state register of lands under the Carey act to file in the local U. S. land office a request for the temporary withdrawal of the lands described.

### 3069. Money to be deposited to cover all preliminary costs—Relinquishment.

SEC. 6. Immediately after any application has been approved by the commission and prior to the filing of the request for the temporary withdrawal in the U. S. land office, said applicant shall deposit with the commission a sum which, according to the estimate of the state engineer, will cover the entire cost of the surveys, determinations, maps and plats required by the secretary of the interior before approving a segregation and allotment of such lands to the state. Such deposit shall be for a guarantee that all such surveys, determinations, maps and plats shall be properly and in good faith made on the part of the applicant, and completed and filed with said commission for its examination at least ninety days prior to the termination of the temporary withdrawal, and also to cover any fees and expenses of the state engineer authorized by law to be collected and charged against the applicant in such cases; and said state engineer is hereby empowered to supervise such surveys and determinations. From time to time, as such surveys, determinations, and the preparation of such maps and plats progress, and on requisition by the state engineer, said applicant shall be reimbursed from such deposit for the accrued costs of the same; *provided*, that any such applicant, desiring to relinquish and abandon such project prior to the completion of such surveys and determinations, who shall serve a written notice to such effect upon the commission, accompanied with a relinquishment to the state of his application for a water right, shall be reimbursed the unexpended balance of his deposit.

### 3070. Request for segregation to be filed—Waiver of withdrawal—Fees.

SEC. 7. Any applicant who shall submit his application for a segregation in a form complying with the requirements of the commission and of the secretary of the interior in respect to surveys, determinations, maps, plats, water rights, etc., and which shall be approved by the state engineer and by the commission, may waive request for a temporary withdrawal and, on payment to the commission of a fee of one cent per acre, and any fee required by the state engineer for any verification thereof; and any applicant who has completed the requirements of a temporary withdrawal in respect to such fees, surveys, determinations, maps, plats, water rights, etc., and who shall pay the segregation fee required by the U. S. land office, the state register of lands under the Carey act by direction of the commission, shall file a request on the part of the state for a segregation of the lands embraced in such approved application.

### 3071. Commission to enter into contract with applicant, when—Bond—Default—Extension of time, when—Sale of equity—Proceeds of sale, how used.

SEC. 8. Upon the approval of the secretary of the interior of the application for a segregation, it shall be the duty of the commission to enter into a contract with the applicant for such segregation, which contract shall contain such complete specifications with respect to the system of irrigation works proposed to reclaim the lands of such segregation as the commission, by its regulations, shall prescribe; the price, conditions and terms per acre at which

such works and perpetual water rights shall be sold to settlers; the price, terms and conditions on which the state is to dispose of the lands to settlers, and such other and additional requirements and stipulations as shall insure and protect the good reputation of the state, and the rights of all parties in interest from date to the complete consummation of the enterprise. Such contract shall not be entered into until the contractor shall have filed a satisfactory bond in a penal sum equal to five per cent of the estimated cost of the works, which shall be conditioned for the faithful performance of the provisions of the contract with this state; *provided*, that if within three months after notice by the commission to the applicant, by registered letter, addressed to his, their, or its last known address, that such segregation has been approved by the secretary of the interior, said applicant person or persons, association, company or corporation neglects or refuses to appear in person, or through its duly authorized officers, or by agent satisfying the commission of his authority so to do, to enter into and execute a contract with the state and supply the bond as required, then said person or persons, association, company or corporation shall be declared in default by the commission (unless in the opinion of the commission an extension of time, not exceeding thirty days, should be granted), and all his, their or its rights and equities therein lapsed and defaulted to the state; and the commission may advertise the equity of such applicant for sale to the highest bidder, under such rules and regulations as it may prescribe, and sell the same and enter into a contract covering such segregation with the purchaser thereof, in which case the state engineer shall transfer the application for the water right in the name of and to such purchaser. The proceeds of any such sale shall be used, first, to cover the costs and expenses of advertisement and sale, second, to reimburse said defaulting applicant for his outlay in respect to such application, as the same may appear from the records and account of the commission and of the state engineer's office, and the surplus, if any, shall be deposited in the Carey act trust fund hereinafter created. In the case of any segregation approved by the secretary of the interior prior to the date this act goes into effect, where due notice to the applicant of such approval has been made by the state land register, said three months' limitation within which a contract must be signed shall begin to run from the date when this act goes into effect.

### 3072. Contracts limited as to time of construction of works—Proviso.

SEC. 9. No contract shall be entered into by the commission on the part of the state which requires a greater time than three years for the construction of the works, but all contracts must provide that work shall commence within three months from the date of said contract, that at least one-tenth of the construction work shall be completed within one year from the date of said contract, that construction shall be prosecuted diligently and continuously to completion, and that a cessation of the work under the contract with the state for a period of three months shall forfeit to the state all rights under said contract; *provided*, that if such three months' cessation of work shall occur in whole, or in part during the months of December, January, February, and March, and shall be caused by the inclemency of the weather, it shall not be deemed a forfeiture.

### 3073. Modification of contract, when.

SEC. 10. Any contract, so entered into, may be subsequently modified, if in the opinion of the commission such modification conserves and protects the public welfare and the rights of settlers; *provided*, that if such modification relates to changes in the irrigation works or system or to an extension of time for the completion thereof, the consent of the state engineer shall be a condition precedent to any act of the commission authorizing the same. Any contract so entered into may contain a stipulation for the subsequent

enlargement of the works to irrigate more land under the Carey act, but no such enlargement shall be undertaken except in accordance with the requirements of an original application.

### 3074. State not obligated.

SEC. 11. Nothing in this act shall be construed as authorizing said commission to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state.

### 3075. Assignment of contracts not recognized under certain conditions—Approval of.

SEC. 12. No assignment by any applicant for a temporary withdrawal or segregation, of any right, interest, claim or equity therein, before or after its approval, and before contract shall actually have been entered into with the state, shall be recognized by the commission, without it be accompanied with a certificate signed by the assignee that he has had in his possession, and examined for his own information, a statement of the status of such application, or approved segregation, prepared and subscribed by the state register of lands under the Carey act of date not older than thirty days preceding the date of the execution of the assignment; and any assignment, without such statement in the actual possession of the assignee prior to the execution thereof, if for a valuable consideration shall render the assignor liable to prosecution for fraud. No assignment shall be valid until it receive the approval of the commission, when the same, or a certified copy thereof, shall be filed with the commission by the assignee.

### 3076. Commission to fix price of lands.

SEC. 13. Said commission is hereby authorized to fix the price at which the state shall dispose of lands in each segregation to settlers, which shall not be less than fifty cents per acre nor more than one dollar per acre, depending on the location, character of the land and climatic conditions; the proceeds of which shall be deposited in the state treasury, in a fund hereby created for such purpose, to be known as Carey act trust fund.

### 3077. Payment not made until water is available—Bond—Proviso—Sales through agency.

SEC. 14. No person, or persons, association, company or corporation, contracting with the state under the provisions of this act, or their assigns, shall require any advance payment of any settler or prospective settler, prior to the time that water for the irrigation of his entry or allotment is actually available, unless a satisfactory bond in such sum as the commission shall require shall be deposited with the commission, conditioned on the return to the settler, with interest at six per cent per annum thereon, of all payments so made, if water for the irrigation of his entry or allotment is not available at the time stipulated in the agreement with such settler; *provided*, that in lieu of a bond as aforesaid, said commission may authorize advanced sales to be made by, or through the agency of, a bank or trust company furnishing satisfactory assurances and guarantees that if said project is not consummated to deliver water for the irrigation of such settler's entry or allotment within the time specified, such payments with interest shall be returned to the settler.

### 3078. Limitation of time as to construction—Forfeiture of bond—Notice by publication in newspaper—Money from sale, how applied.

SEC. 15. Upon the failure of any parties having contracts with the state for the construction of irrigation works to begin the same within the time

specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, to the satisfaction of the state engineer, it shall be the duty of the commission to give such parties written notice of such failure, signed by the chairman of said commission and the state register of lands under the Carey act; and if, after a period of sixty days after the sending of such notice, they shall have failed to proceed with the work or to conform to the specifications of their contract with the state, the bond and contract of such parties, and all works constructed thereunder, shall be at once and thereby forfeited to the state; and it shall be the duty of the commission at once so to declare and to give notice, once each week, for a period of four weeks, in some newspaper of general circulation in the county or counties in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, of the forfeiture of said contract, and that upon a fixed day proposals will be received at the office of the commission at Carson City for the purchase of the incompleting works and for the completion of the contract, the time of receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received by the commission from the sale of partially completed works under the provisions of this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, and to satisfy the bond; and the surplus, if any exists, shall be paid to the original contractors with the state. Said commission shall give notice in its advertisement for proposals for the purchase of such incompleting works that the successful bidder therefor shall be required, before the transfer of ownership, to furnish a satisfactory bond in a prescribed sum conditioned for the faithful fulfilment of the uncompleted provisions of the contract with the state.

### 3079. Commission to determine conditions of opening land for entry.

SEC. 16. Said commission shall determine the time, manner and conditions under which lands and water rights of any segregation, or any part thereof, shall be thrown open for entry by, or sale to, intending settlers.

### 3080. Qualifications of applicants for land—160-acre limitation—Applications to be accompanied by contract for perpetual water right—Previous entry—Payments—Certificate and record.

SEC. 17. Any citizen of the United States, or person who has declared his intention to become such, over the age of twenty-one years, including married women, may make application under oath to the commission to enter any of such land in an amount not to exceed one hundred and sixty acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of Congress and the laws of this state relative thereto, and that the applicant has never received the benefit of the provisions of this act to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Said application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person or persons, association, company or corporation authorized by the commission to furnish water for the reclamation of said lands; and if said applicant has at any previous time entered lands under the provisions of this section he shall so state in his application, together with the description, date of entry and location of such land. The commission shall thereupon file in its office the application and papers relating thereto and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of twenty-five cents per acre, which shall be a partial payment on the land if the application is

allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, the twenty-five cents per acre accompanying it shall be refunded to the applicant. The balance unpaid on the price fixed by the commission for the land allowed an applicant shall be due and payable in such installments and at such times as the commission shall prescribe, but before patent shall issue the full price of such land shall have been paid by the settler.

### 3081. Final proof of reclamation, how made—Fees, where paid—Proofs—Patents.

SEC. 18. Within one year after a water right is available for the irrigation of the land described in a certificate of location, the settler shall cultivate and reclaim not less than one-sixteenth part of the land filed on, and within two years thereafter, shall have actually irrigated and cultivated not less than one-eighth thereof, and within three years thereafter the settler shall appear before the state register of lands under the Carey act, or the judge or clerk of any court of record within the state, or any agent designated by the commission, and make final proof of reclamation, settlement and occupation, in such form and according to such requirements as may be prescribed by the commission or the department of the interior. The officer taking this proof shall be entitled to receive a fee of two dollars, which fee shall be paid by the settler and shall be in addition to the price paid the state for the land; *provided*, that when the state register of lands under the Carey act takes final proof, all fees received by him shall be turned into the Carey act trust fund. Said state register and the agents appointed by the commission are hereby authorized to administer oaths required under this act. All proofs so received shall be accompanied with the final payment for said land, and upon approval by the commission the settler shall be entitled to the patent. If the land shall not be embraced in any patent theretofore issued to the state by the United States, the proofs shall be forwarded to the secretary of the interior, with the request that a patent to said lands be issued to the state. When the works designed for the irrigation of lands under the provisions of this act shall be so far completed as to actually furnish in a substantial ditch, or canal, or by artesian wells or reservoirs, water to reclaim any particular tract or tracts of such land, the State of Nevada may, by, and in the discretion of said commission, make proof of such fact, and apply for a patent to such lands in the manner provided by the act of Congress approved June eleventh, eighteen hundred and ninety-six.

### 3082. Patents to land, regulations concerning issue of.

SEC. 19. Upon the issuance of a patent to any lands by the United States, notice shall be forwarded to the settler upon such land. All patents issued by the state to the settler shall be signed by the governor and attested by the state register of lands under the Carey act, and under such seal as the commission may adopt for such purpose, and shall be recorded in the office of said state register in a book kept for that purpose. No patent shall issue on an assignment of a certificate of location, or by reason of a process of foreclosure, unless the assignee or purchaser under foreclosure, possesses all the qualifications of an original applicant.

### 3083. Water rights to attach to lands—Liens for deferred payments—Record.

SEC. 20. The water rights to all lands acquired under the provisions of this act shall attach to and become appurtenant to the land as soon as the title passes from the United States to the state. Any person or persons, association, company or corporation, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which

said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any other and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right is acquired. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the recorder of the county where said land is situated.

### 3084. Default of deferred payments on lands—Foreclosure—Sale of land, when—Restrictions regarding said sale.

SEC. 21. Upon default of any deferred payments secured by any lien under the provisions of this act, the person or persons, association, company or corporation, holding or owning said lien, may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right are situate, once each week, for six consecutive weeks, and shall be sold to the highest bidder at the front door of the court-house, or such place as may be agreed by the terms of the aforesaid contract. And the sheriff of said county shall in all cases give all notices of sale, and shall sell all such lands and water rights, and shall make and execute a certificate of sale to the purchaser thereof. And at such sale no person or persons, association, company or corporation, owning or holding any lien, shall bid in or purchase any land or water right at a greater price than the amount due on said deferred payment for said water right and land and the cost incurred in making the sale of the same.

### 3085. Idem—Land may be redeemed within six months—Who may redeem—Proviso.

SEC. 22. At any time within six months after the foreclosure sale by the sheriff of the the land and water rights aforesaid, the original owner against whom the lien has been foreclosed, may apply to the person or persons, association, company or corporation, purchasing at such sale, to redeem such land and water rights, and the purchaser shall assign the certificate of sale of such land and water rights to such original owner upon the payment by him, within such six months, of the amount of the lien for which the same was sold, together with the interest, costs and fixed charges thereon. Where the lien holder becomes the purchaser at such foreclosure sale, if such land and water rights are not redeemed by the original owner within six months, then at any time within six months thereafter any person (possessing the qualifications of an original applicant if patent has not yet issued), desiring to settle upon and use such land and water rights, may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale thereof to the person desiring to redeem the same upon the payment by him, within such six months, of the amount of lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon; *provided*, that in all cases arising under the provisions of this section and the section preceding, the right of the state to secure any unpaid balance due on the selling price of the land shall be protected.

### 3086. Sheriff to record certificate of sale—Deed issued, when—Disposition of proceeds of sale.

SEC. 23. Upon issuing any certificate of sale, it shall be the duty of the sheriff to file for record in the office of the recorder of the county where such land is situated, a certified copy of such certificate of sale; and in case the

original owner shall redeem the land and water rights, said original owner shall file for record in the office of such recorder the certificate of sale assigned to him by the purchaser. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, if patent for the land has issued, issue a deed, otherwise a transfer (subject to an unpaid balance on the land due the state) of such land and water rights to the person so redeeming the same. If the land and water rights shall not be redeemed by any person within the times and in such manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of the certificate of sale by the original purchaser, to issue a deed or transfer as aforesaid to the purchaser. Where such land and water rights are not purchased by the lien holder at such foreclosure sale, it shall be the duty of the sheriff to first pay the lien holder out of the proceeds of such sale the amount of the lien, together with all interests, costs and fixed charges thereon, next the state any unpaid balance on the selling price of the land if patent has not issued, and any residue remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by law in civil cases.

### 3087. Commission to make and enforce rules.

SEC. 24. Said commission is hereby authorized and empowered to establish, and require the observance of, such rules and regulations as it may deem necessary, proper or expedient, not in conflict with law or the regulations of the department of the interior, with respect to the administration of the provisions of this act, and which shall be published from time to time in pamphlet form for free distribution.

### 3088. Department of Carey act lands established: state register of lands under the Carey act—Duties—May appoint deputy—Compensation.

SEC. 25. There is hereby established, as a department of the bureau of industry, agriculture and irrigation, as is or may be created by law, the department of Carey act lands, and which shall be in charge of the state register of lands under the Carey act, subject to the general supervision and control of the commission. Said state register may appoint a deputy and such clerical and other assistance as may be required in such department, at such compensation as the commission may fix. He shall be the custodian of all papers, documents, maps and plats relating to such department, receive and receipt for all fees and payments required to be paid under the provisions of this act, or under any rule or regulation of the commission, and deposit the same with the state treasurer to the credit of the Carey act trust fund; conduct all correspondence relating to such department, perform such other duties as the commission may prescribe and is hereby named as the authorized agent of the state to enter into and to execute, for and in behalf of the state, the agreement prescribed by the secretary of the interior binding the state in respect to the disposal of lands under the Carey act. He shall be entitled to such compensation for his services as state register of lands under the Carey act as the commission may allow.

See sec. 4486.

### 3089. Fees.

SEC. 26. The following fees shall be collected by the commission under the provisions of this act and deposited with the state treasurer to be placed in the Carey act trust fund: For filing each application for entry of land, one dollar; for each assignment of entry, two dollars; for taking evidence in final proof, two dollars; for taking evidence of annual proof of cultivation, one dollar and fifty cents; for issuing each certificate of location, one dollar;

for issuing each patent, one dollar; for making certified copies of papers or records, twenty cents per folio for the original, and five cents per folio for each carbon copy thereof; for each application for a temporary withdrawal or a permanent segregation, but not twice for the same lands by the same applicant, one cent per acre for the total number of acres covered by the application, and for each statement of the status of an application for a segregation, prepared for the information of a prospective assignee thereof, twenty-five dollars.

**3090. Services of state engineer, how paid—Expenses—Report—Authorized agent of state—Deputy.**

SEC. 27. The services of the state engineer shall be compensated for by such fees and expense allowances as are authorized by law to be assessed against an applicant for a water right and for his inspection, supervision and report upon the proposed irrigation works of such applicant, and all other services of the state engineer, if the expense thereof is not covered by existing law, shall be assessed against the applicant, and shall be required in advance, and the state engineer shall render a statement to the commission therefor, showing the disposition thereof; but, except in special cases and for unusual services, the work of the state engineer in connection with the Carey act shall be taken care of under the fee and compensation system of his office. He shall be the authorized agent of the state to make desert land selections under the Carey act, and may depute an engineer under his office to act in his stead.

**3091. Name of commission—Suits at law.**

SEC. 28. Said commission shall be known collectively as "State Commission of Industry, Agriculture and Irrigation," and in that name may sue and be sued in any action at law brought under the provisions of this act.

See sec. 4486.

**3092. Annual report—Distribution—Pending proceedings not to be made public.**

SEC. 29. The state register of lands under the Carey act at the close of each fiscal year shall submit a detailed report of the transactions of his department to said commission, and on its approval, such number of copies thereof shall be printed for gratuitous distribution as the commission may direct; *provided*, that all pending proceedings before the commission and the state engineer, except the application for permit for a water right, shall not be made public or be open to public inspection until the application for temporary withdrawal or a segregation is filed in the U. S. land office.

**3093. Proceeds of sale of lands under control of the commission—Carey act trust fund—Proceeds of sale, how applied—Money appropriated from treasury for use of commission—Reimbursement—Examiners to approve disbursements—Proviso.**

SEC. 30. Subject to the provisions of the act of Congress, approved August eighteenth, eighteen hundred and ninety-four, the proceeds derived by the state from fees and the sale of Carey act lands, and by this act required to be deposited in the Carey act trust fund, shall be subject to control and disposition by said commission and may be used and drawn upon by said commission from time to time for the following purposes, and for none other:

First—For the payment of all expenses, clerical assistance, and the compensation of the state register of lands under the Carey act, necessary to the administration and conduct of the said department of Carey act lands of the bureau of industry, agriculture and irrigation.

Second—For the reclamation, under the control and direction of the com-

mission, of desert lands in the state, other than those included in any segregation or application for a temporary withdrawal by any applicant except the state.

Third—For such experimentation in agriculture, horticulture and forestry as shall aid the reclamation of the desert lands of the state.

Fourth—For such advertisement and publicity of the desert lands of the state as may advance their settlement and reclamation.

Until said Carey act trust fund shall have received deposits from fees and sales of land under the provisions of this act sufficient to meet the necessary disbursements arising under the first foregoing paragraph, the state controller and state treasurer are hereby authorized and directed to transfer from the general fund to said Carey act trust fund, from time to time, sufficient moneys to meet the same, not exceeding five thousand dollars, and such sum is hereby appropriated for that purpose; *provided*, that as soon thereafter as deposits to the credit of said fund, derived from fees and sales of lands shall be sufficient therefor, all sums so transferred shall be restored to the general fund. All disbursements from said Carey act trust fund shall be on certificates of the chairman of said commission, approved by the state board of examiners.

#### 3094. Provisions nonapplicable to prior transactions—Provisions applicable—Proviso.

SEC. 31. The provisions of this act with respect to fees and the price authorized to be established by the commission and charged settlers for the purchase of lands shall not be held to apply in cases where the segregation applied for by any person or persons, association, company or corporation has been approved by the secretary of the interior and the contract covering the same entered into with the state, and executed on the part of the state by the state land register, prior to April first, nineteen hundred and eleven; but in all such cases the provisions of section 15 of the act of March twenty-third, nineteen hundred and nine, shall be held to apply as covering the same and said commission shall take such procedure under the terms thereof as shall reimburse the state for its actual expense and outlay in respect to proof of reclamation, settlement and occupation by settlers and the issuance of patent and recording the same; *provided*, that if prior to any actual sale of lands and water rights to settlers the contractor shall agree with the commission that such fees for proof of reclamation, settlement and occupation and for patent may be charged, the same shall apply.

#### 3095. Certain contracts subject to these provisions.

SEC. 32. All contracts entered into on the part of the state with any person or persons, association, company or corporation on and after April first, nineteen hundred and eleven, irrespective of whether the segregation covered by said contract shall have been approved prior to the date this act goes into effect, shall be subject to the provisions of this act, and shall require the settler to pay such price as the commission shall establish for the land and the fees for proof of reclamation, settlement and occupation.

#### 3096. Applications covered by this act.

SEC. 33. All applications for a segregation after the date this act goes into effect shall be covered by the provisions of this act, and irrespective of the fact that said land may have been temporarily withdrawn prior to such date, the fee of one cent per acre shall be required of the applicant before said commission shall authorize or direct the state register of lands under the Carey act to file the application for a segregation.

#### 3097. Certain acts repealed.

SEC. 34. All acts and parts of acts in conflict with the provisions of this

act are hereby repealed, including section 3 of the act of March twenty-third, nineteen hundred and nine. No provision of said act of March twenty-third, nineteen hundred and nine, shall hereafter be held to apply in any case other than as prescribed in section 31 of this act.

**REGULATIONS OF THE SECRETARY OF THE INTERIOR WITH RESPECT  
TO THE CAREY ACT**

1. Under the provisions of the acts quoted the states and territories are allowed ten years from the date of the approval of the application for the segregation of the land by the secretary of the interior, in which to irrigate and reclaim them. The secretary of the interior may, however, in his discretion, extend the time for irrigating and reclaiming the land for a period of five years, or he may restore to the public domain the lands not reclaimed at the expiration of the ten years, or of the extended period.

2. The lands selected under these acts must all be desert lands, as defined by the acts of 1877 and 1891, and the decisions and regulations of this department therein provided for.

Lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

Lands occupied by bona fide settlers and lands containing valuable deposits of coal or other minerals are not subject to selection.

3. The second paragraph of section 4, before quoted, provides that before the application of any state is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the secretary of the interior, the state shall file a map of the land selected and proposed to be irrigated, which shall exhibit a plan showing the mode of contemplated irrigation and the source of the water. In accordance with the requirements of the act, the state must give full data to show that the proposed plan will be sufficient to thoroughly irrigate and reclaim the land and prepare it to raise ordinary agricultural crops; for which purpose a statement by the state engineer of the amount of water available for the plan of irrigation will be necessary. The other data required cannot be fully prescribed, as it will depend upon the nature of the plan submitted. All information necessary to enable this office to judge of its practicability for irrigating all the land selected must be submitted. Upon the filing of the map showing the plan for irrigation, and the lands selected, such lands will be withheld from other disposition until final action is had thereon by the secretary of the interior. If such final action be a disapproval of the map and plan, the lands selected shall, without further order, be subject to disposition as if such disposition had never been made; and the local officers will make the appropriate notations on the tract books and plat books, opposite those previously made, in accordance with the requirements of paragraph 7.

4. The map must be on tracing linen, in duplicate, and must be drawn to a scale not greater than 1,000 feet to 1 inch. A smaller scale is desirable, if the necessary information can be clearly shown. The map and field notes must be filed in the local land office for the district in which the land is located. If the lands selected are located in more than one district, duplicate map and field notes need be filed in but one district and single sets in the others. Each legal subdivision of the land selected should be clearly indicated on the map by a check mark, thus: **V**. The map and field notes must show the connections of termini of a canal or of the initial point of a reservoir with public survey corners, the connections with public survey corners, wherever section or township lines are crossed by the proposed irrigation works, and must show full data to admit of retracing the lines of the survey of the irrigation works on the ground.

5. The map should bear an affidavit of the engineer who made or supervised the preparation of the map and plan (Form 11), and also of the officer authorized by the state to make its selections under the act (Form 2). The map should be accompanied by a list in triplicate of the lands selected, designated by legal subdivisions, properly summed up at the foot of each page, and at the end of the list. If the lands selected are located in more than one district, a list in triplicate must be filed in each office, describing the lands selected in that district. Clear carbon copies are preferred for the duplicate and triplicate lists. The lists should be dated and verified by a certificate of the selecting agent (Form 3). The party appearing as agent of the state must file with the register and receiver written and satisfactory evidence, under seal, of his authority to act in the premises; such evidence once filed need not be duplicated during the period for which the agent was appointed. The state should number the lists in consecutive order, beginning with No. 1, regardless of the land office in which they are to be filed. Form of title page to be prefixed to the lists of selections will be found in Form 2, marked "A." Lists received at this office containing erasures will not be filed, but will be returned in order that new ones may be prepared. When a township has not been subdivided, but has had its exteriors surveyed, the whole

<sup>1</sup> Copies of this and all succeeding forms mentioned in these rulings may be obtained on application from the Nevada Bureau of Industry, Agriculture and Irrigation.

township may be designated, omitting, however, the sections to which the state may be entitled under its grant of school lands. When the records are in such condition that the proper notations may be made, a section or part of a section of unsurveyed land may be designated in the list; but no patent can issue thereon until the land has been surveyed.

6. A contract in the form herein prescribed (Form 5), in duplicate, signed by the state officer authorized to execute such contract, must also be filed. A carbon copy of the contract will not be accepted. The person who executes the contract on behalf of the state must furnish evidence of his authority to do so.

7. The lists must be carefully and critically examined by the register and receiver, and their accuracy tested by the plats and records of their office. When so examined and found correct in all respects, they will attach a certificate at the foot of each list (Form 4). The register must note on the map, lists, contracts, and all papers the name of the land office and the date of filing over his written signature and will thereupon post the selections in ink in the tract book after the following manner: "Selected ..... 19....., by....., the State....., as desert land, act of August 18, 1894, serial No. ....," and on the plats he will mark the tracts so selected "State desert land selection." After the selections are properly posted and marked on the records, the lists, maps, and all papers will be transmitted to the general land office.

For rejected selections a new list will be required, upon which the register will note opposite each tract the objections appearing on the records and indorse thereon his reasons in full for refusing to certify the same. The state will be allowed to appeal in the manner provided for in the rules of practice. It is required that clear lists of approvals shall in every case be made out by the selecting agents, if after the above examination one or more tracts have been rejected, showing clearly and without erasure the tracts to which the register is prepared to certify. On the map of the lands selected the register will mark rejected such tracts as he has rejected on the lists.

8. When the canals or reservoirs required by the plan of irrigation cross public land not selected by the state, an application for right of way over such lands under sections 18 to 21, act of March 3, 1891 (26 Stat. 1085), should be filed separately, in accordance with the regulations under said act.

9. In the preceding paragraphs instructions are given for the designation of the lands by the proper state authorities. Upon the approval of the map of the lands and the plan of irrigation, the contract is executed by the secretary of the interior and approved by the president, as directed by the act. Upon the approval of the map and plan, the lands are reserved for the purposes of the act, said reservation dating from the date of the filing of the map and plan in the local land office. A duplicate of the approved map and plan, and of the list of lands, is transmitted for the files of the local land office, and a triplicate copy of the list is forwarded to the state authorities.

10. When patents are desired for any lands that have been segregated, the state should file in the local land office a list, to which is prefixed a certificate of the presiding officer of the state land board, or other officer of the state who may be charged with the duty of disposing of the lands which the state may obtain under the law (Form 6); and followed by an affidavit of the state engineer, or other state officer whose duty it may be to superintend the reclamation of the lands (Form 7).

11. The certificate of Form 6 is required in order to show that the state laws accepting the grant of the lands have been duly complied with.

12. The affidavit of Form 7 is required in order to show compliance with the provisions of the law, that an ample supply of water has been actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, for each tract in the list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the state engineer must be furnished, giving all the facts as to the water supply and the nature, location, and completion of the irrigation works.

If there are some high points which it is not practicable to irrigate, the nature, extent, location, and area of such points should be fully stated. If no part of a legal subdivision is susceptible of irrigation such legal subdivision must be relinquished. Lands upon which valuable deposits of coal or other minerals are discovered will not be patented to the state under these acts.

13. These lists will be called "lists for patent," and should be numbered by the state consecutively, beginning with No. 1. The list should also show, opposite each tract, the number of the approved segregation list in which it appears. The aggregate area should be stated at the foot of each page and at the end of the list.

14. Upon the filing of such list the local officers will place thereon the date of filing and note on the records opposite each tract listed: "List for patent serial No. ...., filed ....., giving the date.

15. When said list is filed in the local land office there shall also be filed by the state a notice, in duplicate, prepared for the signature of the register and receiver, describing the land by sections, and portions of sections, where less than a section is designated (Form 8). This notice shall be published at the expense of the state once a week in each of nine consecutive weeks, in a newspaper of established character and general circulation, to be designated by the register as published nearest the land. One copy of said notice shall be posted in a conspicuous place in the local office for at least sixty days during the period of publication.

16. At the expiration of the period of publication the state shall file in the local office proof of said publication and of payment for the same. Thereupon the register and receiver shall forward the list for patent to the general land office, noting thereon any protests or contests which may have been filed, transmitting such papers, and submitting any recommendations they may deem proper. They will also forward proofs of publication, of payment therefor, and of the posting of the list in their office.

17. Before patents are issued for lands within the former Southern Ute and the Ute Indian reservations in Colorado, the state will be required to pay the price (\$1.25 per acre) fixed by the acts of March 1, 1907, and February 24, 1909. The state will be advised of the number of acres which will be included in the patent and payment shall be made to the receiver of the proper land office, who will issue a receipt as in other cases. The money will be accounted for in the same manner as other moneys received from the disposal of such lands.

18. Upon the receipt of the papers in the general land office such action will be taken in each case as the showing may require, and all tracts that are free from valid protest or contest, and respecting which the law and regulations have been complied with, will be certified to the secretary of the interior for approval and patenting.

FRED DENNETT,  
*Commissioner General Land Office.*

Approved April 9, 1909:

R. A. BALLINGER,  
*Secretary of the Interior.*

#### REGULATIONS RELATING TO THE AMENDMENT OF MARCH 15, 1910

1. Under the provisions of this amendatory act public lands of the United States may be temporarily withdrawn upon proper application by a beneficiary state or territory that proper surveys may be prepared and investigation made preliminary to the filing of application by such state or territory for the segregation of such lands under the Carey act.

If such application is not filed within one year from the date of withdrawal, the lands so withdrawn will, as directed by the act, be immediately restored to entry.

No provision is made for the extension of such temporary withdrawal.

2. To obtain the benefits of this amendatory act, the state or territory, through its proper official, will be required to file in the local land office in the land district within which lands sought to be withdrawn lie, an application therefor, which shall set forth the name of the individual or corporation proposing to reclaim the lands; that all of the forms and conditions imposed by the state law upon such proposer prior to segregation have been complied with; that from the showing made by the proposer (or state other source of information) it is believed that sufficient water to irrigate the whole of the lands asked to be withdrawn, over and above prior appropriations, is available; and that the proposer has either acquired title to such water or applied for the same, and that the lands are desert in character.

Appended to the application should be a list of the lands asked to be withdrawn. If the lands are unsurveyed, the fact should be set forth, together with a statement that an application for the survey thereof has been filed in the office of the surveyor-general.

3. Accompanying such application should be filed an affidavit (Form C), based upon personal examination, that the lands sought to be withdrawn are desert in character, as contemplated by the Carey act, and are nonmineral.

This affidavit should be made either by the proposer, his or its engineer, or by the state or territorial engineer, or one of his assistants.

4. Where the lands sought to be withdrawn are situated in more than one land district, a list must be filed in each district describing the lands in that district.

5. Upon the filing of such application the register will at once note the same upon his records, and will thereafter reject all applications to enter, purchase, or select any of such lands, excepting when settlement or application to enter, purchase, or select prior to the date of filing of the state's application is alleged or disclosed of record. He will then at once transmit the application to this office for further action, first noting thereon the date of filing over his written signature.

6. Within three months after the date of filing the application for withdrawal in the local office the state must file a corroborated affidavit by the proposer, his or its engineer, or the state engineer, that the work of surveying and laying out of the proposed irrigation system has been actually commenced in the field and is being energetically prosecuted. This affidavit should show the work accomplished and the result.

In default of such showing by the state, the withdrawal will be promptly revoked.

7. In the event that any of the tracts withdrawn are found to be above the proposed irrigation works, or for any other reason not susceptible of irrigation, the fact and description of the nonreclaimable land by smallest legal subdivisions should be at once communicated to this office, that they may be relieved from the withdrawal.

8. If at any time after withdrawal it is shown that the state is not energetically prosecuting the investigation and survey of the lands, that the same are not reclaimable by the proposed system of reclamation, are not desert in character, or for any reason are not subject to the provisions of the Carey act, or that the proposer is not proceeding in good faith, the withdrawal will be at once revoked.

9. The one year mentioned in the act as the period of withdrawal will commence to run from the date of the filing of the application for withdrawal in the local land office.

## **RULES AND REGULATIONS OF THE STATE COMMISSION OF INDUSTRY, AGRICULTURE AND IRRIGATION RELATING TO THE CAREY ACT**

### **CHAPTER I**

Defining the General Policy of the Commission Relative to Carey Act Projects and Other Matters Relating Thereto

#### **Policy of the Commission with Respect to Carey Act Projects**

Rule 1. It is the purpose and policy of the commission to aid, assist and foster all Carey act reclamation enterprises in the state undertaken and conducted in good faith under the provisions of the act approved March 17, 1911. It is to the highest interests of the state that the two million acres granted Nevada by act of Congress under the Carey act, and acts supplemental thereto, be reclaimed, occupied by settlers and made fruitful at the earliest practicable day. To insure such speedy result, the conduct of the Carey act reclamation projects will be businesslike, competent and responsible. The state will exercise such supervision over each project as will tend to protect investors in the securities of the construction company building the reclamation works, as well the settler who purchases the land and water right, and the commission will assume all powers in this respect that the law permits. The following special requirements under this rule must be complied with:

(a) Before an application for temporary withdrawal (complying in all other respects with the requirements of sections 3 and 5 of said act) will be approved, the commission must be supplied with satisfactory assurance of the responsibility of the applicant, with respect to his personal and business integrity and competency to carry such project through to a successful conclusion; and the same assurance of responsibility will be required of the assignee in all cases of assignment under the provisions of section 12 of said act.

(b) Where the same applicant has been granted a previous application for a temporary withdrawal or a segregation, the commission must be supplied with satisfactory assurances that all such other projects are successfully under way before a new application will be granted.

(c) The commission reserves the right to reject any application for a temporary withdrawal, or to reduce the acreage applied for, for any reasons which seem to it sufficient.

(d) The commission reserves the right to require any contracting applicant, under the provisions of section 8 of said act, either to maintain its principal place of business in the State of Nevada or a branch office in which shall be kept duplicate records of all transactions with respect to its stocks and securities and receipts and disbursements, and which shall be subject to examination at any time by any duly authorized agent of the commission. In all cases the contracting applicant shall designate some resident of the state as its agent upon whom all official notices by the commission, and all civil processes, may be served.

#### **Relating to the Price at which Water Rights of a Project May Be Sold to Entrymen**

Rule 2. In determining the price with the contractor at which water rights will be sold the settler, the estimated cost per acre of the reclamation works and all other attendant expenses will be considered, as well the value for crop growing purposes of the land when reclaimed, less the cost of clearing, leveling and seeding. And from which basis the commission will try to arrive at such fair price for the water right as will prove highly remunerative to the contractor as well as a land-bargain to the entryman. It is to the interest of the state that both the contractor who carries through the project which reclaims the segregation shall be handsomely recompensed for his enterprise, work and outlay, and equally so that the settler will be abundantly satisfied with his acquirement of the land and water right.

#### **Relating to the Unity of an Irrigation Project**

Rule 3. There must be a certain natural unity, either of the water system, or of the lands to be reclaimed, in any application for a temporary withdrawal or a complete segregation. In cases where the water-system is a connected unit, the lands applied for may be in tracts separated from one another, but become united in one project through the unity of the irrigation system. In cases where the land is a single tract, but irrigated by two or more separated and disconnected water-systems, a separate map may be filed of each water-system, together with a single map of the entire project, and all such maps must be assembled and fastened together, as a part of the application.

### **CHAPTER II**

Interpreting Certain Provisions of the Act Approved March 17, 1911

#### **Minimum Acreage Considered in Any Application**

Rule 1. The interior department having previously rejected applications for a complete segregation where the acreage applied for was less than two sections, or 1280 acres, no application for either a temporary withdrawal or for a complete segregation will be considered for a less acreage.

### Where the Applicant Is an Incorporated Company

Rule 2. Where the applicant for a temporary withdrawal or of a complete segregation, or the contracting party with the state for the construction of reclamation works, is an incorporated company, a certified copy of the articles of incorporation, the names and residences of the officers and stockholders and their shareholdings must be filed with the commission, and before the lands are opened for entry a copy of the by-laws in force at such time shall be filed with the commission.

### Relating to Deposits of Money with Commission by Applicants under Provisions of Section 6

Rule 3. The sum deposited with the commission to cover the cost of surveys, determinations, maps and plats, as provided by section 6 of said act, shall immediately be deposited by the state register of lands under the Carey act, as a separate deposit, in some approved bank. From time to time as such surveys, etc., progress, said applicant may certify such work to the state engineer, requesting to withdraw an amount from such deposit proportional thereto, and on approval thereof by the state engineer he shall issue a requisition upon said state register of lands under the Carey act to forward to said applicant, from such deposit, the amount expressed in said requisition. The said surveys, etc., referred to, shall be such as required by paragraphs 3, 4 and 5 of the department regulations, approved April 9, 1909, and by paragraphs 6, 7 and 8 of the regulations applying to the supplemental act of Congress of 1910.

It is not the purpose of the commission, in carrying out this provision of the act, to cause the applicant any unnecessary annoyance or delay in the active use of the sum deposited. The purpose of the deposit is to insure that proper surveys, in accordance with the department requirements, will be made, and the state must presume that the applicant for a temporary withdrawal, possesses at least the means to make such surveys and pay the state and government filing fees.

### Interpretation of the Meaning of the Word "Determinations" as Used in Section 6

Rule 4. The word "determinations" as used in section 6 of said act is hereby interpreted and construed to include in its meaning a determination, as accurately as may be estimated, of the entire cost of the proposed irrigation system and works; the water supply available for the project, and the acreage which may be reclaimed thereby.

### Relating to the Price at which Water Rights Shall Be Sold Settlers as Provided in Section 8

Rule 5. Where the lands of a segregation are of different degrees of fertility, or value for crop raising, the price at which the water right is sold the entryman may be different for different lands in the same segregation; but in all such cases the contract shall stipulate such different prices and the legal subdivisions to which the same apply.

### Water Must Be Brought within One-Half Mile of Each Quarter Section of a Segregation

Rule 6. The contract provided for in section 8 shall require that water furnished intending settlers shall be brought within one-half mile of each quarter section; that a survey of the settler's lateral to his land shall be made by the contractor, and a right of way for such lateral and for egress and ingress over the land of any other entryman shall be guaranteed.

### Relative to the Water Rights Sold the Settler

Rule 7. The stipulations of the contract provided for in section 8 of said act, relative to the quantity of water per acre sold the settler as a perpetual water right, shall be sufficient to thoroughly irrigate and reclaim the land which he has entered and shall be subject to such conditions of delivery, with respect to continuous flow or rotation of delivery during the irrigation season, as will enable the most beneficial use thereof. Sufficient flexibility must be allowed in the contract stipulations as to permit of the adoption, by direction of the state engineer or on approval by the state engineer, of such regulations with respect to the use and delivery of water as experience may suggest as effecting the best results.

### Section 10 Interpreted to Mean a Modification of Contract by Mutual Consent

Rule 8. Section 10 of said act is hereby interpreted to mean a modification of contract only by mutual consent.

### Relative to Section 12 of Said Act and Providing for Advancing the Date of the Statement of the Status of an Application or of an Approved Segregation

Rule 9. The provisions of section 12 of said act are intended to prevent fraudulent transfers to innocent parties of the right, interest, claim or equity of an applicant for a temporary withdrawal or a complete segregation and to compel all such transfers to be conducted on a legitimate business basis by requiring the assignee to be informed in advance of any purchase, involving a valuable consideration, of the exact status of the assignor's right, interest, claim or equity which he proposes to sell or transfer. The provisions of this section will be strictly enforced; provided, however, that where an official statement of the status of an application or of an approved segregation has been issued and the fee paid therefor, the date of the original statement may be advanced from time to time by certificate prepared and subscribed to by the state register of lands under the Carey act, certifying such changes, if any, in the status of such application or approved segregation,

as shall have occurred subsequent to the date of said original statement. For each such certificate the state register of lands under the Carey act shall charge a fee of five dollars.

#### **Rule Applying to Section 16 of Said Act**

Rule 10. The contract entered into with an applicant or his assigns, under the provisions of section 8 of said act, shall contain a stipulation covering the time, manner and conditions under which the lands and water rights of the segregation, or any part thereof, may be thrown open for entry by, or sale to, intending settlers; and in addition to the bonded liability of the contracting applicant, as provided in section 8 of said act, on his or its failure or refusal to fulfil and comply with such stipulations, said commission will apply to the district court of the county or counties in which such segregation is located for an order of court directing and commanding said contracting applicant so to do.

#### **State Engineer's Fees and Expenses under the Provisions of Section 27**

Rule 11. In all cases requiring field investigations and examinations by the state engineer, not provided for by existing law with respect to reimbursing the state for the expenses thereof, the state engineer shall estimate the expenses of such field investigations and examinations and shall require the parties interested to advance the same for his use, or the use of any engineer he may designate to perform the same.

#### **Relative to Maps, Plats, and Hydrographic and Meteorological Data Supplied Commission**

Rule 12. The contracting applicant will be required to supply the commission from time to time, with a copy of such hydrographic and meteorological measurements and observations as may be taken, including a log of artesian borings, which may be of any practical or scientific value, and on the completion of the project, with a full set of maps, plats, drawings and specifications, including a hydrographic map of such perfected project.

### **CHAPTER III**

Relating to Carey Act Projects Where the System of Reclamation Is by the Utilization of Subsurface Waters

#### **Interpretation of Rule 3, Chapter 1, as applied to Artesian Reclamation Projects**

Rule 1. Rule 3 of Chapter I hereof is hereby interpreted, in accordance with a ruling of the department of the interior dated February 11, 1911, as requiring separate maps of each section or half-section, with the proposed artesian wells for the irrigation thereof showing as connected by a common canal, ditch, pipe line, or other irrigation system, and all such separate systems showing on the general plan of reclamation of all the lands applied for as connected to make one united project.

EXTRACT FROM DEPARTMENT RULING, February 11, 1911: This department will do all in its power to assist the state in the reclamation of these (artesian) lands, but it must clearly appear that the proposed plan of reclamation is feasible, and that the project will be carried out to a successful completion before the application for segregation will be allowed. In applications where at best there is some doubt as to the water supply, I would urge upon the state officials the necessity and importance of making a careful and thorough examination of each application and also the financial ability and good faith of the company or individual contracting for the reclamation of the lands, and in the event of the approval of the application for segregation to observe that the lands are not disposed of to Carey act settlers until the artesian wells and reclamation works have been completed and it has been clearly shown that there is sufficient water available for the reclamation of the lands.

In applications under the Carey act where the water supply is to be obtained by means of artesian wells, which, at the date of the application have not been driven or definitely located, it is impossible to designate on the map the exact location of the water supply and distributing ditches or pipe lines, and a strict compliance with the regulations in this respect will not be required. There must, however, be shown upon the map a combined and connected scheme of reclamation, and sufficient data be furnished with the application to enable this office to get a complete idea of the proposed plan of reclamation, and to judge as to its feasibility.

S. V. PROUDFIT,

*Assistant Commissioner General Land Office.*

#### **Relating to Applications to Appropriate the Underground Waters of the State**

Rule 2. All applications to appropriate the underground waters of the state for the reclamation of Carey act lands shall be in accordance with and subject to the provisions of the rulings of the state engineer of April 20, 1911, and shall further be subject to the provisions of section 8 of the act approved March 17, 1911.

(For these rulings see schedule under Waters, sec. 4672.)

#### **Rule Applying where Portions of an Artesian Reclamation Project Are Opened for Entry**

Rule 3. Where the irrigation works of an approved segregation comprise a series of artesian wells withdrawing water from a common underground watercourse or lake, the contracting applicant may, on application to and approval by the commission, be authorized to offer for sale to entrymen portions of such segregation, not less than 640 acres in area, on satisfying the commission that sufficient water is available therefor and that all water rights sold to such senior entrymen will be protected by equipment, if necessary, with power lifts, from diminution of flow by reason of the sinking of additional wells tapping the underground water supply.

**When Uncompleted Artesian Irrigation Project May Be Abandoned Without Default of Bond**

Rule 4. The commission will hold that the contracting applicant of an approved segregation may not abandon any portion of his irrigation project, without defaulting his bond, except in cases where the good faith of the contractor is shown and it appears to the satisfaction of the state engineer that the probable available water supply of the underground watercourse or lake, under the general provisions of the rulings of the state engineer of April 20, 1911, is exhausted; or where the commission authorizes the relinquishment of a portion or all the segregation on satisfactory proof that the development of a water supply therefor is not economically feasible.

**Contract with Power Company Required To Be Filed and Recorded Where the Reclamation Project Involves Pumping with Power Supplied by an Independent Power Company**

Rule 5. Where an application for a complete segregation of lands is based on reclamation by water which must be elevated by power before it is available for irrigation purposes, and the power therefor is to be supplied by an independent power company, at the time of entering into contract with the state, the applicant must file with the commission a good and sufficient contract with such independent power company agreeing, for a period of not less than twenty years, to supply power to all settlers under the project, during the season required for crop growing, at a charge or toll per standard power unit not exceeding a stated maximum cost; and which contract shall express the times and conditions of payment for power used, and all penalties attaching to deferred payments. Such contract, before any contract is entered into on the part of the state with the applicant or his assigns, under the provisions of section 8 of the act approved March 17, 1911, must be placed on record in the office of the county recorder of the county or counties in which such project is situated, and its terms shall be explained in all advertising matter inviting settlers to make entry upon the lands of such project and due reference shall be made to it in the contract for the water right executed with the settler; provided, that said contract, by its terms, shall not prevent the settler from contracting with any other power company, meanwhile, at a less charge for power than that which said first-mentioned power company is willing to supply power, or to prevent a reduction of such maximum power charge voluntarily by said contracting power company, or a reduction by virtue of any existing law, or law that may hereafter be passed regulating power charges.

**RECLAMATION ACT**

*An Act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands.*

Approved June 17, 1902

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| <p>3098. Irrigation—"Reclamation fund" established for certain public land receipts—Exception—Support of agricultural colleges—Deficiency.</p> <p>3099. Location and construction of irrigation works.</p> <p>3100. Lands withdrawn from public entry—Restoration—Entry of irrigable lands—Homestead entries—Surveys.</p> <p>3101. Contracts—Public notice of irrigable lands, charges—Limit of work-hours—Mongolian labor.</p> <p>2102. Requirements of entrymen—Limit—Payments—Disposal of receipts—Commissions.</p> <p>3103. Use of reclamation fund—Ownership of works—Title—Condemnation for rights.</p> <p>3104. Rights acquired by condemnation or purchase.</p> | <p>3105. State laws not interfered with—Vested rights—Water right appurtenant to land—Beneficial use.</p> <p>3106. Funds, how applied.</p> <p>3107. Act carried into effect—Rules and regulations.</p> <p>3108. Rights of way granted—Reservation in land patents.</p> <p>3109. Regulations concerning sale of state lands within irrigation projects—Sale to United States.</p> <p>3110. Duties of county commissioners—Water users associations—Stock subscriptions.</p> <p>3111. Contracts for excess water—Charges, how determined.</p> <p>3112. Federal government to cooperate with private enterprises—Restrictions.</p> <p>3113. Lands not required for government use in irrigation projects to be sold.</p> <p>3114. Idem—Conveyance—Limitations.</p> |
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**3098. Irrigation—"Reclamation fund" established from certain public land receipts—Exception—Support of agricultural colleges—Deficiency.**

That all moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Wash-

ington, and Wyoming, beginning with the fiscal year ending June thirtieth, nineteen hundred and one, including the surplus of fees and commissions in excess of allowances to registers and receivers, and excepting the five per centum of the proceeds of the sales of public lands in the above states set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said states and territories, and for the payment of all other expenditures provided for in this act; *provided*, that in case the receipts from the sale and disposal of public lands other than those realized from the sale and disposal of lands referred to in this section are insufficient to meet the requirements for the support of agricultural colleges in the several states and territories, under the act of August thirtieth, eighteen hundred and ninety, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of Congress approved July second, eighteen hundred and sixty-two," the deficiency, if any, in the sum necessary for the support of the said colleges shall be provided for from any moneys in the treasury not otherwise appropriated.

### 3099. Location and construction of irrigation works—Estimates of cost.

SEC. 2. That the secretary of the interior is hereby authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed.

### 3100. Lands withdrawn from public entry—Restoration—Entry of irrigable lands—Homestead entries—Surveys—Commutation not allowed.

SEC. 3. That the secretary of the interior shall, before giving the public notice provided for in section 4 of this act, withdraw from public entry the lands required for any irrigation works, contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act; and the secretary of the interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works; *provided*, that all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the secretary of the interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon restore said lands to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject

to the limitations, charges, terms, and conditions herein provided; *provided*, that the commutation provisions of the homestead laws shall not apply to entries made under this act.

**3101. Contracts—Public notice of irrigable lands, charges—Limit of work-hours—Mongolian labor.**

SEC. 4. That upon the determination by the secretary of the interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which, in the opinion of the secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably; *provided*, that in all construction work eight hours shall constitute a day's work, and no Mongolian labor shall be employed thereon.

**3102. Requirements of entrymen — Limit — Payments — Disposal of receipts—Commissions.**

SEC. 5. That the entrymen upon lands to be irrigated by such works shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay to the government the charges apportioned against such tract, as provided in section 4. No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one land owner, and no such sale shall be made to any land owner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land; and no such right shall permanently attach until all payments therefor are made. The annual installments shall be paid to the receiver of the local land office of the district in which the land is situated, and a failure to make any two payments when due shall render the entry subject to cancellation, with the forfeiture of all rights under this act, as well as of any moneys already paid thereon. All moneys received from the above sources shall be paid into the reclamation fund. Registers and receivers shall be allowed the usual commissions on all moneys paid for lands entered under this act.

**3103. Use of reclamation fund—Ownership of works—Title—Condemnation for rights.**

SEC. 6. That the secretary of the interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act; *provided*, that when the payments required by this act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation

works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the secretary of the interior; *provided*, that the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the government until otherwise provided by Congress.

### 3104. Rights acquired by condemnation or purchase.

SEC. 7. That where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the secretary of the interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the attorney-general of the United States upon every application of the secretary of the interior, under this act, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the department of justice.

### 3105. State laws not interfered with—Vested rights—Water right appurtenant to land—Beneficial use.

SEC. 8. That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any state or territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the secretary of the interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any state or of the federal government or of any land owner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof; *provided*, that the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

See act of 1866, sec. 2401, ante.

### 3106. Funds, how applied.

SEC. 9. That it is hereby declared to be the duty of the secretary of the interior in carrying out the provisions of this act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each state and territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such state or territory; *provided*, that the secretary may temporarily use such portion of said funds for the benefit of arid or semiarid lands in any particular state or territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event, within each ten-year period after the passage of this act, the expenditures for the benefit of the said states and territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility as aforesaid.

### 3107. Act carried into effect—Rules and regulations.

SEC. 10. That the secretary of the interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect.

*An Act to assist the United States reclamation service in the construction and maintenance of irrigation works provided for by the congressional reclamation act approved June 17, 1902, by granting right of way over state lands, regulating the disposition of state lands included in government irrigation projects, and authorizing county commissioners to accept and use stock subscription books of water users associations formed under the provisions of said congressional reclamation act.*

Approved March 9, 1905, 93

### 3108. Rights of way granted—Reservation in land patents.

SECTION 1. There is hereby granted, over all the lands now or hereafter belonging to the state, a right of way for ditches, tunnels, and telephone and transmission lines, constructed by authority of the United States. All conveyances of state lands hereafter made shall contain a reservation of such right of way.

### 3109. Regulations concerning sale of state lands within irrigation projects—Sale to United States.

SEC. 2. No lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States or its duly authorized agencies shall hereafter be sold except in conformity with the classification of farm units by the United States, and the titles to such lands shall not pass from the state, until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be sold to the United States at the lowest price authorized by law.

### 3110. Duties of county commissioners—Water users associations—Stock subscriptions.

SEC. 3. The county commissioners are hereby authorized to accept from water users associations organized in conformity with the requirements of the United States under the reclamation act, books containing printed copies of their articles of incorporation and forms of subscription to stock, and to use such books for recording the stock subscriptions of such association; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein.

*An Act to authorize the government to contract for impounding, storing, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes.*

Approved February 21, 1911

### 3111. Contracts for excess water—Charges, how determined.

Whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the secretary of the interior, preserving a first right to lands and entrymen under the project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under the act of August eighteenth, eighteen hundred and ninety-four, known as the Carey act, and individuals, corporations, associations, and

irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made; *provided, however*, that water so impounded, stored or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual, as herein provided, the secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the government project. No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of carriage and delivery of such water through their works.

### 3112. Federal government to cooperate with private enterprises — Restrictions.

SEC. 2. In carrying out the provisions of said reclamation act and acts amendatory thereof or supplementary thereto, the secretary of the interior is authorized, upon such terms as may be agreed upon, to cooperate with irrigation districts, water users associations, corporations, entrymen or water users for the construction or use of such reservoirs, canals, or ditches as may be advantageously used by the government and irrigation districts, water users associations, corporations, entrymen or water users for impounding, delivering and carrying water for irrigation purposes; *provided*, that the title to and management of the works so constructed shall be subject to the provisions of section 6 of said act; *provided, further*, that water shall not be furnished from any such reservoir or delivered through any such canal to any one land owner in excess of an amount sufficient to irrigate one hundred and sixty acres; *provided*, that nothing contained in this act shall be held or construed as enlarging or attempting to enlarge the right of the United States, under existing law, to control the waters of any stream in any state.

[Sec. 3 provides that the moneys received in pursuance of such contracts shall be covered into the reclamation fund.]

*An Act to provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purposes of that act.*

Approved February 2, 1911

### 3113. Lands not required for government use in irrigation projects to be sold.

Whenever in the opinion of the secretary of the interior any lands which have been acquired under the provisions of the act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page 388), commonly called the "reclamation act," or under the provisions of any act amendatory thereof or supplementary thereto, for any irrigation works contemplated by said reclamation act are not needed for the purposes for which they were acquired, said secretary of the interior may cause said lands, together with the improvements thereon, to be appraised by three disinterested persons, to be appointed by him, and thereafter to sell the same for not less than the appraised value at public auction to the highest bidder, after giving public notice of the time and place of sale by posting upon the land and by publication for not less than thirty days in a newspaper of general circulation in the vicinity of the land.

3114. *Idem*—Conveyance—Limitations.

SEC. 2. Upon payment of the purchase price, the secretary of the interior is authorized by appropriate deed to convey all the right, title and interest of the United States of, in, and to said lands to the purchaser at said sale, subject, however, to such reservations, limitations, or conditions as said secretary may deem proper; *provided*, that not over one hundred and sixty acres shall be sold to any one person.

[Sec. 3 provides that the money derived from the sale of such lands shall be covered into the reclamation fund and be placed to the credit of the project for which such lands had been acquired.]

The land office issues different pamphlets containing regulations under the homestead, desert land, timber and stone laws, which are valuable guides to applicants.

### HOMESTEAD LAWS OF THE UNITED STATES

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| 3115. Transfers by settlers before patent for public purposes.   | 3131. Widow and minor children of persons entitled to homesteads.  |
| 3116. Who may enter certain unappropriated public lands.   | 3132. Who may enter by agent.  |
| 3117. <i>Idem</i> —Mode of procedure—Affidavit, what to state—Deposit.                                 | 3133. 160-acre limitation.   |
| 3118. Certificate and patent—Improvements and residence—Proof of citizenship—Oath.                     | 3134. Certain canceled entries on forest reserves reinstated—Application for.  |
| 3119. When rights inure to benefit of infant children—Sale of land—Rights of purchasers.               | 3135. Contests initiated prior to withdrawals—Preference right.  |
| 3120. Persons in military or naval service, when and before whom to make affidavit.                    | 3136. Entry not perfected no bar to subsequent entry—Exception.  |
| 3121. Affidavits under various land acts, may be made before whom—Where taken—False oath perjury—Fees. | 3137. Commutation of entry no bar to subsequent entry—Exception.   |
| 3122. Homestead lands not subject to prior debts.  | 3138. Entry prematurely made no bar to subsequent entry—Proviso.   |
| 3123. When lands entered for homestead revert to government—Proviso—Climatic conditions.               | 3139. Homestead not exceeding 320 acres may be entered in Nevada and certain other states on certain prescribed lands. |
| 3124. Quarter-section only may be acquired.  | 3140. <i>Idem</i> —Affidavit—Fees.   |
| 3125. Existing preemption rights are not impaired.   | 3141. May enter tract contiguous to former entry—Residence.  |
| 3126. Minors may have privilege of chapter in case of services in war.                                 | 3142. Requisites of final proofs.  |
| 3127. Payment after expiration of fourteen months—Rights of applicant.                                 | 3143. Entry may be made under general homestead act—Restrictions.  |
| 3128. No distinction on account of race or color—Mineral lands not liable to entry.                    | 3144. Rights relate back.  |
| 3129. Soldiers and sailors' homesteads.  | 3145. Homestead entry by married woman.  |
| 3130. Deduction of military and naval service from time—Rights of widow and minor children.            | 3146. Settlers who become insane.  |
|  | 3147. Leave of absence, when granted, length—Not to be deducted from actual residence.                                 |
|  | 3148. Settler forfeiting entry through unavoidable casualty may make new entry.  |
|  | 3149. Final proof notice, what to contain—Published, how.  |

Subsection numbers refer to United States Revised Statutes.

## 3115. Transfers by settlers before patent for public purposes.

SEC. 2288. Any bona fide settler under the preemption, homestead, or other settlement law shall have the right to transfer, by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, canals, reservoirs, or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to his claim.

*Approved March 3, 1891; 26 Stat. L. 1097.*

See Fed. Stat. Anntd., Public Lands, vol. 6, p. 285.

### 3116. Who may enter certain unappropriated public lands.

**SEC. 2289.** Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter-section, or a less quantity, of unappropriated public lands, to be located in a body in conformity to the legal subdivisions of the public lands; but no person who is the proprietor of more than one hundred and sixty acres of land in any state or territory shall acquire any right under the homestead law. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres. *As amended by act March 3, 1891. Approved May 20, 1862, c. 75; 12 Stat. L. 392.*

See Fed. Stat. Anntd., vol. 6, Public Lands, pp. 285-290, cases and notes.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3117. *Idem*—Mode of procedure—Affidavit, what to state—Deposit.

**SEC. 2290.** That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age, and that such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself, or herself, and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which he or she might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person, except himself or herself, and upon filing such affidavit with the register or receiver on payment of five dollars, when the entry is of not more than eighty acres, and on payment of ten dollars, when the entry is for more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified. *As amended by act March 3, 1891; 26 Stat. L. 1098.*

See Fed. Stat. Anntd., vol. 6, Public Lands, pp. 290-292, cases and notes.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3118. Certificate and patent—Improvements and residence, proof of—Citizenship—Oath.

**SEC. 2291.** No certificate, however, shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death, proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in

section 2288, and that he, she, or they will bear true allegiance to the government of the United States; then, in such case, he, she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law. *Approved June 21, 1866; 14 Stat. L. 67.*

See Fed. Stat. Anntd., vol. 6, Public Lands, pp. 292-298, cases and notes.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3119. When rights inure to benefit of infant children—Sale of land—Rights of purchaser.

SEC. 2292. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office fees and sum of money above specified. *Approved June 21, 1866; 14 Stat. L. 67.*

See Fed. Stat. Anntd., vol. 6, Public Lands, pp. 303-304, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3120. Persons in military or naval service, when and before whom to make affidavit.

SEC. 2293. In case of any person desirous of availing himself of the benefits of this chapter, but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land office which the preceding sections require; and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona fide improvement and settlement have been made, such person may make the affidavit required by law before the officer commanding in the branch of the service in which the party is engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the application and affidavit are accompanied by the fee and commissions as required by law. *Approved March 21, 1864; 13 Stat. L. 35.*

### 3121. Affidavits under various land acts may be made, before whom—Where taken—False oath perjury—Fees.

SEC. 2294. That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising federal jurisdiction in the territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated; *provided*, that in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the commissioner of the general land office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly sub-

scribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, wilfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

For each affidavit, twenty-five cents.

For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

For each deposition of claimant or witness, prepared by the officer, one dollar.

Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars. *As amended by act March 4, 1904. Approved March 21, 1864; 13 Stat. L. 35.*

See Fed. Stat. Anntd., vol. 6, Public Lands, p. 305, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3122. Homestead lands not subject to prior debts.

SEC. 2296. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor. *Approved May 20, 1862; 12 Stat. L. 393.*

See Fed. Stat. Anntd., vol. 6, Public Lands, pp. 307-310, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3123. When lands entered for homestead revert to government—Proviso—Climatic conditions.

SEC. 2297. If, at any time after the filing of the affidavit, as required in section 2290, and before the expiration of the five years mentioned in section 2291, it is proved, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit has actually changed his residence, or abandoned the land for more than six months at any time, then and in that event the land so entered shall revert to the government; [*provided*, that where there may be climatic reasons the commissioner of the general land office may, in his discretion, allow the settler twelve months from the date of filing in which to commence his residence on said land under such rules and regulations as he may prescribe]. *Approved May 20, 1862; 12 Stat. L. 393.*

See Fed. Stat. Anntd., vol. 6, Public Lands, p. 310, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3124. Quarter-section only may be acquired.

SEC. 2298. No person shall be permitted to acquire title to more than one quarter-section under the provisions of this chapter. *Approved May 20, 1862; 12 Stat. L. 393.*

See Fed. Stat. Anntd., vol. 6, Public Lands, p. 313, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3125. Existing preemption rights not impaired.

SEC. 2299. Nothing contained in this chapter shall be so construed as to impair or interfere in any manner with existing preemption rights; and all persons who may have filed their applications for a preemption right prior to the twentieth day of May, eighteen hundred and sixty-two, shall be entitled to all the privileges of this chapter. *Approved May 20, 1862; 12 Stat. L. 393.*

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

**3126. Minors may have privileges of chapter in case of service in war.**

SEC. 2300. No person who has served, or may hereafter serve, for a period not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this chapter on account of not having attained the age of twenty-one years. *Approved May 20, 1862; 12 Stat. L. 393.*

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

**3127. Payment after expiration of fourteen months—Rights of applicant.**

SEC. 2301. Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section 2289 from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen months, and the provision of this section shall apply to lands on the ceded portion of the Sioux reservation by act approved March second, eighteen hundred and eighty-nine, in South Dakota, but shall not relieve said settlers from any payments now required by law. *As amended by act March 3, 1891; 26 Stat. L. 1098. Approved May 20, 1862; 12 Stat. L. 393.*

See Fed. Stat. Anntd., vol. 6, Public Lands, pp. 317-318, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

**3128. No distinction on account of race or color—Mineral land not liable to entry.**

SEC. 2302. No distinction shall be made in the construction or execution of this chapter on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions. *Approved June 21, 1866; 14 Stats. L. 67.*

See Fed. Stat. Anntd., vol. 6, Public Lands, pp. 321-322, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

**3129. Soldiers and sailors' homesteads.**

SEC. 2304. Every private soldier and officer who has served in the army of the United States during the recent rebellion for ninety days, and who was honorably discharged and has remained loyal to the government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the navy of the United States or in the marine corps during the rebellion for ninety days, and who was honorably discharged and has remained loyal to the government, and every private soldier and officer who has served in the army of the United States during the Spanish war, or who has served, is serving, or shall have served in the said army during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged; and every seaman, marine and officer who has served in the navy of the United States or in the marine corps during the Spanish war, or who has served, is serving, or shall have served in the said forces during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter-section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of

the United States; but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement. *As amended by act March 1, 1901; 31 Stat. L. 847. Approved June 8, 1872; 17 Stat. L. 333.*

See Fed. Stat. Anntd., vol. 6, Public Lands, p. 323, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3130. Deduction of military and naval service from time—Rights of widow and minor children.

SEC. 2305. The time which the homestead settler has served in the army, navy, or marine corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements; *provided*, that in every case in which a settler on the public land of the United States under the homestead laws died while actually engaged in the army, navy, or marine corps of the United States as private soldier, officer, seaman, or marine, during the war with Spain or the Philippine insurrection, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, may proceed forthwith to make final proof upon the land so held by the deceased soldier and settler, and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation for the full period of five years, and shall entitle his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, to make final proof upon and receive government patent for said land; and that upon proof produced to the officers of the proper local land office by the widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, that the applicant for patent is the widow, if unmarried, or in case of her death or marriage, his orphan children or his or their legal representatives, and that such soldier, sailor, or marine died while in the service of the United States as hereinbefore described, the patent for such land shall issue. *As amended by act March 1, 1901; 31 Stat. L. 847. Approved June 8, 1872; 17 Stat. L. 333.*

See Fed. Stat. Anntd., vol. 6, Public Lands, p. 323, notes and cases.

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3131. Widow and minor children of persons entitled to homesteads.

SEC. 2307. In case of the death of any person who would be entitled to a homestead under the provisions of section 2304, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the department of the interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvement therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title. *Approved June 8, 1872; 17 Stat. L. 333.*

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3132. Who may enter by agent.

SEC. 2309. Every soldier, sailor, marine, officer, or other person coming within the provisions of section 2304, may, as well by an agent as in person,

enter upon such homestead by filing a declaratory statement, as in preemption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfil the requirements of the law. *Approved June 8, 1872; 17 Stat. L. 334.*

See Cent. Dig., vol. 41, Public Lands, secs. 72-77.

### 3133. Additional homestead entries—160-acre limitation.

SEC. 6. That every person entitled, under the provisions of the homestead laws, to enter a homestead, who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and receive the receiver's final receipt therefor, shall be entitled under said laws to enter as a personal right, and not assignable, by legal subdivisions of the public lands of the United States subject to homestead entry, so much additional land as added to the quantity previously so entered by him shall not exceed one hundred and sixty acres; *provided*, that in no case shall patent issue for the land covered by such additional entry until the person making such additional entry shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise fully complied with such laws; *provided, also*, that this section shall not be construed as affecting any rights as to location of soldiers' certificates heretofore issued under section 2306 of the Revised Statutes. *Approved March 2, 1889; 25 Stat. 854.*

*An Act providing for the validation of certain homestead entries.*

Approved March 3, 1911

### 3134. Certain canceled entries on forest reserves reinstated—Application for.

All homestead entries which have been canceled or relinquished, or are invalid solely because of the erroneous allowance of such entries after the withdrawal of lands for national forest purposes, may be reinstated or allowed to remain intact, but in the case of entries heretofore canceled applications for reinstatement must be filed in the proper local land office prior to July first, nineteen hundred and twelve.

### 3135. Contests initiated prior to withdrawals—Preference right.

SEC. 2. In all cases where contests were initiated under the provisions of the act of May fourteenth, eighteen hundred and eighty, prior to the withdrawal of the land for national forest purposes, the qualified successful contestants may exercise their preference right to enter the land within six months after the passage of this act.

*An Act providing for second homestead and desert-land entries.*

Approved February 3, 1911

### 3136. Entry not perfected no bar to subsequent entry—Exception.

Any person who, prior to the approval of this act, has made entry under the homestead or desert-land laws, but who, subsequently to such entry, from any cause shall have lost, forfeited, or abandoned the same, shall be entitled to the benefit of the homestead or desert-land laws as though such former entry had not been made, and any person applying for a second homestead or desert-land entry under this act shall furnish a description and the date of his former entry; *provided*, that the provisions of this act shall not apply to any person whose former entry was canceled for fraud, or who relinquished

his former entry for a valuable consideration in excess of the filing fees paid by him on his original entry.

This act supersedes the one of February 8, 1908, relating to second homestead entries, and the one of March 26, 1908, providing for second desert-land entries.

### 3137. Commutation of entry no bar to subsequent entry—Exception.

SEC. 2. That any person who has heretofore made entry under the homestead laws and commuted same under provisions of section 2301 of the Revised Statutes of the United States and the amendments thereto, shall be entitled to the benefits of the homestead laws, as though such former entry had not been made, except that commutation under the provisions of section 2301 of the Revised Statutes shall not be allowed of an entry made under this section of this act. *Approved June 5, 1900; 31 Stat. 267.*

### 3138. Entry prematurely made no bar to subsequent entry—Provisos.

SEC. 2. That any person who, prior to the passage of an act entitled "An act providing for free homesteads on the public lands for actual and bona fide settlers, and reserving the public lands for that purpose," approved May seventeenth, nineteen hundred, having made a homestead entry and perfected the same and acquired title to the land by final entry by having paid the price provided in the law opening the land to settlement, and who would have been entitled to the provisions of the act before cited had final entry not been made prior to the passage of said act, may make another homestead entry of not exceeding one hundred and sixty acres of any of the public lands in any state or territory subject to homestead entry; *provided*, that any person desiring to make another entry under this act will be required to make affidavit, to be transmitted with the other filing papers now required by law, giving the description of the tract formally entered, date and number of entry, and name of the land office where made, or other sufficient data to admit of readily identifying it on the official records; *and provided further*, that said person has all the other proper qualifications of a homestead entryman; *and provided also*, that commutation under section 2301 of the Revised Statutes or any amendment thereto, or any similar statute, shall not be permitted of an entry made under this act, excepting where the final proof, submitted on the former entry hereinbefore described, shows a residence upon the land covered thereby for the full period of five years of such term of residence thereon as added to any properly credited military or naval service shall equal such period of five years. *Approved May 22, 1902; 32 Stat. 203.*

### *An Act to provide for an enlarged homestead.*

Approved February 19, 1909; 35 Stat. L. 639

### 3139. Homestead not exceeding 320 acres may be entered in Nevada and certain other states on certain prescribed lands.

Any person who is a qualified entryman under the homestead laws of the United States may enter, by legal subdivisions, under the provisions of this act, in the states of Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the territories of Arizona and New Mexico, three hundred and twenty acres, or less, of nonmineral, nonirrigable, unreserved and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body, and not over one and one-half miles in extreme length; *provided*, that no lands shall be subject to entry under the provisions of this act until such lands shall have been designated by the secretary of the interior as not being, in his opinion, susceptible of successful irrigation at a reasonable cost from any known source of water supply.

### 3140. *Idem*—Affidavit—Fees.

SEC. 2. Any person applying to enter land under the provisions of this act shall make and subscribe before the proper officer an affidavit as required by section 2290 of the Revised Statutes, and in addition thereto shall make affidavit that the land sought to be entered is of the character described in section 1 of this act, and shall pay the fees now required to be paid under the homestead laws.

### 3141. May enter tract contiguous to former entry—Residence.

SEC. 3. Any homestead entryman of lands of the character herein described, upon which final proof has not been made, shall have the right to enter public lands, subject to the provisions of this act, contiguous to his former entry which shall not, together with the original entry, exceed three hundred and twenty acres, and residence upon and cultivation of the original entry shall be deemed as residence upon and cultivation of the additional entry.

### 3142. Requisites of final proofs.

SEC. 4. At the time of making final proofs as provided in section 2291 of the Revised Statutes the entryman under this act shall, in addition to the proofs and affidavits required under the said section, prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops other than native grasses beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

Under late rulings, the department requires specific proof of five years' actual residence, without allowing any deduction for absence between the time of application and entry, or during the first six months following the date of entry.

### 3143. Entry may be made under general homestead act—Restrictions.

SEC. 5. Nothing herein contained shall be held to affect the right of a qualified entryman to make homestead entry in the states named in section 1 of this act under the provisions of section 2289 of the Revised Statutes, but no person who has made entry under this act shall be entitled to make homestead entry under the provisions of said section, and no entry made under this act shall be commuted.

### 3144. Homestead rights of settlers—Rights relate back.

SEC. 3. That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States land office as is now allowed to settlers under the preemption laws to put their claims on record, and his right shall relate back to the date of settlement the same as if he settled under the preemption laws. *Approved May 14, 1880; 21 Stat. 140.*

### 3145. Homestead entry by married woman.

That the third section of the act of Congress approved May fourteenth, eighteen hundred and eighty, entitled "An act for the relief of settlers on public lands," be amended by adding thereto the following:

Where an unmarried woman who has heretofore settled, or may hereafter settle, upon a tract of public land, improved, established, and maintained a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, and has married, or shall hereafter marry, before making entry of said land, or before making application to enter said land, she shall not, on account of her marriage, forfeit her right to make entry and receive patent for the land; *provided*, that she does not

abandon her residence on said land, and is otherwise qualified to make homestead entry; *provided further*, that the man whom she marries is not, at the time of their marriage, claiming a separate tract of land under the homestead law. This act shall be applicable to all unpatented lands claimed by such entrywoman at the date of passage. *Approved June 6, 1900; 31 Stat. 683.*

*An Act to provide for issuing patents for public lands claimed under the preemption and homestead laws in cases where the settlers have become insane.*

Approved June 8, 1880; 21 Stat. 166

### 3146. Settlers who become insane.

That in all cases in which parties who regularly initiated claims to public lands as settlers thereon, according to the provisions of the preemption or homestead laws, have become insane or shall thereafter become insane before the expiration of the time during which their residence, cultivation, or improvement of the land claimed by them is required by law to be continued in order to entitle them to make the proper proof and perfect their claims, it shall be lawful for the required proof and payment to be made for their benefit by any person who may be legally authorized to act for them during their disability, and thereupon their claims shall be confirmed and patented, provided it shall be shown by proof satisfactory to the commissioner of the general land office that the parties complied in good faith with the legal requirements up to the time of their becoming insane, and the requirements in homestead entries of an affidavit of allegiance by the applicant in certain cases as a prerequisite to the issuing of the patents shall be dispensed with so far as regards such insane parties.

### 3147. Leave of absence, when granted—Length—Not to be deducted from actual residence.

SEC. 3. That whenever it shall be made to appear to the register and receiver of any public-land office, under such regulations as the secretary of the interior may prescribe, that any settler upon the public domain under existing law is unable, by reason of a total or partial destruction or failure of crops, sickness, or other unavoidable casualty, to secure a support for himself, herself, or those dependent upon him or her upon the lands settled upon, then such register and receiver may grant to such a settler a leave of absence from the claim upon which he or she has filed for a period not exceeding one year at any one time, and such settler so granted leave of absence shall forfeit no rights by reason of such absence; *provided*, that the time of such actual absence shall not be deducted from the actual residence required by law. *Approved March 2, 1889; 25 Stat. 854.*

### 3148. Settler forfeiting entry through unavoidable casualty, may make new entry.

That section 3 of the said act of March second, eighteen hundred and eighty-nine, be amended by adding thereto the following provision: That if any such settler has heretofore forfeited his or her entry for any of said reasons, such person shall be permitted to make entry of not to exceed a quarter section on any public land subject to entry under the homestead law, and to perfect title to the same under the same conditions in every respect as if he had not made the former entry. *Approved December 29, 1894; 28 Stat. 599.*

*An Act to provide additional regulations for homestead and preemption entries of public lands.*

Approved March 3, 1879; 20 Stat. 472

### 3149. Final proof notice—What to contain—Published, how.

That before final proof shall be submitted by any person claiming to enter

agricultural lands under the laws providing for preemption or homestead entries, such person shall file with the register of the proper land office a notice of his or her intention to make such proof, stating therein the description of lands to be entered, and the names of the witnesses by whom the necessary facts will be established. Upon the filing of such notice the register shall publish a notice, that such application has been made, once a week for the period of thirty days, in a newspaper to be by him designated as published nearest to such land, and he shall also post such notice in some conspicuous place in his office for the same period. Such notice shall contain the names of the witnesses as stated in the application. At the expiration of said period of thirty days the claimant shall be entitled to make proof in the manner heretofore provided by law. The secretary of the interior shall make all necessary rules for giving effect to the foregoing provisions.

#### DESERT LAND LAWS

*An Act to provide for the sale of desert lands in certain states and territories.*

Approved March 3, 1877; 19 Stat. 377

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| <p>3150. Declaration, what to contain—Price of land—Limited to one section—Water appropriation—Patent, when issued—Right of entry.</p> <p>3151. What deemed desert land.</p> <p>3152. Applies to certain states and territories only.</p> <p>3153. Enacting amendment.</p> <p>3154. Maps to be filed—Must show mode of irrigation—May associate with others in construction of canals and ditches.</p> <p>3155. Amount of improvements required—Amount each year—How shown—Land reverts, when.</p> <p>3156. Not affect valid rights heretofore acquired.</p> <p>3157. Patents issue, when—Amount of each limited—Additional proof may be required—Entry subject to contest.</p> | <p>3158. Apply also to Colorado—Benefits limited to actual residents of state or territory.</p> <p>3159. Time lost by entryman through irrigation project not to be computed—Time begins to run from date of notices of abandonment of project—If project completed, acreage to be held limited—Proviso.</p> <p>3160. Right restricted to surveyed lands—Entryman has preference right, when.</p> <p>3161. Assignment of entry permitted, when—Prohibited to corporation or association.</p> <p>3162. Additional time allowed, when—Procedure to obtain.</p> |
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**3150. Declaration, what to contain—Price of land—Limited to one section—Water appropriation—Patent, when issued—Right of entry.**

That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of twenty-five cents per acre—to file a declaration under oath with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same, within the period of three years thereafter; *provided, however*, that the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands, and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making sat-

isfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him; *provided*, that no person shall be permitted to enter more than one tract of land and not to exceed six hundred and forty acres, which shall be in compact form.

Regarding right of second desert-land entry, see sec. 3136.

The land office issues regulations in pamphlet form directing applicants for desert lands how to proceed.

### 3151. What deemed desert land.

SEC. 2. That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

### 3152. Applies to certain states and territories only.

SEC. 3. That this act shall only apply to and take effect in the States of California, Oregon, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the commissioner of the general land office.

*An Act to repeal timber-culture laws, and for other purposes.*

Approved March 3, 1891; 26 Stat. 1095

### 3153. Enacting amendment.

SEC. 2. That an act to provide for the sale of desert lands in certain states and territories, approved March third, eighteen hundred and seventy-seven, is hereby amended by adding thereto the following sections:

### 3154. Maps to be filed—Must show mode of irrigation—May associate with others in construction of canals and ditches.

SEC. 4. That at the time of filing the declaration hereinbefore required the party shall also file a map of said land, which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections or fractional parts of sections of desert lands may associate together in the construction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements.

### 3155. Amount of improvements required—Amount each year—How shown—Land reverts, when.

SEC. 5. That no land shall be patented to any person under this act unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least three dollars per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid, the party so entering shall expend not less than one dollar per acre for the purposes aforesaid; and

he shall in like manner expend the sum of one dollar per acre during the second and also during the third year thereafter, until the full sum of three dollars per acre is so expended. Said party shall file during each year with the register, proof, by the affidavits of two or more credible witnesses, that the full sum of one dollar per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid, the lands shall revert to the United States, and the twenty-five cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of three dollars per acre; *provided*, that proof be further required of the cultivation of one-eighth of the land.

### 3156. Not affect valid rights heretofore acquired.

SEC. 6. That this act shall not affect any valid rights heretofore accrued under said act of March third, eighteen hundred and seventy-seven, but all bona fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed; or said claims, at the option of the claimant, may be perfected and patented under the provisions of said act, as amended by this act, so far as applicable; and all acts and parts of acts in conflict with this act are hereby repealed.

### 3157. Patent issue, when—Amount of land limited—Additional proof may be required—Entry subject to contest.

SEC. 7. That at any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold, by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands; but this section shall not apply to entries made or initiated prior to the approval of this act; *provided, however*, that additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding act shall be subject to contest, as provided by the law relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands and moneys paid therefor shall be forfeited to the United States.

### 3158. Apply also to Colorado—Benefits limited to actual residents of states or territories.

SEC. 8. That the provisions of the act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado, as well as the states named in the original act; and no person shall be entitled to make entry of desert land except he be a resident citizen of the state or territory in which the land sought to be entered is located.

*An Act providing for the subdivision of lands entered under the reclamation act, and for other purposes.*

Approved June 27, 1906; 34 Stat. 520

**3159.** Time lost by entryman through irrigation project not to be computed—Time begins to run from date of notice of abandonment of project—If project completed, acreage to be held limited—Proviso.

**SEC. 5.** That where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and the desert-land entryman has been or may be directly or indirectly hindered, delayed or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry; *provided*, that if after investigation the irrigation project has been or may be abandoned by the government, time for compliance with the desert-land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been filed; but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry, the entryman shall thereupon comply with all of the provisions of the aforesaid act of June seventeenth, nineteen hundred and two, and shall relinquish all land embraced within his desert-land entry in excess of one hundred and sixty acres, and as to such one hundred and sixty acres retained, he shall be entitled to make final proof and obtain patent upon compliance with the terms of payment prescribed in said act of June seventeenth, nineteen hundred and two, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said reclamation act.

*An Act limiting and restricting the right of entry and assignment under the desert-land law and authorizing an extension of time within which to make final proof.*

Approved March 28, 1908; 35 Stat. 52

**3160.** Right restricted to surveyed lands—Entryman has preference right, when.

That from and after the passage of this act the right to make entry of desert lands under the provisions of the act approved March third, eighteen hundred and seventy-seven, entitled "An act to provide for the sale of desert lands in certain states and territories," as amended by the act approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws, and for other purposes," shall be restricted to surveyed public lands of the character contemplated by said acts, and no such entries of unsurveyed lands shall be allowed or made of record; *provided, however,*

that any individual qualified to make entry of desert lands under said acts, who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area three hundred and twenty acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public land surveys, within ninety days after the filing of the approved plat of survey in the district land office.

**3161. Assignment of entry permitted, when—Prohibited to corporation or association.**

SEC. 2. That from and after the date of the passage of this act no assignment of an entry made under said acts shall be allowed or recognized, except it be to an individual who is shown to be qualified to make entry under said acts of the land covered by the assigned entry, and such assignments may include all or part of an entry; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized.

**3162. Additional time allowed, when—Procedure to obtain.**

SEC. 3. That any entryman under the above acts who shall show to the satisfaction of the commissioner of the general land office that he has in good faith complied with the terms, requirements, and provisions of said acts, but that because of some unavoidable delay in the construction of the irrigating works, intended to convey water to the said lands, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said land, as required by said acts, shall, upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the commissioner of the general land office, within which to furnish proof, as required by said acts, of the completion of said work.

**ACTS RELATING TO TIMBER AND STONE ENTRIES**

*An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory.*

Approved June 3, 1878; 20 Stat. 89

**3163. Limited to certain states—Timber and stone lands—Limit of acreage—Price not defeat or impair bona fide claim—Not apply to mineral, coal or state lands—Subject to water rights.**

That surveyed public lands of the United States within the States of California, Oregon, and Nevada, and in Washington Territory, not included within military, Indian, or other reservations of the United States, valuable chiefly for timber, but unfit for cultivation, and which have not been offered at public sale, according to law, may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding one hundred and sixty acres to any one person or association of persons, at the minimum price of two dollars and fifty cents per acre; and lands valuable chiefly for stone may be sold on the same terms as timber lands; *provided*, that nothing herein contained shall defeat or impair any bona fide claim under any law of the United States, or authorize the sale of any mining claim, or the improvements of any bona fide settler, or lands containing gold, silver, cinnabar, copper, or coal, or lands selected by the said states under any law of the United States donating lands for internal improvements, education, or other purposes; *and provided further*, that none of the rights conferred by the act approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," shall be abrogated by this act; and all patents granted shall be subject to any vested and accrued

water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under and by the provisions of said act; and such rights shall be expressly reserved in any patent issued under this act.

See secs. 2401, 3152.

Under the regulations of the land office, when application is made for timber land it must be appraised and sold at its appraised value, but for not less than \$2.50 per acre.

### 3164. Procedure to obtain land—Penalty for false swearing.

SEC. 2. That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the general land office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belonged to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except himself; which statement must be verified by the oath of the applicant before the register or the receiver of the land office within the district where the land is situated; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.

### 3165. *Idem*—Notice to be published—Patent to issue if no adverse—Proviso.

SEC. 3. That upon the filing of said statement, as provided in the second section of this act, the register of the land office shall post a notice of such application, embracing a description of the land by legal subdivisions, in his office, for a period of sixty days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register of the land office satisfactory evidence, first, that said notice of the application prepared by the register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this act, unoccupied and without improvements, other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and the receiver, as provided for in case of mining claims in the twelfth section of the act approved May tenth, eighteen hundred and seventy-two, the applicant may be permitted to enter said tract, and, on the transmission to the general land office of the papers and testimony in the case, a patent shall issue thereon; *provided*, that any person having a valid claim to any portion of the land may object, in writing, to the issuance of a patent to lands so held by him, stating the nature of his claim thereto; and evidence shall be taken, and the merits of said objection shall be determined by the officers of the land office, subject

to appeal, as in other land cases. Effect shall be given to the foregoing provisions of this act by regulations to be prescribed by the commissioner of the general land office.

*An Act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws.*

Approved August 4, 1892; 27 Stat. 348

**3166. Lands valuable for building stone—Entered, how—Not apply to state or school lands.**

That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims; *provided*, that lands reserved for the benefit of the public schools or donated to any state shall not be subject to entry under this act.

See sec. 3149.

**3167. Applicable to all public-land states.**

SEC. 2. That an act entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," approved June third, eighteen hundred and seventy-eight, be, and the same is hereby, amended by striking out the words "States of California, Oregon, Nevada, and Washington Territory" where the same occur in the second and third lines of said act, and insert in lieu thereof the words "public-land states," the purpose of this act being to make said act of June third, eighteen hundred and seventy-eight, applicable to all the public-land states.

[Section 3 provides that nothing in this act shall be construed to repeal section 24 of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one.]

*An Act to abolish the distinction between offered and unoffered lands, and for other purposes.*

Approved May 18, 1898; 30 Stat. 418

**3168. Distinction between offered and unoffered land abolished.**

That in cases arising from and after the passage of this act the distinction now obtaining in the statutes between offered and unoffered lands shall no longer be made in passing upon subsisting preemption claims, in disposing of the public lands under the homestead laws, and under the timber and stone law of June third, eighteen hundred and seventy-eight, as extended by the act of August fourth, eighteen hundred and ninety-two, but in all such cases hereafter arising the land in question shall be treated as unoffered, without regard to whether it may have actually been at some time offered or not.

*An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and other purposes.*

Approved August 30, 1890; 26 Stat. 631

**3169. Acreage to be acquired under land laws limited—Right of way for ditches and canals to be reserved.**

No person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry

or settlement on the public lands, or whose occupation, entry or settlement is validated by this act; *provided*, that in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

For act of 1866 regarding water rights and right of way for ditches on public lands, see sec. 2401.

*An Act to repeal the timber-culture laws, and for other purposes.*

Approved March 3, 1891; 26 Stat. 1095

**3170. Reservoir sites restricted to land actually necessary—Act restricting acreage to be acquired not include lands entered under mineral laws.**

**SEC. 17.** That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs; and that the provisions of "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands, and not include lands entered or sought to be entered under mineral-land laws.

**NOTE**—The 320-acre limitation provided by the above act of March 3, 1891 (26 Stat. 1095), applies to timber and stone entries. (33 L. D. 539, 605.)

Regarding acquirement of lands from the United States, see the following cases:

Yosemite Valley case, 82 U. S. 77, 21 L. Ed. 82; Thayer v. Spratt, 189 U. S. 346; Hawley v. Diller, 178 U. S. 476, affirming 81 Fed. 651, reversing 75 Fed. 946; Guaranty Savings Bank v. Bladow, 176 U. S. 448; United States v. Budd, 144 U. S. 154, 36 L. Ed. 384, affirming 43 Fed. 630; United States v. Clark, 129 Fed. 241; United States v. Detroit Timber Co., 131 Fed. 668, affirming 124 Fed. 393; Alson v. United States, 133 Fed. 849; Hoover v. Salling, 110 Fed. 43, reversing 102 Fed. 716; Lewis v. Shaw, 70 Fed. 289; Cal. Redwood Co. v. Little, 79 Fed. 854; United States v. Braddock, 50 Fed. 669; United States v. Scholl, 45 Fed. 758; Emmons v. United States, 42 Fed. 26; Montgomery v. United States, 36 Fed. 4; Jones v. United States, 35 Fed. 561; Whitney v. Spratt, 25 Wash. 62; Johnson v. Bridal Veil Lumber Co., 24 Ore. 182; Gardner v. Port Blakely Mill Co., 8 Wash. 1. See Fed. Stats. Anntd.,

vol. 7, pp. 300-306, cases and notes; Cent. Dig., vol. 41, title, Public Lands, sec. 82.

**Cases concerning desert lands:** Gutierrez v. Albuquerque Land Co., 188 U. S. 545; United States v. Rio Grande Dam Co., 174 U. S. 690; United States v. Ingram, 172 U. S. 327; United States v. Healey, 160 U. S. 136, 40 L. Ed. 369, reversing 29 Ct. Cl. 115; Williams v. United States, 138 U. S. 514; Salma Stock Co. v. United States, 85 Fed. 339; United States v. McIntosh, 85 Fed. 333; State v. Wright, 17 Mont. 565, 44 P. 89; Farm Invest. Co. v. Carpenter, 9 Wyo. 110; Clear Creek Land Co. v. Kilkenny, 5 Wyo. 28, 36 P. 819; Gray v. Dixon, 83 Cal. 33, 23 P. 60; Sallee v. Corder, 67 Cal. 174, 7 P. 455; Arnold v. Christy, 4 Ariz. 19; Slocum v. United States, 35 Ct. Cl. 485; Nelson v. United States, 35 Ct. Cl. 427. See Fed. Stats. Anntd., vol. 6, title, Public Lands, pp. 392-398, notes and cases; Cent. Dig., vol. 41, title, Public Lands, sec. 81.

*An Act to amend an act to permit the use of the right of way through public lands for tramroads, canals, and reservoirs, and for other purposes.*

### 3171. Rights of way across public lands for certain purposes.

That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following:

That the secretary of the interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way upon the public lands of the United States, not within limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs, and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses. *As amended, May 11, 1898.*

That the secretary of the interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way to the extent of twenty-five feet, together with the use of necessary ground not exceeding forty acres, upon the public lands and forest reservations of the United States, by any citizen or association of citizens of the United States, for the purposes of generating, manufacturing, or distributing electric power. *As supplemented, May 14, 1896.*

### 3172. Idem.

SEC. 2. That the rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections 18, 19, 20, and 21 of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation. *As amended, May 11, 1898.*

The original act is omitted because its provisions are carried in the amendatory and supplemental acts.

The biennial report of the surveyor-general and state land register for 1909-1910 states that "There have been granted by the United States to the State of Nevada, at different times, lands to the amount of 2,732,884.70 acres in different grants. All these grants to the state have been exhausted by selections, but, as there are several thousand acres of selections to be adjusted on account of suspended duplicate and erroneous approval, all the grants have not as yet been closed."

An act of Congress approved March 21, 1864, donated twenty sections for the erection of public buildings for legislative and judicial purposes and twenty sections for a penitentiary.

*An Act to prevent unlawful occupancy of the public lands.*

Approved February 25, 1885

### 3173. Unlawful inclosure of or assertion of right to public lands.

That all inclosures of any public lands in any state or territory of the United States, heretofore or to be hereafter made, erected, or constructed by any person, party, association, or corporation, to any of which land included within the inclosure the person, party, association, or corporation making or controlling the inclosure had no claim or color of title made or acquired in good faith, or an asserted right thereto by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such inclosure was or shall be made, are hereby declared to be unlawful, and the maintenance, erection, construction,

or control of any such inclosure is hereby forbidden and prohibited; and the assertion of a right to the exclusive use and occupancy of any part of the public lands of the United States in any state or any of the territories of the United States, without claim, color of title, or asserted right as above specified as to inclosure, is likewise declared unlawful, and hereby prohibited.

### 3174. Duty of United States district attorney to institute suit—What courts have jurisdiction—Judgment.

SEC. 2. That it shall be the duty of the district attorney of the United States for the proper district, on affidavit filed with him by any citizen of the United States that section 1 of this act is being violated showing a description of the land inclosed with reasonable certainty, not necessarily by metes and bounds nor by governmental subdivisions of surveyed lands, but only so that the inclosure may be identified, and the persons guilty of the violation as nearly as may be, and by description, if the name cannot on reasonable inquiry be ascertained, to institute a civil suit in the proper United States district or circuit court, or territorial district court, in the name of the United States, and against the parties named or described who shall be in charge of or controlling the inclosure complained of as defendants.

And jurisdiction is also hereby conferred on any United States district or circuit court or territorial district court having jurisdiction over the locality where the land inclosed, or any part thereof, shall be situated, to hear and determine proceedings in equity, by writ of injunction, to restrain violations of the provisions of this act; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure.

And any suit brought under the provisions of this section shall have precedence for hearing and trial over other cases on the civil docket of the court, and shall be tried and determined at the earliest practicable day.

In any case if the inclosure shall be found to be unlawful, the court shall make the proper order, judgment, or decree for the destruction of the inclosure, in a summary way, unless the inclosure shall be removed by the defendant within five days after the order of the court.

By the act of March 3, 1911, the United States district court is given jurisdiction to restrain by injunction the unlawful inclosure of public lands. (36 Stat. L. 1093.)

### 3175. Peaceable entry on public lands not to be interfered with—Free transit over—Proviso.

SEC. 3. That no person, by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means, shall prevent or obstruct, or shall combine and confederate with others to prevent or obstruct, any person from peaceably entering upon or establishing a settlement or residence on any tract of public land subject to settlement or entry under the public-land laws of the United States or shall prevent or obstruct free passage or transit over or through the public lands; *provided*, this section shall not be held to affect the right or title of persons, who have gone upon, improved or occupied said lands under the land laws of the United States, claiming title thereto, in good faith.

### 3176. Penal provisions.

SEC. 4. That any person violating any of the provisions hereof, whether as owner, part owner, or agent, or who shall aid, abet, counsel, advise, or assist in any violation hereof, shall be deemed guilty of a misdemeanor and fined in a sum not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, for each offense. *As amended, March 10, 1908.*

[Sec. 5 authorizes the president to take such measures as shall be necessary to remove any unlawful inclosure of public lands, and to employ civil or military force as may be necessary for that purpose.]

3177. No suit without authority from secretary of the interior if less than 160 acres inclosed.

SEC. 6. That where the alleged unlawful inclosure includes less than one hundred and sixty acres of land, no suit shall be brought under the provisions of this act without authority from the secretary of the interior.

*An Act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.*

Approved March 2, 1911

3178. Assignee or grantee of land containing oil or gas located under mining laws, may obtain patent, when—160-acre limitation—Proviso.

In no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases; *provided, however*, that such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.

See sec. 2394.

**STATUTES OF THE UNITED STATES RELATIVE TO GRANTS OF LAND BY THE UNITED STATES TO THE STATE OF NEVADA**

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| 3179. 500,000-acre grant.  | 3188. Secretary of the interior may vary lines of subdivisions.                            |
| 3180. Grant in lieu of preemptions on 16th and 36th sections.                                      | 3189. Lands not subject to other than homestead entry until state has received full quota. |
| 3181. 90,000-acre grant.   | 3190. State authorized to select certain sections within railroad grant.                   |
| 3182. Proceeds of lands for support of colleges of agriculture and mechanic arts—Military tactics. | 3191. Selection of lands for support of agricultural college.                              |
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*An Act to appropriate the proceeds of the sale of the public lands and to grant preemption rights.*

Approved September 4, 1841

3179. 500,000-acre grant.

SEC. 8. There shall be granted to each state specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement; *provided*, that to each of the said states which has already received grants for said purpose, there is hereby granted no more than a quantity of land which shall, together with the amount such state has already received as aforesaid, make five hundred thousand acres, the selections in all of the said states to be made within their limits respectively in such manner

as the legislatures thereof shall direct, and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the president of the United States, which said locations may be made at any time after the lands of the United States in said states respectively shall have been surveyed according to existing laws. And there shall be and hereby is granted to each new state that shall be hereafter admitted into the union, upon such admission, so much land as, including such quantity as may have been granted to such state before its admission and while under a territorial government, for purposes of internal improvement, as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid. *U. S. Statutes at Large, vol. 5, 455.*

The lands granted to the state by this and other acts are pledged to school purposes by the constitution, sec. 355.

*An Act to authorize settlers upon sixteenth and thirty-sixth sections, who settled before the surveys of the public lands, to preempt their settlements.*

Approved February 26, 1859

### 3180. Land granted in lieu of preemption on 16th and 36th sections.

Where settlements, with a view to preemption, have been made before the survey of the lands in the field which shall be found to have been made on sections sixteen or thirty-six, said sections shall be subject to the preemption claim of such settler; and if they, or either of them, shall have been or shall be reserved or pledged for the use of schools or colleges in the state or territory in which the lands lie, other lands of like quantity are hereby appropriated in lieu of such as may be patented by preemptors; and other lands are also hereby appropriated to compensate deficiencies for school purposes, where said sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever; *provided*, that the lands by this section appropriated shall be selected and appropriated in accordance with the principles of adjustment and the provisions of the act of Congress of May twentieth, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for." *U. S. Statutes at Large, vol. 11, 385.*

*An Act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts.*

Approved July 2, 1862

### 3181. 90,000-acre grant.

That there be granted to the several states, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each state a quantity equal to thirty thousand acres for each senator and representative in Congress to which the states are respectively entitled by the apportionment under the census of eighteen hundred and sixty; *provided*, that no mineral lands shall be selected or purchased under the provisions of this act.

See sec. 3165.

### 3182. Moneys from sale of lands, how invested—Colleges for agriculture and mechanic arts—Military tactics.

SEC. 4. All moneys derived from the sale of the lands aforesaid by the states to which the lands are apportioned, and from the sales of land scrip hereinbefore provided for, shall be invested in stocks of the United States, or of the states, or some other safe stocks, yielding not less than five per

centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section fifth of this act), and the interest of which shall be inviolably appropriated, by each state which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

### 3183. Grants of land and scrip on certain conditions.

SEC. 5. The grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several states shall be signified by legislative acts:

First—If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the state to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied, without diminution, to the purposes mentioned in the fourth section of this act, except that a sum not exceeding ten per centum upon the amount received by any state under the provisions of this act may be expended for the purchase of lands for sites, or experimental farms, whenever authorized by the respective legislatures of said states.

Second—No portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings.

Third—Any state which may take and claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as described in the fourth section of this act, or the grant to such state shall cease; and said state shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the state shall be valid.

Fourth—An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their cost and results, and such other matters, including state industrial and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail free, by each, to all the other colleges which may be endowed under the provisions of this act, and also one copy to the secretary of the interior.

Fifth—When lands shall be selected from those which have been raised to double the minimum price, in consequence of railroad grants, they shall be computed to the states at the maximum price, and the number of acres proportionally diminished.

Sixth—No state while in a condition of rebellion or insurrection against the government of the United States shall be entitled to the benefit of this act.

Seventh—No state shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the president. *U. S. Statutes at Large, vol. 12, 503.*

The time for the acceptance of the grant under this act was extended by amendatory act of Congress of April 14, 1864.

This act was accepted by act of the legislature, approved March 9, 1865, 349.

See, also, secs. 7, 8, and 9 of the enabling act, 209, 216, 217, ante, regarding the granting of lands to the state.

*An Act concerning certain lands granted to the State of Nevada.*

Approved July 4, 1866

**3184. Confirmation by Congress of dedication to school purposes of the 500,000 acre-grant.**

The appropriation by the constitution of the State of Nevada to educational purposes of the five hundred thousand acres of land granted to said state by the law of September fourth, eighteen hundred and forty-one, for purposes of internal improvement, is hereby approved and confirmed.

See sec. 3158.

**3185. Grant for maintenance of university.**

**SEC. 2.** Land equal in amount to seventy-two entire sections, for the establishment and maintenance of a university in said state, is hereby granted to the State of Nevada.

**3186. Proceeds of land diverted from teaching agriculture and mechanic arts to that of mining.**

**SEC. 3.** The grant made by law of the second day of July, eighteen hundred and sixty-two, to each state, of land equal to thirty thousand acres for each of its senators and representatives in Congress, is extended to the State of Nevada, and the diversion of the proceeds of these lands in Nevada from the teaching of agriculture and mechanic arts to that of the theory and practice of mining is allowed and authorized without causing a forfeiture of said grant.

See sec. 3160.

**3187. President to appoint surveyor-general for Nevada—Office, compensation, duties, expenses.**

**SEC. 4.** The president of the United States, by and with the advice and consent of the senate, shall be, and he is hereby, authorized to appoint a surveyor-general for Nevada, who shall locate his office at such place as the secretary of the interior shall from time to time direct, whose compensation shall be three thousand dollars per annum, and whose duties, powers, obligations, responsibilities, and allowances for clerk hire, office rent, fuel, and incidental expenses shall be the same as those of the surveyor-general of Oregon, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give him.

**3188. Secretary of the interior may vary lines of subdivisions.**

**SEC. 5.** In extending the surveys of the public lands in the State of Nevada, the secretary of the interior may, in his discretion, vary the lines of the subdivisions from a rectangular form, to suit the circumstances of the country; but in all cases lands valuable for mines of gold, silver, quicksilver, or copper shall be reserved from sale.

**3189. Lands not subject to other than homestead entry until state has received full quota.**

**SEC. 6.** Until the State of Nevada shall have received her full quota of lands named in the first, second, and third sections of this act, the public lands in that state shall not be subject to entry, sale, or location under any law of the United States, or any scrip or warrants issued in pursuance of any such law except the homestead act of May twentieth, eighteen hundred and sixty-two, and acts amendatory thereto, and the acts granting and regulating preemptions, but shall be reserved exclusively for entry by the said state for the period of two years after such survey shall have been made; *provided,*

that said state shall select said lands in her own name and right, in tracts of not less than forty acres, and dispose of the same in tracts not exceeding three hundred and twenty acres, only to actual settlers and bona fide occupants; *and, provided further*, that city and town property shall not be subject to selection under this act; *and, provided further*, that this section shall not be construed to interfere with or impair rights heretofore acquired under any law of Congress. *U. S. Statutes at Large, vol. 14, 85.*

By act of the legislature approved February 3, 1867, the state accepted all grants of public land theretofore made by the United States to the state.

See enabling act, secs. 215-217.

*An Act to provide for giving effect to the various grants of public lands to the State of Nevada.*

Approved June 8, 1868

**3190. State authorized to select certain sections within railroad grant.**

The State of Nevada is authorized to select the alternate even-numbered sections within the limits of any railroad grant in said state, in satisfaction, in whole or in part, of the several grants made in the following acts of Congress, to wit: the act organizing the Territory of Nevada, passed March second, eighteen hundred and sixty-one; the act admitting the State of Nevada into the Union, passed March twenty-one, eighteen hundred and sixty-four, and the act concerning certain lands granted to Nevada, passed July fourth, eighteen hundred and sixty-six; *provided*, that this privilege shall not extend to lands upon which there may be rightful claims under the preemption and homestead laws; *and, provided*, that if lands be selected, the minimum price of which is two dollars and fifty cents per acre, each acre so selected shall be taken by the state in satisfaction of two acres, the minimum price of which is one dollar and twenty-five cents per acre; *and, provided further*, that the lands granted in the eighth and ninth sections of the said act admitting Nevada into the Union shall be selected within four years from the passage of this act, and the period for the selection of said lands is hereby so extended.

**3191. Selection of lands for agricultural college.**

SEC. 2. The lands known and designated for the establishment of an agricultural college by the act of July second, eighteen hundred and sixty-two, and the acts amendatory thereto, shall be selected in the same manner and of the same character of lands as may be selected in satisfaction of any other grants referred to in the first section of this act. But this act shall not authorize the selection of lands valuable for mines of gold, silver, quick-silver, or copper. *U. S. Statutes at Large, vol. 15, 67.*

*An Act to continue in force a grant to the State of Nevada for college purposes.*

Approved March 16, 1872

**3192. Time for establishment of college extended.**

The grant made to the State of Nevada under section 3 of the act of July fourth, eighteen hundred and sixty-six, entitled "An act concerning certain lands granted to the State of Nevada," shall not cease by reason of the failure of the said state to provide at least one college, as required by the several acts of Congress as a condition of said grant, but the same shall continue in full force; *provided*, that all the conditions of law be complied with prior to the tenth of May, eighteen hundred and seventy-seven. *U. S. Statutes at Large, vol. 17, 40.*

*An Act to grant to the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said state.*

Approved June 16, 1880

**3193. Lands granted in lieu of 16th and 36th sections.**

That there be, and are hereby, granted to the State of Nevada two million acres of land in said state in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States; *provided*, that the title of the state and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said state prior to the passage of this act, shall not be changed or vitiated in consequence of or by virtue of this act.

**3194. Selections to be from any unappropriated nonmineral public lands.**

**SEC. 2.** The lands herein granted shall be selected by the state authorities of said state from any unappropriated, nonmineral, public land in said state, in quantities not less than the smallest legal subdivision; and when selected in conformity with the terms of this act, the same shall be duly certified to said state by the commissioner of the general land office and approved by the secretary of the interior.

**3195. Lands may be disposed of under rules prescribed by legislature—Proceeds of sale.**

**SEC. 3.** The lands herein granted shall be disposed of under such laws, rules, and regulations as may be prescribed by the legislature of the State of Nevada; *provided*, that the proceeds of the sale thereof shall be dedicated to the same purposes as heretofore provided in the grant of the sixteenth and thirty-sixth sections made to said state. *U. S. Statutes, 1879-80, 288.*

The lands granted by this act were accepted by the state by act of the legislature of March 8, 1879, 106; and by the constitution the proceeds of these lands are pledged to educational purposes, sec. 355.

**STATE LANDS**

General act for the selection and sale of state lands, approved March 12, 1885, sections 3196-3216.

Act amendatory thereof, regarding contests and forfeiture of money, approved March 13, 1903, sections 3217, 3218.

Act to provide for the advertising of unapproved lands, fixing the charge therefor, and providing for the expense of affidavits, approved March 9, 1899, section 3219.

Act to provide for determining the rights of applicants who simultaneously apply to purchase, approved March 21, 1891, sections 3220-3221.

Act relating to contracts and patents for state lands, approved March 24, 1911, section 3222.

Act relating to the issue and effect of patents, approved March 16, 1903, section 3223.

Act defining the rights of applicants and contractors, and providing for maintaining actions, approved March 5, 1887, sections 3224-3226.

*An Act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada.*

Approved March 12, 1885, 101

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| 3196. State land office created—Office hours—<br>Bond of land register.             | 3200. Nonmineral affidavits—Duties of land register and state controller—Duties state treasurer—Unselectable lands—Completion of purchase. |
| 3197. Register to procure township plats—<br>Report to county assessor.             | 3201. Register to certify application to controller—Duplicate receipts by state treasurer.   |
| 3198. Price state lands—Lands in railroad limits—Simultaneous applications.         | 3202. Fees to be deposited with state land register.   |
| 3199. Application to purchase, what to state—<br>How signed—Statement to assessors. |  |

3203. Register authorized to sell or contract —Conditions—Upon failure to pay interest, land subject to sale—Payment of overdue interest—Duty of register—Issuance of patent.
3204. Contracts may be renewed.
3205. Register to cause notices to be given.
3206. Unlocated land warrants—Rights of holder.
3207. Moneys paid on order from controller.
3208. When two or more persons apply for the same lands, proceedings—Artesian well to give preferred right—Rights of first applicant—Board to decide rights of contesting claimants—Contests to be certified to district court, when—Practice in hearing contested cases—Cost of contest.
3209. 2,000,000-acre grant.
3210. Register to select.
3211. Patent to land from state.
3212. Selections erroneously made.
3213. Seal of state land office.
3214. Investment of funds.
3215. Board of examiners to allow claims.
3216. Acts repealed.
3217. When the claimant abandons—When neither party prosecutes.
3218. Land and money forfeited to state, when.
3219. Relating to advertising of certain unapproved lands—Applicant to bear actual expenses.
3220. Board of awards, how organized.
3221. Powers and duties of—Simultaneous applications.
3222. Contracts, how renewed—How patent rights issue.
3223. Issue of patent in name of deceased applicant—Effect.
3224. Right to exclusive possession.
3225. May defend action.
3226. Prospector may enter and work mine.

Pamphlets containing land laws and regulations are issued by the state land office.

### 3196. State land office created—Office hours—Bond of land register.

SECTION 1. For the purpose of selecting and disposing of the lands that have been or may hereafter be granted by the United States to the State of Nevada, including the sixteenth and thirty-sixth sections, and those selected in lieu thereof, in accordance with the terms and conditions of the several grants of land by the United States to the State of Nevada, a state land office is hereby created, of which the surveyor-general shall be and is hereby made ex officio land register. He shall, as such land register, be required to give bonds in the sum of ten thousand dollars for the faithful performance of his duties, which bonds shall be approved by the governor and filed in the office of the secretary of state. The land register shall keep his office at the seat of government, and the same shall be kept open on all legal days, between the hours of 10 o'clock a. m. and 4 o'clock p. m., for the transaction of business.

### 3197. Register to procure township plats—Report to county assessor.

SEC. 2. The register shall procure from the United States surveyor-general's office one copy of each township plat of the public surveys now approved or that may hereafter be approved by the proper United States authorities, unless the same shall have been previously obtained; *provided*, that said copies be made upon material of such a quality as the state land register may prescribe, the cost of the same not to exceed six dollars each. He shall keep a record of all applications and contracts and of lands which have been or may hereafter be approved to the state, and of all lands which have been sold by the state, which, together with all plats, papers and documents relating to the business of his office, shall be open to public inspection during office hours without fee therefor; and he shall also furnish on or before the first day of July, eighteen hundred and eighty-seven, or as soon thereafter as practicable, a copy of the plat of each township within any county to the county assessor of such county, to be used by him in performing the duties of his office; and all lands applied for in the state land office thereafter shall be reported by the register to the county assessor of the county in which such lands are situated, on or before the first day of May of each year thereafter, and the said assessor shall immediately mark the same upon the township plats in his office, and shall keep such plats subject to the inspection of all persons interested in examining the same. *As amended, Stats. 1887, 112; 1889, 123.*

Cited, State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

### 3198. Price state land—Lands in railroad limits—Simultaneous applications.

SEC. 3. The price of all lands applied for after the approval of this act, is hereby fixed at one dollar and twenty-five (\$1.25) cents per acre, except such lands within the limits of the Central Pacific railroad grant as have heretofore been or may hereafter be approved to the state as double minimum lands, the price of which is hereby fixed at two dollars and fifty (\$2.50) cents per acre, notwithstanding such lands have been or may hereafter be forfeited to the state; *provided*, that in cases of simultaneous applications to purchase the same lands, where neither party claims a preferred right, the price per acre shall be that offered by the highest bidder, as provided by section 13 of this act; *and further provided*, that nothing in this act shall invalidate or change the condition of any completed sale or any contract which may have been entered into between the state and individual purchasers for the sale of any lands. *As amended, Stats. 1887, 32; 1889, 124; 1891, 100.*

See secs. 3208, 3221, regarding simultaneous applications.

### 3199. Application to purchase, what to state—How signed—Statement to assessors.

SEC. 4. All applications to purchase lands shall be made in writing to the land register and shall be signed by the applicant or his or her agent, and shall designate in conformity with the United States survey, the tracts of land applied for to purchase, the number of acres, and amount necessary to purchase such land, and the section of this act under which the applicant wishes to purchase; also residence, postoffice address, and county in which such land is located, and it shall be the duty of the state land register to furnish each of the several county assessors with a statement showing all the lands that have been applied for in their respective counties, and which have not heretofore been shown by such statement, together with the name and address of the applicant or assignee, so far as the same may be known, and on or before the first day of May of each year thereafter, to furnish such assessor with a statement showing all additional applications and forfeitures since last annual statement. *As amended, Stats. 1887, 118; 1889, 124; 1891, 100.*

Contract for the sale of state lands considered and held to constitute an entire contract for the land described therein, and that if the purchaser fails to pay interest upon the balance due upon any part of the land, he forfeits it all. *State ex rel. Powning v. Jones, 22 Nev. 510, 516-517 (34 P. 450).*

The statute permitting such a sale reviewed, and held to authorize the kind of contract made in this case, and to show that the legislature intended it to be entire and indivisible. *Idem.*

### 3200. Nonmineral affidavit—Duties state land register and state controller—Duties of state treasurer—Unselectable lands—Completion of purchase.

SEC. 5. Upon the application of any citizen of the United States or any person who has legally declared his intention to become such, to purchase lands not previously selected by the state, such applicant shall deposit with the state land register an affidavit, in due form, by the applicant or some other competent person, made before an officer having an official seal and legally authorized to administer oaths, that the lands described in the application are nonmineral in character, and such affidavit shall not refer to any lands not included in such application. The land register shall indorse upon each application the exact time of its receipt in his office, and shall certify to the state controller that such person is entitled to apply for the lands, describing the same as in the application, which shall accompany the certificate, and said certificate shall state the amount necessary to purchase such lands. The controller shall thereupon issue his order directing

the state treasurer to receive from such applicant such amount, placing the same in the proper fund, and upon such payment being made, the treasurer shall issue his receipt in duplicate, describing the lands applied for, and he shall at the same time enter in his abstract of applications the name of the person so applying, description of land, number and date of receipt, and amount paid by the applicant. Upon return of the application with the treasurer's receipt to the land office, the register shall file the same, and take prompt measures at the United States land office of the district in which such lands are situated to select, for the state, the lands described in such application. If, during a period of sixty days after the filing of any application, the state land register shall remain unable so to select any of the lands therein described, on account of conflicting entries or reservations in the United States land office, he shall cancel such application, so far as it concerns the unselectable lands therein described, and at once certify to the controller and treasurer each, that such applicant is entitled to the amount paid by him or her, on said unselectable lands, and the controller shall draw his warrant upon the proper fund for the amount due such applicant, and the same shall be paid by the treasurer. The state land register shall, at the same time, notify the applicant of such cancelation, and that the amount deposited thereon is subject to withdrawal as provided by law, and no subsequent application for lands embraced in such canceled application shall be certified by the state land register until due official notice shall have been received from the intending applicant, that the lands in question are subject to selection. Whenever purchase can be completed, in whole, or in part, upon lands applied for, as in this section provided, the land register shall certify the same to the controller and treasurer each, and shall at once proceed to complete such sale. Should the controller, upon receipt of such certificate, find that any payment had been wrongfully apportioned, he shall issue his order directing the treasurer to transfer such amount to its proper fund. If by reason of the nonapproval of the lands to the state, or other cause, the contemplated sale cannot be completed, in whole or in part, then, upon the demand of the applicant or his or her legal agent or assignee, the land register shall certify to the controller and treasurer each, that such applicant is entitled to the amount paid by him or her, and the controller shall draw his warrant upon the proper fund for the amount due such applicant, and the same shall be paid by the treasurer. The term citizen, as used in this act, is held to mean and include females of lawful age. *As amended, Stats. 1889, 124; 1891, 100.*

As all grants are exhausted, section 5 is obsolete so far as it relates to the selection of new lands.

### 3201. Register to certify application to controller—Duplicate receipts by state treasurer.

SEC. 6. Upon the application of any person as defined in section 5 of this act, for the purchase of land after the state has obtained title thereto, should such person be entitled to purchase, the land register shall certify the same to the controller. Said certificate shall be accompanied by such application, as provided in section 5 of this act, whereupon the controller shall issue his order directing the treasurer to receive the amount necessary to purchase such land, placing the same in the fund specified in the order. Upon payment being made by the applicant, the treasurer shall issue his receipts in duplicate for the same, and on return of said application, with the receipt, to the state land office, the register shall thereupon file the same and complete such sale. *As amended, Stats. 1889, 126.*

### 3202. Fees to be deposited with state land register.

SEC. 7. All applicants for purchase of lands not approved to the state at the time of making application shall deposit with the state land register the

amount of fees required for selecting the same in the United States local land office; also the amount of fees required for advertising such selection—if the land so selected or any part thereof—be situated within six miles of a mineral claim or location, the amount of which said advertising fee for each application is hereby limited to and fixed at two dollars. The applicant in every instance shall also bear the actual expense of all nonmineral affidavits required by law, or the regulations of the United States general land office. *As amended, Stats. 1889, 126; 1897, 71.*

**3203. Register authorized to sell or contract—Conditions—Upon failure to pay interest, land subject to sale—Payment of overdue interest—Duty of register—Issuance of patent.**

SEC. 8. In addition to the mode and manner of the sale of state lands, the state land register is hereby further empowered to sell and dispose of any agricultural or grazing lands, payable as hereinafter specified—that is to say, with any person so defined in section 5 of this act, wishing to purchase lands under the provisions of this section, and who shall have made proper application therefor, and duly establish his or her right to purchase under the provisions of this act, the state land register is hereby authorized and required to enter into contract to sell such lands, upon the receipt of the list certifying the approval of such lands to the state, upon the following conditions, to wit: One-fifth of the purchase price to be paid upon application, the remainder of the purchase price to be paid in fifty years from the date of contract, with interest at the rate of six per cent per annum, interest payable annually; *provided*, that the applicant, or his heirs or assigns, may, at any time prior to the maturity of such contract, make full payment of the principal and interest due under the terms of such contract and receive patent in the name of the applicant. All such contracts shall be entered into in writing with the person so purchasing, in which the conditions shall be distinctly expressed, that upon the failure to pay the annual interest or principal when due, as stipulated, the land shall immediately thereafter be subject to sale in the same manner and under the same conditions as though no such prior contract of sale had been made; *provided*, that the state land register is hereby authorized to accept an overdue interest payment on any contract during the period of one year from the date required for such interest payment; but when application is made for any portion of the land described in any contract on which the annual interest payment is overdue, it shall be the duty of the state land register to immediately declare such contract forfeited, and to accept and certify such application, and the remainder of the land embraced in such forfeited contract shall unconditionally revert to the state. It shall be the duty of the register to certify each sale and the terms thereof to the treasurer. The register shall certify to the controller each payment, and the controller upon the receipt of each such certificate, shall issue his order to the treasurer, apportioning the interest to the fund to which it may belong, as in section 5 of this act, and upon payment being made by the applicant of the amount specified in the order, the treasurer shall issue his receipts in duplicate, and when full payment shall have been made, patent shall issue to the purchaser as provided in section 16 of this act. No timber land shall be sold unless the whole purchase price shall be paid at the time of application. *As amended, Stats. 1889, 126; 1899, 124; 1909, 82.*

See State ex rel. Powning v. Jones, under sec. 4 of this act.

**3204. Contracts may be renewed.**

SEC. 9. All contracts in existence at the time of the passage of this act may remain under the same conditions as stipulated in said contracts; or the

unpaid principal may be made the subject of a new contract under the provisions of the foregoing section, to be paid within fifty years from the date of such new contract, with interest at the rate of six per cent per annum at the option of the holder of such contract; *provided*, that such contract shall be made only on the day when the annual interest payment becomes due; *and provided further*, that the applicant shall pay to the state land register a fee of fifty cents for each and every new contract so issued; said fees shall be used by the state land register for the payment of extra clerical labor employed in preparing and recording such new contract. The state land register is hereby authorized and empowered to make such rules and regulations as will carry out the provisions of this act. *As amended, Stats. 1909, 83.*

### 3205. Register to cause notice to be given.

SEC. 10. The state land register shall, with reasonable dispatch, cause proper notices to be prepared, requiring the applicant, or his or her agent or attorney, to make full payment, or enter into contract, in the applicant's name, with the state land register, as provided in section 8 of this act, for the purchase of the land applied for by said applicant, and shall inclose with such notice duly prepared contracts, in duplicate, for the applicant to sign, and shall address the same to such applicant, or his or her agent or attorney, by mail in registered letter, and the register shall file the postoffice receipts in his office. If, at the expiration of ninety days from the date of mailing of such notices and contracts in duplicate, the person so notified, or his or her legal representative, shall fail to make the required full payment, or to sign and return to the register such contracts, he or she shall forfeit his or her right to complete the purchase of such land, and the title of the state to such land shall rest as fully in the state as though it had never been applied for, and shall be subject to sale to any person, including the person so forfeiting such land on previous application. Any and all sums of money deposited as partial payments on lands so forfeited shall immediately and unconditionally become the property of the state. *As amended, Stats. 1889, 127.*

See State ex rel. Powning v. Jones, under sec. 4 of this act.

### 3206. Unlocated land warrants—Rights of holder.

SEC. 11. The holder of any unlocated land warrant of this state, heretofore issued, shall have the right to use the same in payment for lands which he or she may desire to purchase from the state, and any person holding any of said warrants for one hundred and sixty acres or less, at the rate of two and one-half dollars per acre, shall be allowed to surrender the same to the state treasurer in full payment for double the number of acres expressed therein, of land valued at one and one-fourth dollars per acre. And upon the surrender of such land warrant to the controller by the treasurer, properly indorsed, the controller shall draw his warrant upon the state school fund, in favor of the state treasurer, for the amount of said land warrant.

Where one applied to the state to purchase certain public land, which, however, was not part of a sixteenth or thirty-sixth section, or of land selected in lieu thereof, and deposited a land warrant issued under acts of 1865, 173, and 1866, 194, it was held such warrant was not receivable in payment for that class of land, and that no right accrued to the applicant or his grantees.

The only land which could be purchased with a school-land warrant was that embraced in the sixteenth or thirty-sixth sections or land selected in lieu thereof.

The privilege given by the act of 1867, 165, to "the holders of any unlocated land warrant" is limited to the lands "subject to sale by private entry." State ex rel. Sharon v. Treadway, 7 Nev. 241.

### 3207. Moneys paid on order from controller.

SEC. 12. All moneys hereafter paid into the treasury on lands shall be paid in on an order from the controller, and all moneys refunded to applicants shall be drawn out upon a warrant issued by the controller upon the treasurer, as provided in section 5 of this act. All purchases to be completed,

on amounts to be refunded, upon special deposit receipts issued by E. Rhoades, defaulting treasurer, and still outstanding, shall be disposed of in the following manner: Whenever purchase can be completed, in part or in whole, upon lands thus applied for, the state land register shall complete such sale, surrendering to the controller the treasurer's receipts issued by E. Rhoades, with his certificate of the completion of such sale, and the controller shall receive and file the same in his office as vouchers. The register shall at the same time also certify such sale to the treasurer. Whenever, by reason of nonapproval of lands to the state, or other cause, the contemplated sale cannot be completed, the land register shall certify to the controller that such applicant is entitled to the amount paid, and the controller shall file such certificate in his office as a voucher, drawing his warrant upon the proper fund for said amount, and the treasurer shall pay the same. The land register shall, at the same time, certify in like manner to the treasurer. *As amended, Stats. 1889, 127.*

**3208.** When two or more persons apply for the same lands, proceedings—Artesian well to give preferred right—Rights of first applicant—Board to decide rights of contesting claimants—Contests to be certified to district court, when—Practice in hearing contested cases—Cost of contest.

**SEC. 13.** An occupant or party in possession shall have a preferred right to purchase all the lands he or she may be entitled to purchase under the provisions of this act, for the period of six months after the date of filing in the state land office of the official plat or plats covering the survey, by the United States government, of the land occupied or possessed by him or her. After the filing in the state land office of a formal application for lands, not previously approved to the state, should one or more persons, each claiming a preferred right by reason of occupancy or possession severally apply to purchase the same lands, the register shall require each of such claimants to make and deposit with his or her application an affidavit affirming occupancy or possession thereof, dating prior to the filing of the first existing application for the lands so claimed. An occupant or party in possession as named in this act and section, shall be deemed and considered to include any person, as defined in section 5 of this act, who, after the approval of this act, shall commence, and prosecute with due diligence, the sinking of an artesian well upon any unoccupied public lands, subject to selection by the State of Nevada, according to the requirements of an act to encourage the sinking of artesian wells, approved March 5, 1887, and acts amendatory thereof and supplementary thereto, and every such person shall be entitled to all the rights and privileges of an occupant or party in possession, as to a preferred right to purchase when he or she shall have complied with the provisions of said act, concerning said well and the requirements herein written as to diligence in the prosecution of said work, and upon proof being made before the proper court, as hereinafter provided, that said person has complied therewith, his or her preferred right shall date from the commencement of the sinking of said well. When two or more persons severally apply to purchase the same lands, the first applicant, although not claiming a preferred right to purchase, shall be entitled to appear and contest the right of an applicant to purchase under the claim of a preferred right. When two or more persons severally apply to purchase the same lands, neither claiming a preferred right, the first applicant shall be allowed to purchase. It shall be the duty of the state land register to notify the first existing applicant or his or her attorney or other legal representative, immediately upon the filing of a subsequent application for any portion of the lands embraced in his or her application. Such notice shall be given by registered letter through the

United States mails. When two or more persons simultaneously apply to purchase the same lands, neither claiming a preferred right, the determination of the right to purchase shall be submitted to a board consisting of the state controller, state treasurer, and state land register. The said board shall designate a time to receive bids from the several applicants who have simultaneously applied to purchase the lands in question, and shall proceed to determine and award the right to purchase to the highest bidder. The board shall direct the state land register to proceed toward the completion of such highest bidder's application. The money derived from such bids shall be added to the original deposit on each successful application. All cases of contest arising under the provisions of this act from other causes than simultaneous applications shall be certified, together with all the facts in his possession relating thereto, by the state land register, to the district court in and for the county in which the lands in dispute are situated, and the land register shall, at the same time, notify the contestants, by registered mail, of the certification of their cause to the proper court. When a cause shall have been certified by the state land register to the district court for trial, it shall be the duty of the clerk of the court in which the action is pending forthwith to notify the respective parties, and, within forty days after proof of service of notice of such certification, the party making the contest shall file and serve upon the adverse party a complaint setting forth the facts upon which he or she claims to be entitled to purchase the lands. The adverse party shall, within twenty days after the service of the complaint, file an answer setting forth the facts relied upon. In case of default, the court shall proceed to hear and determine the controversy as upon default in other cases. The notice, complaint and answer shall be served in the manner now provided by law for service of process in other cases. In case the party making the contest should neglect to file a complaint, as herein provided, the first applicant shall be entitled to a judgment of the court upon the papers certified by the state land register, decreeing him or her to be entitled to purchase said lands. In case of the rendition of judgment under the provisions of this section, the clerk of the court shall immediately transmit to the state land register, certified, a copy of said judgment, together with a certified statement of all the accrued costs of said contest in said court. All costs in contested cases shall be paid by the parties litigant, as the court or judge may determine. Upon receiving the certificate of the clerk of the court, or order of the board, as herein provided, the state land register shall proceed with the successful applicant, as if he or she alone had applied, and immediately cancel all other applications for the lands in question. It shall be the duty of the state land register to notify each unsuccessful applicant that his or her application has been canceled, and that the amount deposited thereon may be withdrawn from the state treasury, as provided in section 5 of this act; *provided*, that the state land register may withhold from the amount so deposited by said unsuccessful applicant a sum sufficient to pay and satisfy the costs of the contest in the district court as herein provided, and the state land register is hereby directed to transmit to the clerk of said court, taking his receipt therefor, the amount so withheld, and directing that the same shall be applied by said clerk to the satisfaction of the costs adjudged against said unsuccessful applicant; *provided, further*, that if said unsuccessful applicant shall fail, for a period of thirty days after the rendition of the judgment by the district court, to make application for the withdrawal of the amount so deposited by him under the provisions of this act, it shall be the duty of the state land register to make application for withdrawal of the same, and out of said sum so withdrawn shall pay the costs, as herein provided, and remit any balance to said unsuccessful applicant. *As amended, Stats. 1887, 118; 1889, 120; 1891, 101; 1893, 59.*

Regarding simultaneous applications, see secs. 3198, 3221.

Where a person acquires the United States patent to land, he acquires a new title, against which there is no prescription; in other words, his patent sweeps away all former titles, and confers upon him as complete a title as the United States had. *Vansickle v. Haines*, 7 Nev. 250.

An applicant claiming a preferred right of purchase is not limited to 320 acres, but is entitled to 640 acres. *State ex rel.*

*Springer v. Preble*, 20 Nev. 39, 43 (14 P. 584).

This act makes no provision for easements where there are two or more simultaneous applicants for the same lands, and neither applicant claims a preferred right to purchase by reason of prior occupancy or possession. Mandamus to the surveyor-general and ex officio land register, to compel him to sell to one applicant, in preference to the others, in such a case, will therefore be denied. *State ex rel. Sohl v. Preble*, 20 Nev. 44 (14 P. 586).

### 3209. Two-million-acre grant.

SEC. 14. All lands which have been or shall be selected under the two-million-acre grant of June sixteenth, eighteen hundred and eighty, may be sold in tracts equal to six hundred and forty acres to each applicant, notwithstanding such applicant may have heretofore purchased, or may hereafter purchase, three hundred and twenty acres of the state, selected under other grants of land to the state. No lands shall be sold in tracts less than the smallest legal subdivision. *As amended, Stats. 1889, 128.*

The fact that the equitable owner of the land permitted a number of years to elapse without taking action which he might have taken to obtain a legal title, does not pre-

vent him, when sued for the land, from setting up his equity in defense of his possession. *Dutertre v. Shallenberger*, 21 Nev. 507, 515 (34 P. 449).

### 3210. Register to select.

SEC. 15. It is hereby made the duty of the state land register to select as portions of the several grants of land to this state all lands for which money has been deposited under the provisions of this act. *As amended, Stats. 1889, 128.*

### 3211. Patent to land from state.

SEC. 16. The title of the state to any lands sold under the provisions of this act shall be conveyed by patent, free of charge, to the applicant, and none other, except as may be otherwise ordered by a competent court having jurisdiction. All patents shall be in such form as the attorney-general and land register shall jointly prescribe, to be prepared by the land register, signed by the governor, and shall have the great seal of the state affixed by the secretary of state, and shall be countersigned by the register. The secretary of state and state land register shall each keep a record of patents issued. *As amended, Stats. 1889, 128.*

Mineral land reserved, sec. 2457.

[Sec. 17 superseded by various salary acts.]

### 3212. Selections erroneously made.

SEC. 18. The state land register is hereby authorized to withdraw from the local and general land offices of the United States all selections of lands that have been or may be erroneously made, at any time before such lands have been listed and approved to the state by the department of the interior. And the governor is hereby authorized to reconvey, by deeds of relinquishment, all lands that have been or may hereafter be erroneously listed as approved to the state, in such form as the secretary of the interior may prescribe. Such deeds of relinquishment shall be duly attested by the secretary of state, under the seal of his office, and be countersigned by the register of the state land office; *provided*, that in no case shall any selections of lands be withdrawn, or deed of relinquishment executed, so long as there shall be any existing contract or patent for the same, or any pending litigation respecting the right of title of the state to such lands. Nor in any case shall such lands be conveyed or relinquished, when the same were sub-

ject to selection, or where the state's title to such land is valid. When such deeds shall have been executed they shall be forwarded to the commissioner of the general land office at Washington, D. C. The state land register shall, immediately after forwarding such deeds to the general land office, deduct the number of acres thus reconveyed from the amount of lands charged to the state under her grants from the United States. *As amended, Stats. 1887, 46; 1889, 128.*

### 3213. Seal of state land office.

SEC. 19. The impression of the seal of the state land office upon the original or copy of any paper, plat, map, or document emanating from such office, shall impart verity to the same, and such paper, plat, map, or document bearing the impression of such seal, shall be admitted as evidence in any court in this state, and the use of such seal by the state land register is hereby authorized.

The affidavits and declaratory statements of entrymen applying to preempt public lands, filed in the proper land office, or copies thereof certified thereto by the register of the land office wherein the originals are filed, are admissible as evidence of the facts therein stated. *Peers v. Deluchi, 21 Nev. 164 (26 P. 228).*

A certificate of the register of the land office containing a copy of all the entries, as to preemption, settlement, payment of purchase money, and issuance of patent, that appeared in the books of the land office, in relation to the lands in question, is competent evidence of the facts intended to be proven thereby. *Brown v. Warren, 16 Nev. 229.*

### 3214. Investment of funds.

SEC. 20. All funds derived from the sale of lands under this act shall be invested in interest-bearing bonds of this state or of the United States, as required by section 3, article 11, of the constitution of this state. The proceeds of the sale of lands donated to this state by act of Congress of July second, eighteen hundred and sixty-two, shall be invested by the board of regents, and the proceeds of other lands herein referred to, whenever the sum of five thousand dollars shall have been paid into the state school fund, shall be invested as directed by law.

See sec. 355.

### 3215. Board of examiners to allow claims.

SEC. 21. All claims and accounts for services, or for expenses authorized by and legitimately incurred in carrying out any of the provisions of this act, except the salaries of the register and his deputy, shall be presented by itemized bills to the state board of examiners; and when any such claim shall be allowed by said board, they shall indorse thereon their approval of the same, and direct out of what fund or funds the claim so allowed shall be paid. Payment of all such allowed bills shall be made from appropriations made by law of moneys arising from sales of lands under this act. *As amended, Stats. 1889, 129.*

### 3216. Acts repealed.

SEC. 22. An act entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March fifth, eighteen hundred and seventy-three, p. 120; also, an act supplementary to the foregoing, approved March seventh, eighteen hundred and eighty-one, p. 162; also, an act to amend an act entitled "An act fixing the price of lands within the limits of the Central Pacific Railroad grant," etc., approved February nineteenth, eighteen hundred and eighty-three, p. 42; also, an act in relation to the sale of certain lands granted by the United States to the State of Nevada, approved March first, eighteen hundred and eighty-three, p. 103; and all other acts and parts of acts, so far only as in conflict with the provisions of this act, are hereby

repealed; *provided*, that such repeal shall not divest any parties of any rights heretofore acquired under any of said acts referred to.

*An Act to amend an act entitled "An act supplemental to an act entitled 'An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada,' approved March 12, 1885, as amended February 1, 1887, as amended February 9, 1887, as amended March 3, 1887, as amended March 5, 1887; as amended March 5, 1887, as amended March 11, 1889, as amended March 11, 1889, as amended March 21, 1891, as amended February 28, 1893, as amended March 10, 1897, as amended March 18, 1899," approved March 13, 1903.*

Approved March 17, 1905, 110

### 3217. When claimant abandons—When neither party prosecutes.

SECTION 1. Any applicant for lands in the State of Nevada, who is now a contestant or party to any suit in the courts of this state involving the right to purchase the lands so applied for, and who fails to prosecute with due diligence the suit or suits so instituted, within one year after the approval of this act, shall be deemed as having abandoned his or her right in said land or lands, and the opposing or adverse applicant or claimant shall be entitled to complete and purchase and receive a patent or patents therefor. Where neither party to the suit or contest prosecutes the suit with due diligence within the time required by the provisions of this act, the suit shall be dismissed by the court before which such suit is pending, upon the request of any citizen of the state, and upon the payment to the clerk of said court by the party making such request, of all court costs, it shall be the duty of the clerk of the court to immediately notify the state land register of the dismissal of such suit, and upon the receipt of such notification, the state land register shall declare the land and money paid therefor forfeited to the state, and the land shall be open to entry. *As amended, Stats. 1905, 205.*

### 3218. Land and money forfeited to state, when.

SEC. 2. Where the contest papers certified from the state land office have not been filed, then the certificate of the clerk that no suit is pending before said court affecting said contest or contests, shall operate and have the same force and effect as the certificate of dismissal in cases where suits are pending and the contest papers have been filed, and upon receipt of such certificate of no suit pending the state land register shall declare the land and money paid therefor forfeited to the state, and the land shall be open to entry.

*An Act to provide for the advertising of certain unapproved lands, fixing the charge therefor, and providing for the expense of affidavits.*

Approved March 9, 1899, 59

### 3219. Relating to advertising of certain unapproved lands—Applicant to bear actual expenses.

SECTION 1. All applicants for the purchase of land not approved to the state at the time of making application, shall deposit with the state land register, in addition to the amount of fees required for selecting the same in the United States local land office, the amount of fees required for advertising such selection, if the land so selected, or any part thereof, be situated within a township containing any mineral entry, claim or location, said advertising fees or charges, when a daily newspaper is designated, not to exceed seven dollars for each ten lines of space for sixty-one consecutive day's publication, and where a weekly newspaper is designated as the medium of publication, five dollars for the same space of ten lines, for ten consecutive publications. The applicant in every instance shall also bear the actual expense of all non-

mineral affidavits required by law, or by the regulations of the United States general land office.

*An Act to provide for determining the rights of applicants who simultaneously apply to purchase the same lands from the State of Nevada.*

Approved March 21, 1891, 103

### 3220. Board of awards, how organized.

SECTION 1. A board is hereby created which shall be known as the board of award of the State of Nevada, and shall consist of the state controller, state treasurer and state land register. Said board shall organize by electing from their number a chairman and secretary. All meetings shall be held at the state capitol. A majority of the board shall constitute a quorum.

### 3221. Powers and duties of—Simultaneous applications.

SEC. 2. The powers and duties of said board shall be: First—To prescribe rules in accordance with law, for their own government and the transaction of business. Second—To receive bids and determine the rights of all applicants who may have simultaneously applied to purchase the same lands from the State of Nevada.

See secs. 3198-3208.

*An Act relating to contracts and patents for state lands, and matters pertaining thereto.*

Approved March 24, 1911, 355

### 3222. Contracts, how renewed—How patent rights inure.

SECTION 1. All contracts made by the State of Nevada for the sale of lands may be renewed as now provided by law by the contractor, or by his or her successor in interest, or by the holder of or claimant under the original contract, or by the agent of such contractor, successor in interest, holder or claimant, regardless of whether the original contractor be living or dead; but, unless otherwise ordered by a court of competent jurisdiction, such new contract shall be made only in the name of the original contractor, and it shall be sufficient if the same be signed by such successor in interest, holder, claimant or agent. All rights under any new or renewed state land contract, by whomsoever heretofore or hereafter made, and regardless of whether the original contractor be or may have been living or dead at the time of the making thereof, and all rights under any patent issued under any new contract in the name of the original contractor, whether he be or may have been living or not at the time of the making of the contract or the issuance of the patent, shall inure to and become vested in him or her or in his or her heirs, devisees, assignees in interest, or other legal representatives, the same as if such contract had been renewed by the original contractor or such patent had been issued during the life of such deceased contractor.

*An Act relating to the issuing and effect of patents for state lands.*

Approved March 16, 1903, 179

### 3223. Issuance of patent in name of deceased applicant—Effect.

SECTION 1. In case of the death of the applicant for any state lands, upon payment and compliance with the law by his heirs, devisees or assignees, patents for such lands shall issue in pursuance of any statute of this state in his name the same as if he were living, without requiring any order of court, and when so issued the title to the lands designated in these patents, and the title to lands embraced in any patent heretofore issued after the death of the applicant, shall inure to, and become vested in, the heirs, devisees or assignees

of the deceased patentee as if the patent had issued to the deceased person during life.

*An Act defining the rights of applicants for and contractors to purchase land from the State of Nevada, and providing for maintaining certain actions concerning such land.*

Approved March 5, 1887, 124

### 3224. Right to exclusive possession.

SECTION 1. Every person who has applied to the State of Nevada to purchase any land from it, or who has contracted with the State of Nevada for such purchase, or who may hereafter apply to or contract with the State of Nevada, in good faith, for the purchase of any of its public land, and who has paid, or shall pay to the proper state officers, the amount of money requisite under such application or contract, shall be deemed and held to have the right to the exclusive possession of the land described in such application or contract; *provided*, no actual adverse possession thereof existed in another at the date of the application.

Regarding possessory actions to public lands, see secs. 5349-5356.

### 3225. May defend action.

SEC. 2. Every person who has contracted with the State of Nevada, in good faith, to purchase any land from it, shall be entitled to maintain or defend any action at law or in equity concerning said land or its possession, which may now be maintained or defended by persons who own land in fee, and every person who has applied or may hereafter apply to the State of Nevada, in good faith, to purchase any land from it, and has paid or shall pay the amount of money which may be required under such application, to the proper state officer, shall be deemed and held to have the right to the exclusive possession of such land, and shall be entitled to maintain and defend any action at law or in equity, concerning such land or the possession thereof, which may now be maintained or defended by persons who own land in fee; *provided*, no actual adverse possession of such land existed in another at the date of such application.

### 3226. Prospector may enter and work mine.

SEC. 3. Nothing in this act contained shall be so construed as to prevent any person or persons from entering upon such lands for the purpose of prospecting for any of the precious metals, or to prevent the free and economical working of any mine which may be discovered therein.

See secs. 2456, 2458, 2459.

One taking a patent to state lands, containing above reservation, acquired no interest in a mine located after his application was filed, and before the patent issued, notwithstanding that the selection by the state under the grant by the government determined that the lands were agricultural and nonmineral, within the meaning of the grant. *Stanley v. Mineral Union, Limited*, 26 Nev. 55, 65, 66 (63 P. 59).

Previous acts in regard to public lands have been cited as follows:

**Act of 1865, 173:** Cited, *O'Neale v. Cleveland*, 3 Nev. 491.

**Act of 1867, 57:** See citation from *Heydenfeldt v. Daney G. & S. M. Co.*, under sec. 215.

This state, in accepting the grant, unequivocally consented to the reservation by Congress of the mineral lands, and accepted the

grant with all the conditions and reservations contained in the act of Congress. *Heydenfeldt v. Daney G. & S. M. Co.*, 10 Nev. 291, 311-319.

If the state had a vested title to the mineral lands contained in the sixteenth and thirty-sixth sections, by this act, it relinquished its right thereto, and thereby agreed to accept other lands in lieu thereof; the passage of this act was a recognition by the legislature of the validity of the claim made by the United States to the mineral lands. *Idem*.

Where plaintiff claims title under patent issued by the state under virtue of a statute authorizing the conveyance of lands granted by enabling act: Held, that the title of the state to the land so conveyed was, at the time of the survey thereof, subject to the terms and conditions imposed by this act;

and as the said land was then rich in minerals, and was in possession of defendant for mining purposes, the plaintiff acquired no title thereto by virtue of the patent. *Idem.*

This act applies to all grants made by Congress where the lands granted had not been surveyed, and includes the grant mentioned in the enabling act. *Idem.*

The word "public," as used in this act, is applied to all unsurveyed lands, whether the same had been previously granted or not, and is used to distinguish the unsurveyed from the surveyed and segregated lands, where the rights of private proprietorship have attached. *Idem.*

No patent can be issued in the name of any person who has already purchased from the state 320 acres of land. *State ex rel. Faris v. Hatch, 15 Nev. 304, 306.*

**Act of 1867, 165:** By this act, an intention was manifested by the state to sell such public lands as the sixteenth and thirty-sixth sections, vested in it without selection, as well as the lands it was authorized to select. *State ex rel. Wall v. Blasdel, 4 Nev. 241.*

The board of regents, under this act, were authorized to fix the price of public land in but one instance, and that was when the lands had previously been selected in lieu of the sixteenth and thirty-sixth sections. *Idem.*

Under this act the sixteenth and thirty-sixth sections belonging to the state, which were not applied for by actual settlers within six months after its passage, became subject to entry at the minimum price. *Idem.*

Section 6 of this act refers only to such lands as are selected by the state as provided in sections 4 and 5 of the act and not to the sixteenth and thirty-sixth sections, which vest in the state without selection. *Idem.*

Under sec. 6 of this act a settler on public land selected for the state has for six months after selection a preferred right to purchase at the minimum price, notwithstanding the fact that more may have been offered by one not the first occupant. *Idem.*

Where occupants of public land erected fixtures, consisting of a sawmill, thereon, but failed to take any steps to acquire the title to the same, and afterward the land was selected by the state, and (not being applied for by the occupants within six months) was duly sold and patented to other parties, subsequent to which the occupants removed the mill, it was held that they were trespassers and liable in damages for such removal. *Treadway v. Sharon, 7 Nev. 38, 47, 48.*

In a suit against the sureties of the state treasurer for the loss of "special deposits" paid in under this act, the measure of damages is the amount of the deposits, unless a nonapproval of the land locations for which the deposits were made, or an actual repayment to or release by the depositor or something equivalent thereto, is shown in mitigation. *State v. Rhoades, 7 Nev. 435, 439, 441.*

"Occupant" and "party in possession" are

not strictly synonymous. Occupant means one dwelling upon and occupying a part of a tract of land; it does not necessarily imply that the party is in possession of the whole. *O'Neale v. Cleveland, 3 Nev. 485, 489, 491.*

Parties who become occupants before selection of lands afterwards selected in lieu of the sixteenth and thirty-sixth sections, are entitled at their option to buy the same at \$1.25 per acre; although they may have previously purchased the land warrants to locate the same lands. *Idem.*

Section 7 was not intended to prohibit the judge from hearing such testimony where convenient to himself and preferable to the parties. *O'Neale v. Cleveland, 3 Nev. 486, 493, 495.*

Section 11, if construed by itself would be held to confer a preferred privilege on the occupant who purchased the entire sixteenth or thirty-sixth section upon which he might have an occupancy; but taken in connection with other sections it is clear that the legislature only intended to give this preferred right to the extent either of 160 or 320 acres. *O'Neale v. Cleveland, 3 Nev. 485, 491-495.*

Lands selected in lieu of sixteenth and thirty-sixth sections are to be disposed of in accordance with the provisions of this section and section 21 of this act. *O'Neale v. Cleveland, 3 Nev. 485, 494, 495.*

Section 12 was intended by the legislature to give a preferred right to the actual occupant. But the extent of that preferred right not being shown in this section, we have to resort to section 11 and other portions of the act to ascertain the quantity or extent of land to be affected by this preferred right. That quantity cannot be less than 160 acres. *Idem.*

This section gave first a preferred right to the actual occupant. Next, if no claim was asserted by an actual occupant, then to any person who had applied to locate a land warrant on lands selected in lieu of the sixteenth and thirty-sixth sections.

Section 21, taken in connection with other portions of the act indicates: First, that an occupant shall have a preferred right of purchase over all other persons; second, that rights shall be limited in quantity to 160 or 320 acres; third, actual occupancy of any portion of the section would give a preferred right to at least 160 if not to 320 acres; fourth, the purchase should be within the time limited to other preferred purchases. *O'Neale v. Cleveland, 3 Nev. 485.*

**Act of 1871, 135:** Cited, *Shoemaker v. Hatch, 13 Nev. 264.*

No patent can be issued in the name of any person who has already purchased from the state 320 acres of land. *State ex rel. Faris v. Hatch, 13 Nev. 304, 306, 307.*

Cases of contest for public land under this act, being governed by the practice act as far as applicable, a statement for motion on new trial in such case, which contains no specifications of error, is insufficient. *Neil v. Wynecoop, 9 Nev. 46, 47.*

**Act of 1873, 120:** Where a party has a

contract of purchase from the state, he has the beneficial estate or interest as well as the possession, and as such equitable owner and actual possessor is entitled to enjoy all the incidents to the land and its ownership as well as to the land itself. *Barnes v. Sabron*, 10 Nev. 218, 228.

In construing this act it was held that no patent can be issued in the name of any person who has already purchased from the state 320 acres of land. *State ex rel. Faris v. Hatch*, 15 Nev. 304, 307.

Where there is but one applicant claiming a preferred right to purchase land under this act, the register should proceed at once and enter into a contract with the applicant, providing his claim presents a prima facie case and was filed within the time provided by law; and his duty in this respect, being ministerial, may be enforced by mandamus. *State ex rel. Springer v. Preble*, 20 Nev. 38-44 (14 P. 584).

A claimant of a preferred right need not set forth in his application the facts upon which his occupancy or possession is based, so as to enable the register to determine therefrom whether the applicant possesses the requisite qualifications prescribed by statute. *Idem*.

Contests for public land are governed by the provisions of the practice act so far as applicable. *Burbank v. Rivers*, 20 Nev. 81-83 (16 P. 430).

The method of taking appeals, and the questions to be considered thereunder by the appellate court, are matters of purely statutory regulations. *Idem*.

**Act of 1881, 115:** Under this act an applicant claiming a preferred right of purchase is not limited to 320 acres, but is entitled to 640 acres. *State ex rel. Springer v. Preble*, 20 Nev. 38-44 (14 P. 584).

## PUBLIC LIBRARIES

### *An Act to provide for free public libraries and other matters relating thereto.*

Approved March 16, 1895, 79

3227. On petition, commissioner to levy tax for library fund.  
3228. Library trustees, how appointed—Term—No compensation.

3229. Powers of library trustees.  
3230. Manner of paying claims.  
3231. Library and rooms to be free.

State library, sections 3946-3964.

District school library, sections 3393-3397.

### 3227. On petition, commissioners to levy tax for library fund.

**SECTION 1.** Whenever in any county in the State of Nevada a petition or petitions for the establishment of a free public library, certified by the district judge of any judicial district of the State of Nevada as being signed by a majority of the taxpayers or by taxpayers representing a majority of the taxable property, as shown by the last preceding assessment roll of any city, unincorporated town or school district shall be presented to the board of county commissioners of the county in which said city, unincorporated town or school district is situated, accompanied by affidavit of one or more of the signers thereof that the signatures thereto are genuine, the said board of county commissioners shall within ten days after said petition or petitions are so presented levy a tax upon all taxable property of said city, unincorporated town, or school district of not less than five nor more than ten cents on each one hundred dollars valuation of taxable property therein for the purpose of creating a fund to be known as the "Library Fund." And each year thereafter said board of county commissioners at the time and in the manner other taxes are levied shall levy a tax upon said property for said purpose of not more than ten cents on each one hundred dollars valuation thereof. *As amended, Stats. 1897, 30; 1901, 37; 1901, 99; 1907, 181.*

### 3228. Library trustees, how appointed—Term—No compensation.

**SEC. 2.** The state board of education of Nevada, whenever notified that a petition has been presented as provided in section 1 of this act, shall appoint three competent persons who are residents of such city, unincorporated town or school district, to be known as library trustees, who shall hold office for

the period of one, two, and three years respectively, and said state board of education shall annually thereafter appoint one library trustee, who shall hold office for the period of three years, and all vacancies which may occur at any time in the said office of library trustee shall be filled by appointment by the said state board of education; said trustees shall serve without compensation, and shall hold office until their successors are appointed and qualified. *As amended, Stats. 1901, 38.*

### 3229. Powers of library trustees.

SEC. 3. Said library trustees shall have power to, and shall establish and maintain a library and reading room, make purchases, secure rooms, employ assistants, appoint officers, establish by-laws and regulations, and manage and control the affairs and business of said library; and they and their successors, shall hold and possess the property and effects of said library and reading room in trust for the public and for the purpose of said library and reading room, and may as said library trustees, and for the purpose hereinbefore provided, acquire and hold real estate and personal property, by purchase or bequest, and administer any trust declared or created, for such library or reading room, and may prosecute, maintain or defend any action, in reference to the property or affairs of said library and reading room.

### 3230. Manner of paying claims.

SEC. 4. All claims for indebtedness incurred or created by said library trustees, shall be audited by a majority of said library trustees, and presented to and acted upon by the board of county commissioners, and paid out of said library fund in the same manner as claims against the county are presented, acted upon and paid. No indebtedness in excess of the amount of money, to be realized in any year from said levy for said library fund, shall be incurred by said library trustees, or allowed by the board of county commissioners, and in no case shall any claim except for library and reading-room purposes, be allowed or paid out of said library fund.

### 3231. Library and rooms to be free.

SEC. 5. Said library and reading room shall forever be and remain free and accessible to the people of such city, unincorporated town or school district, subject to such reasonable rules and regulations as said library trustees may adopt.

## PUBLIC RECORDS

*An act empowering all persons to copy or make abstracts or memoranda of all books and records of state and county officers and to utilize the same to supply the general public with copies, abstracts, and memoranda, and to otherwise make use thereof.*

Approved March 20, 1911, 290

### 3232. State and county records may be copied.

SECTION 1. All books and records of the state and county officers of this state shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memoranda prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of said records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

Prior to the passage of this act it was held, under sections 1038, 1039, ante, providing that every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged, certified, and recorded in the manner presented, "shall from the time of filing the same with the recorder, for record, impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice," and under other statutes enumerated, as construed in connection with the common law, that a corporation organized for the purpose of furnishing abstracts and guaranteeing titles, may, free of charge, through its agents and employees, during regular business hours, inspect and make memoranda and copies of all the files and records in the office of the

county recorder, in so far as they relate to current transactions in which it is authorized or employed to make searches, furnish abstracts, or guarantee titles by persons having, or seeking to acquire, an interest in property; the examination to be made at such times and under such circumstances as will not prevent the recorder or his assistants from discharging their duties, nor interfere with the right of other persons to have access to the records.

Under the laws mentioned, relator has not the right to copy or inspect all records for the purpose of compiling an independent set of abstract books, covering all the property to which the records relate and for use in equipping an office in opposition to the recorder. *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 50, 5 L. R. A. (N. S.) 545, 124 A. S. 883, 84 P. 1061.

## PUBLIC SAFETY

### *An Act to secure persons and animals from danger arising from mining and other excavations.*

Approved February 8, 1866, 59

3233. Safeguards to be erected.

3234. Notice of violation of preceding section may be filed—What notice shall state.

3235. Upon filing notice, justice or judge to issue an order.

See chapter 16, Crimes, sections 6561-6591.

See Explosives, sections 1946-1948, 6561-6591.

3233. Safeguards to be erected.

**SECTION 1.** Any person or persons, company or corporation, who shall hereafter dig, sink, or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation, or hole, whether used for mining or otherwise, or whether dug, sunk or excavated, for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking, or excavating, or after they may have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences, or other safeguards, and keep the same in good repair, around such works or shafts, sufficient to securely guard against danger to persons and animals, from falling into such shafts or excavations.

This act is not limited to excavation for mining purposes, but requires the guarding of excavations in streets, made for the benefit of abutting owners, rendering them liable for injuries to a traveler because of their failure to comply therewith. *Anderson v. Feutsch*, 31 Nev. 501 (103 P. 1013, 105 P. 100).

3236. What notice shall require—Liable to fine in addition to judgment.

3237. Suits to be in name of the state.

3238. County commissioners shall fence abandoned excavations—Expenses, how paid.

An excavation in a sidewalk in a traveled thoroughfare is so inherently dangerous that the person making it cannot escape responsibility for injuries to others by having the work done by an independent contractor; he being bound to protect others from injury therefrom. *Idem*.

3234. Notice of violation of preceding section may be filed—What notice shall state.

**SEC. 2.** Any person being a resident of the county, and knowing, or having reason to believe, that the provisions of section 1 of this act are being or have been violated within such county, may file a notice with any justice of the peace or police judge therein, which notice shall be in writing, and shall

state: First—The location, as near as may be, of the hole, excavation, or shaft. Second—That the same is dangerous to persons or animals, and has been left, or is being worked, contrary to the provisions of this act. Third—The name of the person or persons, company or corporation, who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein. Fourth—If abandoned, and no claimant; and, Fifth—The estimated cost of fencing, or otherwise securing the same against any avoidable accidents.

The notice under this section must state that the person or persons proceeded against are the owners, or in possession, of the unguarded well or excavation, in order to

give a justice court jurisdiction of the person. *Wiggins v. Henderson*, 22 Nev. 103-108 (36 P. 459).

### 3235. Upon filing notice, the justice or judge to issue an order.

SEC. 3. Upon the filing of the notice, as provided for in the preceding section, the justice of the peace, or judge of the police court, shall issue an order, directed to the sheriff of the county, or to any constable or city marshal therein, directing such officer to serve a notice, in manner and form as is prescribed by law for service of summons upon any person or persons, or the authorized agent or agents, of any company or corporation named in the notice on file, as provided in section 2 of this act.

### 3236. What notice shall require—Liable to fine in addition to judgment.

SEC. 4. The notice thus served shall require the said persons to appear before the justice or judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show, to the satisfaction of the court, that the provisions of this act have been complied with, or if he or they fail to appear, judgment will be entered against him or them for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this act, which judgments and fines shall be adjudged and collected as provided for by law.

But one fine can be imposed on all persons jointly proceeded against under this section. *Wiggins v. Henderson*, 22 Nev. 103-108 (36 P. 459).

### 3237. Suits to be in the name of the state.

SEC. 5. Suits commenced under the provisions of this act shall be in the name of the State of Nevada, and all judgments and fines collected shall be paid into the county treasury for county purposes.

### 3238. County commissioners shall fence abandoned excavations—Expenses, how paid.

SEC. 6. If the notice filed with the justice of the peace, or police judge, as aforesaid, shall state that the excavation, shaft, or hole, has been abandoned, and no person claims the ownership thereof, said justice of the peace, or judge, shall notify the board of county commissioners of the county, or either of them, of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid first, out of the fines and judgments collected in accordance with the provisions of this act, as other county expenses; *provided*, that nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence, or otherwise guard, any shaft, excavation, or hole, unless in their discretion the same may be considered dangerous to persons or animals.

## PUBLIC SCHOOLS

An act concerning public schools, sections 3239-3461.

An act to provide books, equipment and materials, and to encourage the economic use thereof by the pupils, sections 3462-3472.

An act to authorize the issuance of interest-bearing school warrants in emergencies, sections 3473-3477.

Providing certain percentage of fees from national forest reserves for school fund, section 3478.

### CONSTITUTIONAL PROVISIONS

Education to be encouraged, section 353.

System of common, to be provided for, sections 354, 357.

Normal and other, may be established, section 357.

Special tax for support of, section 358.

Sectarian instruction in, prohibited, section 361.

Attendance upon public schools, laws to secure general, to be passed, section 354.

State lands, proceeds of, devoted to, section 355.

Proceeds of escheated estates, all fines collected under penal laws, all property given or bequeathed to state for educational purposes, solemnly pledged for, section 355.

Shall not be transferred to any other fund for other uses, section 355.

Interest thereon to be apportioned among counties, section 355.

State university to be provided for, sections 355, 356.

Superintendent of public instruction: Liable to impeachment, section 335; election, term of office, section 353; perform other duties as may be prescribed by law, section 315.

State university, sections 4638-4670.

Virginia City school of mines, section 4671.

State superintendent of public instruction, sections 4341-4346.

*An Act concerning public schools, and repealing certain acts relating thereto.*

Approved March 20, 1911, 183

Chapter 1—State board of education, sections 3239-3242.

Chapter 2—Superintendent of public instruction, sections 3243, 3244.

Chapter 3—Deputy superintendents of public instruction, sections 3245-3254.

Chapter 4—Teachers' certificates, sections 3255-3273.

Chapter 5—Powers and duties of teachers, sections 3274-3277.

Chapter 6—School trustees, sections 3278-3313.

Chapter 7—School districts, sections 3314-3339.

Chapter 8—General provisions, sections 3340-3360.

Chapter 9—Census marshals, sections 3361-3372.

Chapter 10—School funds, sections 3373-3392.

Chapter 11—District school libraries, sections 3393-3397.

Chapter 12—School books, sections 3398-3412.

Chapter 13—County high schools, sections 3413-3424.

Chapter 14—Normal training schools, sections 3425-3430.

Chapter 15—School district bonds, sections 3431-3442.

Chapter 16—Compulsory education, sections 3443-3451.

Chapter 17—Protection of school children, sections 3452-3454.

Chapter 18—Protection of school property, sections 3455, 3456.

Chapter 19—Location of houses of ill-fame, sections 3457-3459.

Chapter 20—Construction of act, sections 3460, 3461.

NOTE—The annotations in this act refer to former school laws. So far as possible they have been placed under corresponding sections of this law.

### CHAPTER 1

#### STATE BOARD OF EDUCATION

- |   |                                   |
|---|-----------------------------------|
| 3239. State board of education—How com-<br>posed. | 3241. Time of meeting.            |
| 3240. Officers of board.                          | 3242. Powers and duties of board. |

**3239. State board of education—How composed.**

SECTION 1. The state board of education shall consist of the governor, the superintendent of public instruction and the president of the university.

**3240. Officers of board.**

SEC. 2. The governor shall be the president, and the superintendent of public instruction the secretary of the board.

**3241. Time of meeting.**

SEC. 3. The board shall meet at the call of the secretary, but shall hold at least two meetings a year.

**3242. Powers and duties of board.**

SEC. 4. The powers and duties of the board shall be as follows:

1. To prescribe and cause to be enforced the courses of study for the public schools; *provided*, that schools of the first class may have modified courses of study, subject to the approval of the state board of education;

2. To adopt lists of books for district libraries; *provided*, that boards of trustees in districts of the first class may make such adoptions;

3. To revoke or suspend for immoral or unprofessional conduct, evident unfitness for teaching, or persistent defiance of and refusal to obey the laws of the state, or the rules and regulations of the state board or of the state superintendent defining and governing the duties of teachers, any state diploma or any state certificate;

4. To have done by the state printer any printing required by the state board such as state courses of study, the proceedings of the teachers' institutes, blank forms, and such other matter as the state board may require; *provided*, that text-books are not included in such courses of study;

5. To adopt and use in authentication of its acts an official seal;

6. To keep a record of its proceedings which shall be published biennially in the report of the superintendent of public instruction;

7. To designate some monthly school journal as the official organ of the department of education. The publishers of such journal shall mail one copy of every number of such journal to the clerk of every school district in the state and shall file an affidavit with the superintendent of public instruction showing that such copies have been so mailed. The county treasurer of every county before notifying the superintendent of public instruction of the county fund to be apportioned in the July apportionment shall set aside an amount equal to one dollar for each and every school district of the county and this fund shall be known as the school journal fund. The amount certified to the superintendent of public instruction for apportionment shall not include the school journal fund so set aside. The superintendent of public instruction shall draw his orders annually in favor of the publishers of such school journal for an amount equal to one dollar for each and every school district in each county to which the school journal has been sent in accordance with this section, to be paid out of the school journal fund, and the county auditor shall immediately draw his warrant, in favor of the publishers of such journal, for an amount equal to that named in aforesaid order to be paid out of the school journal fund.

## CHAPTER 2

## SUPERINTENDENT OF PUBLIC INSTRUCTION

3243. Election of superintendent of public instruction      3244. Duties of said officer.

**3243. Election of superintendent of public instruction.**

SEC. 5. The superintendent of public instruction shall be elected quadrennially by the qualified electors of the state at the same time and in the

same manner as the governor is elected and shall hold office for the term of four years from the first Monday in January next after the election, and until his successor is elected and qualified.

Under the act of 1865, 413, sec. 9, it was held that hotel bills incurred by the superintendent of public instruction, while staying at a place for the purpose of visiting schools, are not a portion of the "actual traveling expenses" which are to be allowed and paid to that officer. State ex rel. Cut-

ting v. La Grave, 23 Nev. 88, 90, 91 (42 P. 797).

Under the act of 1891, 32, it was held that the superintendent of public instruction was not entitled to receive any of the compensation attaching in solido to the four ex officio offices. State ex rel. Cutting v. La Grave, 23 Nev. 120, 123 (43 P. 470).

### 3244. Duties of said officer.

SEC. 6. The superintendent of public instruction shall have power and it shall be his duty:

1. To visit each county in the state at least once each year for the purpose of conducting institutes, visiting schools, consulting with school officers, and addressing public assemblies on subjects pertaining to the schools; and the necessary traveling expenses incurred by the superintendent in performance of such duties, such traveling expenses to include the cost of transportation and board while absent from his place of residence, shall be allowed, audited and paid out of the general fund, in the same manner as claims upon said fund are now allowed, audited, and paid; *provided*, that the sum so expended in any one year shall not exceed one thousand dollars;

2. To apportion the state distributive school fund;

3. To apportion the county school fund of each county among its various districts;

4. To report to the governor biennially, on or before the first day of December of the years preceding the regular session of the legislature. The governor shall transmit said report to the legislature; and whenever it is ordered published the state printer shall deliver a sufficient number of copies to the superintendent, who shall distribute the same among school officers of the state and of the United States. Said report shall contain a full statement of the condition of public instruction in the state; a statement of the condition and amount of all funds and property appropriated to the purpose of education, the number and grade of schools in each county; the number of children in each county between the ages of six and eighteen years of age; the number of such attending public schools; the number attending private schools; the number attending no schools; the number under six years of age; the number between eighteen and twenty-one years of age; the amount of public-school moneys apportioned to each county; the amount of money raised by county taxation, district tax, subscription or otherwise, by any city, town, district, or county, for the support of schools therein; the amount of money raised for building schoolhouses; a statement of plans for the management and improvement of public schools; and such other information relative to the educational interests of the state as he may think of importance;

5. To prescribe suitable rules and regulations for making all reports and conducting all necessary proceedings under this act and to furnish suitable blank forms for the same; to cause the same, with such instructions as he shall deem necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith. He shall prepare a convenient form of school register for the purpose of securing accurate returns from the teachers of public schools, and shall furnish each school district in the state with such registers. He shall prepare pamphlet copies of the school law and all amendments thereto, and shall transmit a copy thereof to each school trustee, school census marshal, and school teacher in the state;

6. To convene a state teachers' institute biennially in the even-numbered years in such place and at such time as he may deem advisable. It shall be his further duty to convene five district teachers' institutes in the various sections of the state biennially in the odd-numbered years in such places and at such times as he may deem advisable. He shall engage such institute lecturers and teachers as he shall deem advisable, and shall preside over and regulate the exercises of all state and district institutes. No institute shall continue less than four nor more than ten days. The expenses incurred in holding such institute shall be paid out of the state general fund; *provided*, that the amount for the state institute shall not exceed five hundred dollars nor the amount of any one district institute two hundred and fifty dollars and the state controller is hereby authorized and directed to draw his warrants for the same upon the order of the superintendent of public instruction. All teachers shall be required to attend the district institutes held in the supervision districts in which they may be teaching respectively, unless they shall be excused for good cause by the superintendent of public instruction, and without loss of salary for the time thus employed;

7. To call, with the approval of the board of county commissioners, a county teachers' institute in any county at such time and place as in his judgment will best subserve the educational interests of the county, and to preside over and regulate the exercises of the same. The expenses of such institute shall be paid out of the county general fund of the county in which such institute is held; *provided*, that the board of county commissioners shall authorize such institute upon the application of the superintendent of public instruction; *and provided*, that such expenses shall not exceed the sum of one hundred dollars. All teachers shall be required to attend any county institute held in the counties in which they shall be teaching respectively, unless excused for good cause by the superintendent of public instruction, and without loss of salary for the time thus employed;

8. To call meetings of the state board of education in January and June of each year, and at such other times as he shall deem proper or when two members of said board shall request a meeting;

9. To nominate deputy superintendents of public instruction for appointment by the state board of education;

10. To perform such other duties relative to the public schools as may be prescribed by law;

11. To have done at the state printing office any printing required in the performance of his duties;

12. To require a written report from each deputy superintendent on the first day of October, the first day of January, the first day of April, and the first day of July of each school year. Such reports shall contain any information or facts that the superintendent of public instruction may require;

13. To arrange blank forms, including school registers, for teachers' contracts, and supply the same to school trustees and teachers;

14. The superintendent of public instruction shall, at the expiration of his term of office, deliver to his successor all property and effects belonging to his office and take a receipt for the same.

### CHAPTER 3

#### DEPUTY SUPERINTENDENTS OF PUBLIC INSTRUCTION

- |  |                                      |
|--|--------------------------------------|
| 3245. Office of county superintendent abolished. | 3250. Powers and duties of deputies. |
| 3246. Educational districts established.         | 3251. Compensation of deputies.      |
| 3247. Supervision districts.                     | 3252. Powers of deputies.            |
| 3248. Qualifications of deputies.                | 3253. Rules for deputies.            |
| 3249. Duties of deputies.                        | 3254. Removal of deputies.           |

**3245. Office of county superintendent abolished.**

SEC. 7. The office of county superintendent of public schools either as a separate office or as an ex officio office shall be, and hereby is, abolished for all counties in this state on and after the thirty-first day of August, 1907; *provided*, that the ex officio county superintendent shall make the reports for the school year ending on the thirty-first day of August, 1907.

Cited, State ex rel. Daggett v. Collins, 2 Nev. 352.

**3246. Educational districts established.**

SEC. 8. Five educational supervision districts are hereby established as follows: District Number 1, comprising Elko County; District Number 2, comprising White Pine, Lander, Eureka Counties; District Number 3, comprising Humboldt and Churchill Counties; District Number 4, comprising Washoe, Storey, Ormsby, Douglas, Lyon, and Mineral Counties; District Number 5, comprising Lincoln, Nye, Clark, and Esmeralda Counties.

**3247. Supervision districts.**

SEC. 9. Upon the nomination of the superintendent of public instruction the state board of education shall, on or before the first Monday in May, 1911, and each fourth year thereafter, appoint one deputy superintendent of public instruction for each supervision district as herein provided for, and such appointee shall, at the time of his appointment and during his term of office, be a bona fide resident of the district for which he is appointed. Such appointee shall take office on the first Monday in September and shall serve for a period of four years, or until his successor shall have been appointed and shall have qualified; *provided*, that in case any nominee of the state superintendent is unsatisfactory to the board another nomination or nominations shall be made to the satisfaction of the board. In case a vacancy shall occur in the office of deputy superintendent of public instruction, the state board of education shall in like manner make an appointment for the unexpired term. The deputy superintendents of public instruction shall devote their entire time to school supervision and shall not engage in other work while holding this office.

**3248. Qualifications of deputies.**

SEC. 10. Any person holding a teacher's certificate of high-school grade and who shall have had not less than forty-five months' successful experience in teaching, at least twenty months of which shall have been in the State of Nevada, shall be eligible to appointment as deputy superintendent of public instruction, and no others shall be eligible to such appointment.

**3249. Duties of deputies.**

SEC. 11. It shall be the duty of each deputy superintendent to visit each school in his district at least twice a year, to examine the records and observe the work of each school carefully, to advise with teachers as to organization, management and teaching, to inspect school buildings, libraries and apparatus, to confer with trustees and county officers as to the condition and needs of their schools, to hold teachers' meetings, to assist at state, district and county institutes, and otherwise advance the educational interests of his district. The deputy superintendent of public instruction shall act as deputy examiner at teachers' examinations, as member of the board of educational examiners and shall assist the state board of education in preparing courses of study. He shall attend the meetings of the state board of education to furnish information pertaining to the schools of his district when said board shall so order.

**3250. Powers and duties of deputies.**

SEC. 12. Within his supervision district, each deputy superintendent shall have power and it shall be his duty:

1. To file with the county auditor of each county a directory of all teachers who shall be entitled to draw salary from the state or the county funds, and to advise the county auditor from time to time of any changes or additions to such directory, and to file with the county auditor a directory of all qualified school trustees of each county. The county auditor shall not draw any warrant in favor of any teacher until he shall be officially informed by the deputy superintendent that such teacher is legally entitled to receive salary from the state or county school funds;

2. To investigate any claim against any school fund whenever a written protest against the drawing of a warrant in payment of said claim against any school fund shall be filed with the county auditor. If, upon investigation, the deputy superintendent of public instruction shall find that any claim against any school fund is illegal or unreasonably excessive, he shall notify the county auditor and the clerk of the board of trustees who drew the order for such illegal claim, stating the reasons in writing why such order is illegal or excessive, and the county auditor, if so notified, shall not draw his warrant in payment of such claim. If the deputy superintendent of public instruction shall find that any protested claim is legal and actually due the claimant, he shall authorize the county auditor to draw his warrant for such claim, and the county auditor shall immediately draw his warrant in payment of the claim;

3. To suspend the certificate of any teacher for a time not to exceed one year, who fails to attend any district or county institute unless excused for nonattendance by the deputy superintendent;

4. To suspend the certificate of any teacher for any of the causes for which a certificate may be revoked by the state board of education;

5. To inspect the record books and accounts of boards of trustees, and to authorize and enforce an efficient method of keeping the financial records and accounts of the school district;

6. To inspect the school fund accounts of the county auditors of the several counties, and report the condition of the funds of any school district to the trustees thereof;

7. To grade the schools in his supervision district, in the month of July of each year, designating which schools are high schools, and which are elementary schools, and to keep record of such graduation in his office;

8. To appoint school trustees in all districts in which the qualified voters fail to elect.

### 3251. Compensation of deputies.

SEC. 13. The compensation of each deputy superintendent of public instruction is hereby fixed at two thousand dollars per annum, and shall be paid out of the general fund of the state as the salaries of other state officers are paid. All claims for the traveling expenses, including the cost of transportation and cost of living, of each deputy superintendent of public instruction while absent from their places of residence, together with necessary office expenses, shall be paid from the general fund of the state, whenever such claims shall be allowed by the state board of examiners; *provided*, that not more than eight hundred dollars shall be paid from the general fund of the state in settlement of claims for such traveling expenses of any deputy superintendent of public instruction during any one year, and not more than three hundred and fifty dollars shall be paid from the general fund of the state in settlement of claims for such office expenses of any deputy superintendent of public instruction for any one year.

### 3252. Powers of deputies.

SEC. 14. The superintendent of public instruction shall confer upon the deputy superintendents such power and authority to act in his name as he

shall deem proper; *provided*, such power and authority shall be in accordance with the laws of this state.

### 3253. Rules for deputies.

SEC. 15. The state board of education shall adopt such rules and regulations further defining the powers and duties of the deputy superintendents of public instruction as shall, in its judgment, be needful to secure efficiency and coordination; *provided*, that such rules and regulations shall be in accordance with the laws of this state.

### 3254. Removal of deputies.

SEC. 16. The state board of education shall, upon the recommendation of the superintendent of public instruction, have power to remove deputy superintendents of public instruction from office for evident unfitness or for conspicuous failure to perform the duties of said office.

## CHAPTER 4

### TEACHERS' CERTIFICATES

- |   |   |
|---|---|
| 3255. Certificates of teachers.             | 3265. Elementary certificate, third grade.                      |
| 3256. Examinations, when held.              | 3266. Life diplomas.  |
| 3257. Deputy examiners—Compensation.        | 3267. Certificates to certain graduates of state normal school. |
| 3258. Regulations regarding questions.      | 3268. Other graduates privileged.                               |
| 3259. Unlawful use of questions.            | 3269. Life certificates of other states.                        |
| 3260. Idem—Penalty for.                     | 3270. Papers graded by whom.                                    |
| 3261. Grades of certificates.               | 3271. Special certificates.                                     |
| 3262. High-school certificates.             | 3272. Temporary certificates—Restriction.                       |
| 3263. Elementary certificate, first grade.  | 3273. Age limit.  |
| 3264. Elementary certificate, second grade. |   |

### 3255. Certificates of teachers.

SEC. 17. All teachers' certificates and diplomas, except temporary certificates, shall be granted by the state board of education, and the state board of education shall grant only those classes and grades described in this act; *provided*, that the deputy superintendents of public instruction may issue temporary certificates; *provided, further*, that all teachers' certificates previously issued by legally constituted authorities shall remain valid for the time and under the conditions of the original issue unless revoked in accordance with law. In case of the renewal of any grammar-grade certificate now in force an elementary certificate of the first grade shall be issued instead of the grammar-grade certificate.

### 3256. Examinations, when held.

SEC. 18. Examinations for teachers' certificates shall be held in the several counties in this state semiannually, during the months of June and December of each year; *provided*, that the interest of the schools shall require such examinations. The state board of education shall give at least sixty days' notice of the time and places of holding the examinations; *provided*, that the dates of holding the regular semiannual examinations shall be uniform throughout the state and no examination shall continue for more than four days. The state board of education shall make provision for such other examinations at such times and places as in its judgment the public interest may require.

### 3257. Deputy examiners—Compensation.

SEC. 19. All examinations for teachers' certificates shall be conducted by deputy examiners, who shall act under the authority of the state board of education. It shall be the duty of the deputy examiners to send all examination papers to the superintendent of public instruction without grading them. The deputy superintendents of public instruction shall act

as deputy examiners in such counties in their respective districts as shall be designated by the superintendent of public instruction, and the deputy superintendent of public instruction shall appoint in addition a sufficient number of deputy examiners to provide for all the counties of the state; *provided*, that there shall not be more than two such deputy examiners in any one county. Deputy examiners other than the deputy superintendents of public instruction shall receive a compensation of five dollars a day, to be paid as other claims out of the state general fund. The state board of education shall prescribe such rules and regulations governing examinations as may be needful to secure uniformity and justice.

### 3258. Regulations regarding questions.

SEC. 20. The questions used for written work in teachers' examinations shall be prepared by the state board of education, and shall be uniform throughout the state. Such examination questions shall be forwarded to the various deputy examiners throughout the state by the superintendent of public instruction, so as to reach their destination immediately before the date set for the examination. Such questions shall be sent under the seal of the state board of education, the questions on each subject being under separate seal, and no questions shall be opened by any deputy examiner or other person, until the day and the hour set for the use of such questions, and this time shall be plainly specified under each seal.

### 3259. Unlawful use of questions.

SEC. 21. It shall be unlawful for any person to sell or offer for sale, or buy or offer to buy, or to distribute, or to have in his or her possession, except as authorized by this act, any printed or written examination questions prepared for any examination to be held for the purpose of testing the qualifications of persons desiring to be admitted to the practice of any of the professions in this state in which it is required that such person be examined as to their qualifications, or any printed or written examination questions prepared for teachers' examinations for certification of teachers in this state, or of any printed or written examination questions prepared for the final examination of students in any of the schools of this state prior to the time for holding such examination.

### 3260. *Idem*—Penalty for.

SEC. 22. Any person selling or offering to sell, buying or offering to buy, distributing or having in his or her possession any such examination questions contrary to section 21 of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not less than \$25 nor more than \$100, or imprisonment in the county jail for not less than ten days nor more than six months; *provided*, that the provisions of this act shall not be construed to prevent the proper officials or instructors whose duty it is to conduct the said examination referred to in section 21 of this act from having in their possession printed or written copies of such examination questions; *provided, further*, that the state printer shall have the care and custody of such examination questions while they are in process of being printed.

### 3261. Grades of certificates.

SEC. 23. Teachers' certificates in this state shall be:

High school, authorizing the holder thereof to teach in any high school or elementary school in the state;

Elementary, authorizing the holder thereof to teach in any elementary school in the state;

Special, authorizing the holder to teach such special branch or branches of learning, and in such grades as are named in the certificate;

Temporary, authorizing the holder to teach such branches of learning and in such grades and school districts as are named in the certificate.

### 3262. High-school certificate.

SEC. 24. The high-school certificate shall be valid for four years from the date of issuance and shall be issued upon examination in the following subjects: English grammar, spelling, arithmetic, English literature, general history, history of the United States, civil government, algebra, plane geometry, physics, history and methods of teaching. Any one of the following foreign languages: Latin, French, German, Spanish; and any three of the following additional subjects: Rhetoric, English history, solid geometry, physical geography, chemistry, botany, and zoology; *provided*, that no high-school certificate on examination shall be issued to any person whose general average is less than ninety per cent; *and provided further*, that such certificate shall not be issued to any person under twenty years of age. The high-school certificate may be renewed by the state board of education according to such rules and regulations as the board may prescribe.

### 3263. Elementary certificate, first grade.

SEC. 25. The elementary-school certificate, first grade, shall be valid for three years from the date of issuance, and shall be issued upon examination in the following subjects: Spelling, reading, writing, English grammar, mental arithmetic, written arithmetic, physiology and hygiene, history of the United States, geography, general history, drawing, music, business forms, and theory and methods of teaching; *provided*, that no such certificate shall be issued on examination to any person whose general average is less than eighty-five per cent or whose grade is less than sixty-five per cent in any one subject. The elementary certificate, first grade, shall not be issued to any person under twenty years of age, nor to any person who has had less than sixteen months of successful experience in teaching. Such certificate may be renewed by the state board of education according to such rules and regulations as the board may prescribe. Any person who shall at any regular examination make a grade of eighty-five per cent or more in any subject or subjects shall receive credit for such subject or subjects toward a first-grade elementary certificate; *provided*, that no such credits shall be held for a period of more than two years.

### 3264. Elementary certificate, second grade.

SEC. 26. The elementary certificate, second grade, shall be valid for two years from the date of issuance and shall be issued upon examination in all subjects required for the first-grade elementary certificate; *provided*, that no second-grade elementary certificate on examination shall be issued to any person whose general average is less than seventy-five per cent or whose grade is less than sixty per cent in any one subject. In no case shall an elementary certificate of the second grade be renewed.

## CERTIFICATION

### 3265. Elementary certificate, third grade.

SEC. 27. The state board of education shall have power, after the regular teachers' examination in December, and before the next regular examination is held, to grant third-grade elementary certificates to applicants who took the December examination, and who are actively engaged in teaching in Nevada; *provided*, that a third-grade elementary certificate shall entitle the holder to teach in the school in which she was engaged as a teacher at the time of the December examination, and in no other school, for a period not longer than until the next regular examination of teachers;

*provided, further*, that but one third-grade elementary certificate shall be granted to the same person.

### 3266. Life diplomas.

SEC. 28. The state board of education may grant a life diploma to any resident of the State of Nevada who shall present evidence of having taught successfully and continuously for a period of seventy-two months, thirty-six of which shall have been in the State of Nevada. A life diploma granted under this section shall be of the same grade as the certificate held by the applicant at the time of the application for the diploma and shall entitle the holder thereof to teach in any school in the State of Nevada of a grade corresponding to the grade of the certificate upon which the life diploma was granted; *provided*, that no life diploma shall be granted upon a nonrenewable certificate.

### 3267. Certificates to certain graduates of state normal school.

SEC. 29. High-school certificates, good for five years, shall be issued to graduates of the Nevada state normal school, advanced course. First-grade elementary certificates, good for five years, shall be issued to graduates of the Nevada state normal school, elementary course. To the graduates of the Nevada state normal school who hold high-school certificates, the state board of education shall grant a life diploma of high-school grade when said graduates shall have completed at least forty-five months of successful teaching in public schools. To all graduates of the Nevada state normal school who hold a grammar-school certificate, the state board of education shall grant a life diploma of the grammar grade when said graduate shall have completed at least forty-five months of successful instruction in public schools.

### 3268. Other graduates privileged.

SEC. 30. Graduates of universities, colleges, and normal schools supported by state appropriations, approved by the state board of education, shall be permitted to submit their credentials from such institutions, and to the extent that these credentials give evidence of scholarship and professional preparation they shall be accepted in lieu of examination; *provided*, that no certificate of the elementary grade shall be granted upon any credentials not equivalent to a diploma of graduation from the Nevada state normal school; *and provided further*, that no high-school certificate shall be granted upon any credential not equivalent to a diploma of graduation from a science course or the liberal arts course of the University of Nevada, together with the required training in educational subjects.

### 3269. Life certificates of other states.

SEC. 31. Any teacher holding a life certificate from another state shall be permitted to submit such certificate as evidence of his or her fitness for teaching, and if the state board of education shall be satisfied that the state which issued such certificate maintains a high professional standard, said board may issue a certificate for teaching in this state of such grade as it shall deem proper. Such credentials should be forwarded to the superintendent of public instruction, Carson City, Nevada.

### 3270. Papers graded, by whom.

SEC. 32. All examination papers for teachers' certificates shall be examined and graded under the authority of the state board of education by the board of educational examiners which shall consist of at least one member of the state board of education, the deputy superintendents of public instruction, and such other persons, not to exceed three in number, as may be appointed by the superintendent of public instruction. The board of

educational examiners shall certify the grade of each applicant in each subject to the state board of education. Persons appointed by the superintendent of public instruction as members of the board of educational examiners shall receive compensation at the rate of five dollars a day for the time actually employed in such service, to be paid out of the state general fund in the usual manner.

### 3271. Special certificates.

SEC. 33. The state board of education shall grant special certificates valid for teaching music, drawing, manual training, penmanship, commercial subjects, kindergarten work, or any specified foreign language, provided that it shall be satisfied that the applicant is qualified to teach such special subject. The board shall determine as to the fitness of the applicant by whatever method shall appear to be most appropriate. Such certificate shall be valid for two years. A special certificate shall entitle the holder to teach only the subject or subjects mentioned in the certificate.

### 3272. Temporary certificate—Restriction.

SEC. 34. The deputy superintendent of public instruction may, at his discretion, issue temporary certificates without examination; *provided*, that such certificate shall be issued upon request of the board of school trustees of a school district in this state, and that such certificate shall be valid only in the district from which the request is made, and such certificate shall be valid only until the next teachers' examination held in the county in which such person shall be teaching. If any member of the board of school trustees making the above-mentioned request is a member of the family or a near relative of the applicant, the certificate shall not be granted. Not more than one temporary certificate shall be granted to any one person.

### 3273. Age limit.

SEC. 35. No certificate authorized by this act shall be issued to any person under eighteen years of age.

## CHAPTER 5

### POWERS AND DUTIES OF TEACHERS

3274. Teacher must be legally employed.

3276. Form.

3275. School officer may administer oath.

3277. Duties of teacher.

### 3274. Teacher must be legally employed.

SEC. 36. No teacher shall be entitled to receive any portion of the public school moneys as compensation for services rendered, unless such teacher shall have been legally employed by the board of trustees, nor unless such teacher shall have a certificate issued in accordance with law, in full force and effect at the time such service is rendered, nor unless such teacher shall have made a full and correct report, in the form and manner prescribed by law, to the superintendent of public instruction, and to the board of school trustees.

### 3275. School officer may administer oath.

SEC. 37. The superintendent of public instruction and the deputy superintendents of public instruction are hereby authorized to administer the oath (or affirmation) to teachers and all other oaths (or affirmations) relating to public schools.

### 3276. Teachers to take official oath—Form.

SEC. 38. Each and every teacher employed in this state, whose compensation is payable out of the public funds, shall take and subscribe to the oath as prescribed by the fifteenth article of the state constitution before enter-

ing upon the discharge of the duties of such teacher. Such oath, when so taken and subscribed to, shall, if that of a teacher in the state university, be filed in the office of the board of regents; if of any other class of teachers, the same shall be filed in the office of the superintendent of public instruction.

The oath is as follows:

I, ....., do solemnly swear (or affirm) that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution or law of any state convention or legislature to the contrary notwithstanding. And further that I will well and faithfully perform all the duties of teacher on which I am about to enter (if an oath); "so help me God"; (if an affirmation) "under the pains and penalties of perjury."

Sworn and subscribed to before me a ..... of the County of ..... and State of Nevada, this ..... day of ....., Anno Domini 191.....

### 3277. Duties of teacher.

SEC. 39. Every teacher in the public schools shall:

1. Upon opening school in any school district file with the deputy superintendent of public instruction, a Nevada teachers' certificate entitling the holder to teach the school in the district in which he shall be hired, together with the oath of office, and any other report that the superintendent of public instruction shall require. The deputy superintendent shall acknowledge the receipt of each teacher's certificate and shall make proper record of the same in his office. The teacher's certificate shall remain on file in the office of the deputy superintendent until the teacher's final report shall be received in his office;

2. One week before closing the school, make a final report in the manner and on the blank forms prescribed by the superintendent of public instruction. The final report shall include all required statistics and information for the entire school year, notwithstanding any previous report for a part of the year. The teacher shall make estimates of the statistics and information for the last week in order to close the final report. Upon receipt of the teacher's final report, the deputy superintendent shall, if he approve such report, notify the clerk of the school district from which the report comes that the teacher's final report has been received, and the clerk of the board shall then draw the trustees' order in payment for the teacher's last month's salary. Any trustees' orders drawn in violation of the provisions of this act shall be illegal;

3. Keep record of all scholars attending school in accordance with the registers prescribed by the superintendent of public instruction, and teachers shall make reports of such records at such times and to such persons as the superintendent of public instruction shall designate. All school registers shall be delivered to the board of trustees at the close of every school term;

4. Enforce the state course of study, or the city course of study (as the case may be), the use of the legally authorized text-books, and the rules and regulations prescribed for teachers and schools;

5. Hold pupils to a strict account for their conduct on the way to and from school, on the playground, and during any intermission; *provided, however,* that no school teacher or principal, or board of trustees, shall expel or suspend any pupil under the age of fourteen years for any cause without first securing the consent of the deputy superintendent of public instruction.

**CHAPTER 6**  
**SCHOOL TRUSTEES**

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**3278. Board of trustees body corporate.**

**SEC. 40.** The trustees of a school district shall constitute a board for such district and such board is hereby created a body corporate.

**3279. Property held as corporation.**

**SEC. 41.** All property which is now vested in, or shall hereafter be transferred to the trustees of a district, for the use of schools in the district, shall be held by them as a corporation.

**3280. Number of trustees.**

**SEC. 42.** School districts having fifteen hundred or more school children, as shown by the last preceding school census, shall have five trustees; other districts shall have three trustees.

If an office is filled, and the duties appertaining thereto are performed, by an officer de jure, another person, claiming the office

under color of title, cannot become an officer de facto. *State ex rel. Harris v. Blossom*, 19 Nev. 312, 315 (10 P. 430).

**3281. Election of trustees.**

**SEC. 43.** An election of school trustees shall be held in each school district of the state on the first Saturday in April, nineteen hundred and ten, and on the same day every two years thereafter. At such elections, three trustees shall be elected in any district having fifteen hundred or more school census children, as shown by the last preceding census, two for four years and one for two years; and two trustees shall be elected in every other district, one for four years and one for two years.

Referring to act of 1885, 111, sec. 2, providing a five-year term for trustees, it was held that this section is in conflict with sec. 379, ante, and is void. *State ex rel. Davenport v. Harris*, 19 Nev. 222-225 (8 P. 462).

The unconstitutional provision is so inseparably connected with the other provisions as to render all of the act, in relation to the election of school trustees, void. *Idem*.

Referring to act of 1887, 138, sec. 2, it was held: This section does not authorize a separate May election in cases where parts of school districts are within the same election precincts. *State ex rel. Vansickle v. Hansen*, 20 Nev. 401, 402 (22 P. 753).

The office of long-term school trustee is

separate and distinct from that of short term, and a certificate of appointment which does not state that it is for the long term is insufficient to entitle the appointee to that position. *State ex rel. Guinan v. Meder*, 22 Nev. 264, 265, 269, 270 (38 P. 668).

An appointment to a public office must be in writing. *Idem*.

The legislature has power to provide for the manner in which the result of election shall be determined and declared, and their enactment in reference thereto is binding. *Idem*.

The failure of the election board to canvass the votes and issue a certificate is fatal to the right to hold office. *Idem*.

**3282. Number of, how determined.**

SEC. 44. In any school district having for the first time fifteen hundred school census children, as determined after the election of trustees in any year, there shall be elected at the next ensuing school trustee election two trustees for four years and two trustees for two years, to bring such district to the five-trustee basis; and in any district falling below such number, as determined after a school trustee election, there shall be elected at the next ensuing trustee election one trustee for four years, to bring such district to the three-trustee basis.

**3283. Election officers, how appointed.**

SEC. 45. Three inspectors of election and such other officers as may be necessary, shall be appointed by the school trustees in each district; *provided*, that respecting all questions that come before said election boards, the inspectors only shall determine the same. If the trustees fail to appoint the election officers, or if they are not present at the time of opening the polls, the electors present may appoint them. All such officers shall serve without compensation; *provided*, that in school districts of the first class, the inspectors and a clerk of election may be allowed compensation not to exceed four dollars each for services at such election, said compensation to be paid from the district school funds.

If two or more polling-places are kept open in districts of the first class, three inspectors and one clerk shall be appointed for each polling-place, and each such officer shall be allowed compensation not to exceed four dollars.

**3284. Notice to be posted—Hours of election.**

SEC. 46. Not less than ten days before the election held under the provisions of this act, the trustees in each district shall post notices in three public places in the district, which notices shall specify that there will be an election held at the schoolhouse in such district and the hours between which the polls will be kept open. In districts of the first class the polls shall be kept open between the hours specified by the board of trustees, and in districts of the second class the polls shall be kept open between the hours of 1 o'clock p. m. and 5 o'clock p. m. If the trustees shall have failed to post notices as required by this section, then any three electors of the district may, within five days of the day of election, give notice of such election, which notices shall be sufficient for the election required by this act, and in such case no registration shall be necessary, but all the other provisions of this act shall be enforced; *provided*, that in districts of the first class as many different polling-places may be kept open as there are schoolhouses in the district, and the trustees may decide in what buildings the election shall be held; but in such cases, the trustees must specify, in the election notice, the particular buildings in which polling-places will be held.

**3285. Qualification for voting.**

SEC. 47. No person shall be allowed to vote at any school election unless he is a resident of the district and his name appears upon the official registry list of the voting precinct or precincts including the district for the last preceding general election; *provided*, that any citizen of the United States who shall have resided in this state six months, and in the school district thirty days next preceding the day of election, and whose name is not upon the said official registry list, may apply to the clerk of the board of school trustees, or to a person authorized by the trustees of the district to act as registry agent, not more than eight nor less than five days prior to the day of election to have his name registered.

**3286. Registration regulations—Oath.**

SEC. 48. It shall be the duty of the clerk of the board of school trustees,

or the person appointed by the board of school trustees, as the case may be, to register any qualified voter of the school district who may apply to be registered under the provisions of the preceding section; *provided*, that if the person applying to be registered be unknown to the registry agent, or his qualifications for voting be unknown, he shall, before having his name registered, be required to subscribe to the following oath: "You do solemnly swear that you are a citizen of the United States; that you are twenty-one years of age; that you will have resided in the state six months and in this school district thirty days next preceeding the day of the school election." False swearing under the provisions of this section shall be deemed perjury and punished as now provided by law.

### 3287. List of voters.

SEC. 49. No person shall be entitled to vote under the provisions of this act except he be registered as herein provided. The board of school trustees shall prepare or cause to be prepared, or obtain a list, certified or sworn to as being correct, of the names of all persons entitled to vote at the school election as herein provided, which said list shall be completed at least three days prior to the day of election, and shall be under the charge of the clerk of the board of school trustees and subject to the inspection of any qualified voter in the district.

### 3288. Preparation of list—Compensation.

SEC. 50. The board of school trustees in all districts having a voting population of fifty or more, are authorized to employ a competent person to prepare said list of qualified voters and to pay for the work out of the school fund of the district, in a manner as other claims against the district are allowed and paid, a reasonable sum, not exceeding five cents a name for each qualified voter, providing that the total amount to be allowed shall not exceed fifty dollars. The list so prepared shall be sworn to by the person making the same as correct according to his best knowledge, information and belief.

### 3289. List delivered to inspectors.

SEC. 51. The list of qualified voters, as hereinbefore described, shall be delivered to the inspectors of election prior to the time of opening the polls on the day of election, and no person shall be entitled to vote at the election whose name is not on said list; *provided*, that any person whose name is left off said list by mistake, design, accident, or otherwise, may have his name placed thereon by the inspectors of election upon satisfactory proofs being presented of his having previously been registered in accordance with the provisions of this act.

### 3290. Voting by ballot.

SEC. 52. The voting shall be by ballot, either written or printed, and when two or more trustees are to be elected for different terms, the ballot shall designate such term as "long term" and "short term," respectively.

### 3291. Ballots, number of—What to contain.

SEC. 53. In all school districts having a voting population of one hundred or over, the board of school trustees shall have printed ballots of uniform size containing the names in alphabetical order, of all persons candidates for the office of school trustee. There shall be twice as many ballots printed as there are voters in the district, and no ballots other than those furnished by the board of school trustees shall be voted.

### 3292. How to vote.

SEC. 54. A person desiring to vote shall, if his name be upon the registry

list as herein provided, receive from the board of election or some member thereof, and from no other person, a ballot upon which he shall designate his choice for trustee or trustees to be elected in the district, by placing a cross thus: X, opposite and to the right of the name of the person for whom he intends to vote.

### 3293. Instructions as to voting.

SEC. 55. There shall be placed on the ballots, in addition to the names of the candidates, such information as the board of trustees may deem necessary to inform the voter how to mark his ballot, such as: "Place a cross thus: X, opposite and to the right of the name of the candidate for whom you wish to vote," "vote for one," "vote for two," etc.

### 3294. Not allowed at polls—Misdemeanor—Acts prohibited.

SEC. 56. No person, other than the board of election or a police officer in the discharge of his duty, shall be allowed within one hundred feet of the polls, except when actually engaged in voting or in going to or from the polls for the purpose of voting or of challenging the vote of another, and excepting all persons in attendance upon any school which may be in session in the building. No person shall show his ballot to another while marking it or after marking it so as to disclose for whom he has voted, but he shall, as soon as possible after marking it, fold it so that the marking will be on the inside and return it to the board of election to be counted. Wilful violation of any of the provisions of this section shall constitute a misdemeanor, punishable by a fine not exceeding fifty dollars, or imprisonment in the county jail not exceeding twenty-five days, or by both such fine and imprisonment.

### 3295. Assistance in marking ballot, when allowed.

SEC. 57. No person shall receive assistance in marking his ballot unless physically unable to mark it and then only by permission of the board of election. A voter spoiling his ballot may procure another by delivering the spoiled ballot to the board of election.

### 3296. Challenge—Illegal voting punished.

SEC. 58. Any registered person offering to vote may be challenged by any elector of the district, and the judges of election must thereupon administer to the person challenged an oath in substance as follows: You do swear that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in this state six months, and in this school district thirty days next preceding this election, and that you have not voted before this day. If he takes the oath prescribed in this section his vote shall be received, otherwise his vote must be rejected. Illegally voting under the provisions of this act shall be punished the same as the law now provides for punishing offenses of this character.

A judge of an election is not authorized to administer the oath of office to a school trustee; the only oath he is authorized to administer is the oath to a voter when challenged. *State ex rel. Davenport v. Horton*, 19 Nev. 199 (8 P. 171).

In proceedings to determine the right of persons to hold the office of school trustees, it was held that the question of the quali-

fication of trustee cannot be inquired into; that it was enough to show that he had been elected, entered upon and exercised the duties of his office. *Idem*.

An official oath attached to a certificate of appointment, or indorsed upon the face thereof, is as valid as if indorsed upon the back of the certificate. *Idem*.

### 3297. Candidates to file names with county clerk.

SEC. 59. In school districts having a voting population of one hundred (100) or over, candidates for the office of school trustee shall, not later than five days before the day of election, have their names filed with the county clerk of said county, with designation of the term of office for which they are can-

didates, and no names shall be placed upon the ballots unless filed within the time herein provided.

### 3298. Duty of election board on completion of count.

SEC. 60. The board of election in districts of the first class shall keep a poll-list and tally-sheet, which, together with the registry list and all ballots cast, shall be delivered to the county clerk upon the count being completed, and such returns shall be kept as the law now provides for keeping returns of general elections; but in districts of the second class, said poll-list, tally-sheet; registry list and all ballots cast, upon the count being completed, shall be delivered to the deputy superintendent of public instruction and kept on file in his office. After the completion of the count at each polling-place in districts of the first class using more than one polling-place, the election board of each polling-place shall meet at a place designated by the board of trustees and there summarize all votes cast in the district and make out the election certificates.

### 3299. Certificates of election.

SEC. 61. The election board shall issue certificates of election to those receiving the greatest number of votes cast in accordance with the provisions of this act, specifying the number of years for which each is elected; and the election board shall immediately send by mail a copy of each election certificate to the deputy superintendent of public instruction.

### 3300. Terms of office.

SEC. 62. Trustees elected under this act shall take office on the first Monday in May following their election.

### 3301. Vacancies, how filled.

SEC. 63. On the fourth Saturday after the occurrence of any vacancy or vacancies in any board of school trustees, an election may be held to elect a trustee or trustees for the remainder of the unexpired term or terms. Such elections shall be conducted in accordance with the law now in effect for the election of public school trustees; *provided*, that the remaining members or member of the board may serve as a full board for the purpose of making all required preliminary arrangements for conducting said elections to fill said vacancies.

### 3302. Deputy to fill vacancies.

SEC. 64. In case the voters fail to elect, or in case no election is held, as provided in the preceding section, the deputy superintendent shall fill all vacancies occurring in said board of trustees.

### 3303. Meetings of trustees.

SEC. 65. It shall be the duty of the board of trustees, a majority of whom shall constitute a quorum for the transaction of business, to meet on the first Monday in May following their election, or as soon as practicable thereafter, after taking the oath of office, at such place as may be most convenient in the district, and to organize by electing one of their number president of the board and another as clerk. It shall be the duty of the president to preside at the meetings of the board. It shall be the duty of the clerk to record the proceedings of the board in a book to be provided for the purpose; and all such proceedings, when so recorded, shall be signed by said clerk. Said book shall at all times be subject to the inspection of the deputy superintendent of public instruction and of any taxpayer in the district. In districts having a school census population of three hundred or more and not exceeding one thousand the clerk of the board of trustees may receive such salary as said board may allow; *provided*, that such salary shall not exceed ten

dollars per month; *provided*, that in districts having a school census population of one thousand or more the clerk of the board of trustees shall receive not to exceed fifty dollars.

See State ex rel. Davenport v. Horton, under sec. 58 of this act.

### 3304. Majority vote to legalize action.

SEC. 66. No action of the board of school trustees in any school district shall be valid unless such action shall receive the approval of a majority of the members of such board at a regularly called meeting. The clerk of the board shall give notice of each meeting to each member of the board of school trustees, specifying the time, place and purpose of each meeting; *provided*, that if all members of such board are present at such meeting the lack of such notification shall not invalidate its proceedings.

In all school districts in which there are not less than three hundred school census children, as shown by the last preceding school census report, the board of school trustees shall hold a regular meeting at least once each month, at such time and place as it shall determine, and public notice of such meeting shall be given in one or more newspapers published in such district; *provided*, that such notices can be published without cost to the district.

### 3305. Powers and duties of trustees.

SEC. 67. School trustees shall have the power and it shall be their duty:

1. To buy or sell any schoolhouse or schoolhouse site directed to be bought or sold by a vote of the heads of families of the district; *provided*, that in districts in which there shall be fewer than ten such heads of families, no schoolhouse or schoolhouse site shall be sold without the approval of the deputy superintendent of public instruction;

2. To build, purchase, or rent schoolhouses when directed to do so by a vote of the heads of families, and to equip and supply the same with all things necessary for the successful operation of the schools of the district. The trustees, without such vote, shall make necessary repairs on any school buildings when the expense of such repairs will not exceed five hundred dollars; *provided*, that in districts of the first class the trustees may make all necessary repairs without a vote of the electors. No public schoolhouse shall be erected in any school district until the plan of the same has been submitted to and approved by the deputy superintendent of public instruction. The county auditor shall draw no warrant in payment of any bill for the erection of such new schoolhouse until notified by the deputy superintendent of public instruction that the plans for the said new schoolhouse have received his approval;

3. To change the location of schools or schoolhouse sites; *provided*, that in districts in which there shall be fewer than ten heads of families, no school or schoolhouse site shall be changed without the approval of the deputy superintendent of public instruction;

4. To call meetings of the heads of families of the school district in order to secure by vote the authority to procure or sell schoolhouse sites, or to erect, purchase, sell, hire, or rent schoolhouses for the use of the district. Whenever the trustees shall decide to hold such meeting, they shall give at least ten days' notice by posting at least three notices of such meeting in three conspicuous places within the district. One of such notices shall be posted on the school grounds. The notices shall contain the time, place, and purpose of the meeting. The president of the board shall call such meeting to order and shall preside over the deliberations of the same. The clerk of the board shall keep a record of the proceedings of such meeting in a book kept especially for that purpose. In case of the absence of either the president or the clerk of the board at such meeting, the heads of families assembled shall proceed to elect a president pro tem. and a temporary clerk. All ques-

tions placed before the meeting shall be determined by ballot or by taking the "ayes" and "noes" as the meeting shall decide;

5. To manage and control the school property within their districts, and pay all moneys collected by them, from any source whatever, for school purposes, into the county treasury, to be placed to the credit of the county fund of their district;

6. To cause to be erected at least two suitable and convenient privies for each of the schools under their charge, which shall be entirely separate each from the other, and have separate means of access and approaches thereto. In case of failure or neglect on the part of the trustees to provide privies in accordance with the provisions of this section, the deputy superintendent of public instruction shall have power and it shall be his duty to cause such privies to be built, and to pay for the same by drawing his order on the county auditor on the funds of the district, and the auditor shall draw his warrant upon the county treasurer in payment of the same;

7. To prescribe and enforce rules, not inconsistent with law or those prescribed by the state board of education, for their own government and government of schools, and to transact their business at regular or special meetings, called for such purpose, notice of which shall be given each member;

8. To keep the public-school buildings in their charge in such repair as is necessary for the comfort and health of pupils and teachers, and in case of neglect to do so, the deputy superintendent of public instruction shall have power and it shall be his duty to cause such needed repairs to be made, and to pay for the same by drawing his order upon the county auditor on the funds of the district, and the auditor shall draw a warrant upon the county treasurer in payment of the same; *provided*, that the cost of such repairs shall not exceed fifty dollars;

9. To have the custody and safe keeping of the district schoolhouses, their sites and appurtenances;

10. To insure the schoolhouses, furniture and school apparatus in some company authorized by law to transact business in the State of Nevada, and to comply with the conditions of the policy;

11. To employ legally qualified teachers, to determine the salary to be paid and the length of the term of school for which teachers shall be employed, embodying these conditions in a written contract to be signed by the president and the clerk of the board or by a majority of the trustees and the teacher, and a copy of the said contract properly written shall be delivered to each teacher at the opening of the term of school; *provided*, that the trustees shall not have the right to employ teachers for any term of service commencing after the time for which any member of the board of trustees was elected. The salaries of teachers shall be determined by the character of the service required, and in no district shall there be any discrimination in the matter of salary as against female teachers; *provided*, that it shall be unlawful for the board of trustees of any school district to employ any teacher not legally qualified to teach all the grades of the school for which such teacher is engaged to teach;

12. To pay toward the salaries of legally qualified teachers the public moneys apportioned to districts for such purpose by giving them orders therefor on the county auditor;

13. To provide at least six months of free school in the district under their charge. If at any time the deputy superintendent of public instruction shall find that the state and county moneys to which any district is entitled are not sufficient for the completion of a term of school of at least six months during the current school year, he shall immediately certify that fact and information to the clerk of the board of the said district. Upon the receipt of such information, the clerk shall immediately notify the other members of the board, and they shall, as soon as possible thereafter, meet and levy a

district tax upon the taxable property of such district sufficient to raise an amount of money which will insure the completion of at least six months of school in that school year. Immediately after the trustees shall have made the levy provided herein, the clerk of the board shall notify the county commissioners and the deputy superintendent of public instruction of its action. The said notice shall contain the statement of the amount of money to be raised by such district tax. The county commissioners shall ascertain the necessary percentage on the property of said district as shown by the last assessment made thereof after equalization, to raise the amount of money voted and they shall add it to the next county tax to be collected on the property aforesaid, and the same shall be paid into the county treasury and shall be added to and become a part of the county fund of that district, and shall be drawn in the same manner as other school moneys.

The tax provided herein shall be assessed, equalized, and collected in the same manner prescribed for assessing, equalizing, and collecting the taxes voted for furnishing additional school facilities in section 141 of this act.

If for any reason the trustees shall fail to provide the necessary funds to insure the completion of at least six months of school in any school year, when notified by the deputy superintendent of public instruction that such action is necessary on their part, as provided in this act, then the deputy superintendent of public instruction shall himself notify the county commissioners and the county auditor of the deficiency in funds for the district in question, and he shall make an estimate of the amount of money necessary to be raised, and the commissioners shall proceed to assess, equalize, and collect this amount as though the trustees themselves had made the levy as provided in this act;

14. To maintain at least eight months of school in the school district during each and every school year; *provided*, there is sufficient money to the credit of the district to pay the expenses of maintaining the said eight months of school.

Whenever there shall be sufficient money to the credit of any school district to pay the expenses of maintaining a school for eight months in any school year, and the trustees shall for any reason neglect to provide for the said eight months of school, the deputy superintendent of public instruction shall take such steps as may be necessary to prolong and maintain the said school for at least eight months. He shall draw his order on the county auditor and the county auditor shall draw his warrant on the county treasurer in payment of all expenses incurred in prolonging school as provided in this section;

15. To administer all oaths pertaining to teachers, census marshals, and school trustees, whether of the same school district or of any other school district in the State of Nevada; *provided*, that in districts of the first class, the city superintendent may administer the oath of office to teachers in their respective districts;

16. To provide books for the indigent children, desk text-books for the teachers, and record books for the district, and to pay for the same out of the county school moneys belonging to their district;

17. To divide the public schools within their district into kindergarten, primary, grammar, and high-school departments, and to employ competent and legally qualified teachers for the instruction of the different departments whenever they shall deem such division into departments necessary; *provided*, that such division into departments shall be in accordance with the state courses of study and all rules and regulations of the department of education; *and provided further*, that there shall be means for all such departments, and if not, then the division shall be in the order in which they are herein named, excepting the kindergarten department, which shall not be considered as taking precedence over any other department; *and provided also*, that the

kindergarten department shall not be established in any school district having a school census population of less than one hundred;

18. To suspend or expel from any public school within their district, with the advice of the teachers and deputy superintendent of public instruction, any pupil who will not submit to reasonable and ordinary rules of order and discipline therein, and to exclude from school all children under six years of age when the interests of the school requires it to be done; *provided, however*, that under no circumstances shall any school teacher or principal, or board of trustees be authorized to expel any pupil under the age of fourteen years for any cause without first securing the consent of the deputy superintendent of public instruction;

19. To enforce in schools the course of study and the use of text-books prescribed and adopted by the proper authority;

20. To make, with the approval of the deputy superintendent of public instruction, arrangements with the trustees of any other district for the attendance of such children in the school of either district as may be most convenient, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school. The school trustees of any district may transfer to another district any child, whenever the parent or guardian shall present a written request accompanied by a written permit from the board of school trustees of the other district. Whenever two boards of trustees shall agree upon the transfer of any child, together with the money due such child by apportionment from state and county funds, the trustees of the district from which the child is to be transferred shall draw their order upon the county auditor for the amount equal to the money apportioned to that district at the last preceding apportionment of state and county funds, in favor of the county treasurer of the county in which the district to which the child is to be transferred is located. The county treasurer of such county shall place the amount ordered to be transferred to the credit of the proper fund of the district to which the child is to be transferred, and he shall immediately notify the county auditor of such county that the amount of money so transferred has been placed in the fund of said district; *provided*, that the amount of money to be transferred in accordance with this section shall consist only of the moneys apportioned to the child, and not any part of the amount of money apportioned to the teacher of the district from which the child is to be transferred;

21. To visit every school in their district at least once in each term, and examine carefully into its management, condition and wants. This clause to apply to each and every member of the board of trustees;

22. To furnish writing and drawing paper, pens, inks, blackboard erasers, crayons, and lead and slate pencils, and other necessary supplies for the use of the schools, and charges therefor must be audited and paid as other claims against the county school fund of their districts are audited and paid;

23. To make an annual report on or before the first day of July, to the deputy superintendent of public instruction in the manner and form and on the blanks prescribed by the superintendent of public instruction;

24. To enforce needful sanitary regulations, to make and enforce such rules for preventing the spread of contagious and infectious diseases as they may deem necessary, and to pay out of the public-school funds any expenses incurred by them in enforcing such regulations and rules among indigent children.

Cited, in dissenting opinion of Bronson, J., *State v. First National Bank*, 4 Nev. 492, 493.

Section 50 of the act of 1867, 95, in so far as it excludes negroes from the public schools, is unconstitutional. *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342, 345-347, 357-361 (8 A. R. 713).

Where the trustees of a public school

refuse to admit a negro, between the ages of six and eighteen, and a resident of the district as a pupil into such school, it was held that an application for mandamus to compel such admission should be granted. *Idem*.

While school trustees cannot legally deny to any (such as a negro) resident person of proper age an equal participation in the benefits of a common school, it is entirely within their power to send all blacks to one

school and all whites to another; or, in other words, to make such classification, whether based on age, sex, race or any other existent condition as may seem to them best. Idem.

### 3306. Schools to be maintained with equal rights and privileges.

SEC. 68. The boards of school trustees and county boards of education must maintain all the schools established by them for an equal length of time during the year and, as far as practicable, with equal rights and privileges;

2. When in any district it is necessary for the convenience of the residents of said district that the school therein should be maintained a part of the year in one portion of the district, and a part of the year in another portion of the district, the aggregate of the time the school has been maintained in the different portions of the district shall be considered in estimating the time for which a school has been maintained in the district during the school year.

### 3307. Clerk to issue warrants.

SEC. 69. It shall be the duty of the clerk of the board of school trustees in each district, subject to the direction of said board, to draw all orders for the payment of the moneys belonging to his district, and such orders, when signed by the president and clerk of the board or by a majority of the board of trustees, shall be valid vouchers in the hands of the county auditor for warrants on the county treasurer, to be paid out of the funds belonging to such district; *provided*, that in school districts having fewer than five trustees, no warrant for the payment of money for a new school building or for repairs or furniture in excess of five hundred dollars shall be issued unless the order shall be approved by the deputy superintendent of public instruction.

### 3308. Itemized statement of bills.

SEC. 70. All such orders shall be accompanied by an itemized statement of the purpose or purposes for which the order is issued, and such statement shall be kept on file in the office of the county auditor, subject to inspection by the deputy superintendent of public instruction, until ordered to be destroyed by the state board of education. No order for the payment of the money of any district shall be issued by the clerk of such district unless there shall be in the county treasury credited to such district a sum of money equal to the amount for which the order is issued, and available for the purpose of such order. If the clerk of the board of school trustees of any district shall draw any order for the payment of school moneys in violation of the laws of this state, the members of the board of school trustees of such district shall be jointly and severally liable for the amount of such order.

### 3309. Trustees to have no interest in contracts.

SEC. 71. No trustee shall be pecuniarily interested in any contract made by the board of trustees of which he is a member.

### 3310. To enforce discipline.

SEC. 72. The school trustees, principals and teachers are hereby given concurrent power with the peace officers for the protection of children in school and on the way to and from school, and for the enforcement of order and discipline among them.

### 3311. Trustees vested with necessary power.

SEC. 73. The board of school trustees of the respective school districts of the State of Nevada are hereby given such reasonable and necessary powers, not conflicting with the constitution and laws of the State of Nevada as may be requisite to attain the ends for which the public schools are established, and to promote the welfare of school children.

**3312. Idem—Teachers.**

SEC. 74. The school trustees may direct the principals and teachers employed by them to exercise such powers and authority in the schools as the trustees are invested with under this act.

**3313. County boards of education, powers of.**

SEC. 75. Under the provisions of this act, county boards of education in control of high schools shall have the same powers as are herein given to school trustees.

## CHAPTER 7

## SCHOOL DISTRICTS

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**3314. One district only in town or city.**

SEC. 75. Each village, town, or incorporated city of this state shall constitute but one school district; and the public schools therein shall be under the supervision and control of the trustees thereof.

**3315. Classes of school districts.**

SEC. 76. All school districts in Nevada are hereby divided into two classes. Districts employing ten or more regular grade teachers shall be known as districts of the first class, and districts employing less than ten teachers shall be known as districts of the second class. The board of school trustees of any district of the first class is hereby authorized to create the office of city superintendent of schools for such district, to define the powers and duties of such superintendent, to elect to said office any person entitled to teach in the high schools of this state, and to fix the salary; *provided*, that no city superintendent shall be elected for more than one year, unless said city superintendent shall have first served one year acceptably in the district, when said board of trustees is empowered to elect said superintendent for a term not to exceed four years; *provided, further*, that said superintendent may be dismissed at any time for cause.

**3316. New districts, when.**

SEC. 77. The boards of county commissioners of the several counties of the state are hereby authorized and empowered to create new school districts from unorganized territory when there shall have been presented to them a certified petition from the parents or guardians of five school census children, which petition shall accurately describe the boundaries of the proposed district, such boundaries to conform, when practicable, with the lines of the government surveys, and the names and ages of all children residing in such proposed district at the date of said petition. The boards of county commissioners may create new districts from a portion or portions of one or more established districts upon the presentation of a similar petition signed by not less than three-fifths of the heads of families and taxpayers of the districts from which the proposed new district is to be taken. They may make

changes in the boundaries of districts upon petition of three-fifths of the heads of families and taxpayers of the district or districts to be affected by the change.

When a new school district is organized, school shall be commenced within one hundred and twenty days from the date of the action of the board of county commissioners creating such district and if school shall not be commenced within such time in said district, then such action shall become void and no such district shall exist.

No school district organized under the provisions of this act shall exceed in size sixteen miles square.

**3317. But one school, when.**

**SEC. 78.** In any neighborhood or community containing not more than twenty school census children, in which a schoolhouse may be located so that the most distant school census child resides not to exceed three miles therefrom, but one school district shall be created or shall exist; and, in any neighborhood or community in which more than one school district is now organized not in conformity with this act, such districts shall be consolidated, and it shall be the duty of the board of county commissioners of the county in which said neighborhood or community is located to organize the territory comprised in said districts into one school district. It shall be the duty of the county auditor and county treasurer to place the funds of the several districts to the credit of the newly organized district, and the deputy superintendent of public instruction shall appoint trustees for said district. In any such neighborhood or community no school district shall receive an apportionment from the school funds until consolidated as herein provided. The deputy superintendent of public instruction shall decide where the school shall be held, and if school is held in any other place in the district than that designated by the deputy superintendent of public instruction, the county auditor shall draw no warrants upon the funds of the district in payment of claims for the maintenance of said school.

**3318. Restriction in apportionment.**

**SEC. 79.** The county school fund shall not be apportioned to any school district unless there shall be at least five school census children residing therein as shown by the last preceding census report. The state school fund shall not be apportioned to any school district unless there shall be at least three school census children residing therein as shown by the last preceding census report.

**3319. Certain districts not to receive school money, when.**

**SEC. 80.** From and after September first, nineteen hundred and eleven, no school district, except when newly organized, in which there was not taught by a legally qualified teacher, a public school for a term of at least six school months of the school year ending the last day of June preceding, with at least three children of school age in actual attendance for eighty days, sixty days of which shall have been consecutive, shall receive any portion of the public school moneys. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district after the payment of all outstanding debts at the time when a school was actually commenced in such new district; and the superintendent of public instruction shall divide and apportion such remaining money according to the number of census children resident in each district, for which purpose he may order a census to be taken, the expenses of which shall be met as provided in section 133 of this act.

**3320. Joint school district, when.**

**SEC. 81.** A joint school district may be formed of parts of two or more

counties, provided a majority of the qualified voters in that part of each county which it is proposed to include in such joint district shall petition for the creation of such joint district, such petition to contain a description of the boundaries of the proposed joint district. When such petition is presented to the board of county commissioners in each county in which any part of the territory of said proposed joint district is located, such boards shall, if they favor the establishment of a joint district, provide for such establishment, and the superintendent of public instruction shall appoint the members of the board of school trustees, who shall serve until their successors are elected and qualified according to law.

### 3321. State superintendent to apportion funds, how.

SEC. 82. The superintendent of public instruction shall apportion the county school fund to any such joint school district as follows: In apportioning sixty per cent of the county school fund of any county, he shall apportion to a joint school district the regular amount per census child residing in that county. In apportioning forty per cent of the county school fund of any county, he shall consider the teacher as belonging in part to each county, part of which lies in the joint school district, and the part belonging to any county will be in proportion to the number of school census children in that county.

In apportioning thirty per cent of the state distributive school fund within any county, he shall apportion to a joint school district the regular amount per census child residing in that county. In apportioning seventy per cent of the state distributive school fund within any county, he shall consider the teacher as belonging in part to each county, part of which lies in the joint school district, and the part belonging to any county will be in proportion to the number of school census children in that county.

### 3322. Union school, how established.

SEC. 83. On the recommendation of the deputy superintendent of public instruction, the boards of school trustees of any contiguous school districts in the same county or in adjoining counties may, in joint meeting of the two boards, unite the two districts and establish a union school to be supported out of the funds belonging to the respective districts.

Where the inhabitants of two school districts in adjoining counties have for nearly twenty years acted as a union district and carried on a union school supported by the public-school funds belonging to the respective districts, it will be presumed to be a

union district regularly organized without proof of its formation by the records of either the said trustees or commissioners. State ex rel. Schulz v. Sweeney, 24 Nev. 350 (55 P. 88).

### 3323. Joint board to govern—More than one school, when.

SEC. 84. The school thus established shall be governed by a joint board, composed of the trustees of the combining districts; *provided*, that school may be maintained at more than one point in the union district thus formed, if found necessary or advisable; *and provided further*, that the classes and grades in the two districts shall be arranged with reference to the convenience of the children and the efficient and economical management of the school. In case of a disagreement of the joint board as to the arrangement and distribution of the various classes and grades in the two districts, the deputy superintendent of public instruction shall determine the same.

### 3324. Expenses, how paid.

SEC. 85. A majority of the members of the joint board shall constitute a quorum for the transaction of business. Vouchers shall be made out on the separate district funds for the pro rata of monthly expenses, as agreed upon by the joint board, and these vouchers shall be signed by the president and clerk of the school board in the district on whose fund the vouchers are drawn.

**3325. District dissolved, when.**

SEC. 86. The union school, or district, herein provided for may be dissolved in June of any year by mutual consent or action of the boards of school trustees in the districts interested, or by the unanimous action of the school board of either district; *provided*, that no indebtedness incurred by the joint board exists; *and provided further*, that in case of dissolution by action of only one of the two districts as herein prescribed, at least thirty days' notice of intention to dissolve shall have been given to the joint board.

**3326. Districts enlarged or consolidated, how.**

SEC. 87. The board of county commissioners in any county on the recommendation of the deputy superintendent of public instruction, and without formal petition, may enlarge the boundaries of any school district, wherein there may be uncertainty of maintaining the minimum requirement of five census children, sufficiently beyond the sixteen-mile-square limit to include five or more school census children actually residing, and not temporarily living, therein, or the board, upon the recommendation of the deputy superintendent, may consolidate two or more such districts or parts of districts into a single district.

**3327. Property of consolidated districts.**

SEC. 88. In case of the consolidation of two or more districts as herein provided for, the property of the separate districts shall become the property of the district thus formed, and any money in the fund of a district consolidated with another shall, on notice given by the deputy superintendent of public instruction, be transferred by the county auditor and the county treasurer to the credit of the district so formed.

**3328. Board for, appointed, when.**

SEC. 89. When a district is formed by consolidation as herein provided, the deputy superintendent of public instruction shall appoint a board of school trustees therefor; he shall determine the points therein where instruction is to be given, and shall aid the trustees in making necessary provision for carrying out the purposes of this act.

**3329. Emergency fund created.**

SEC. 90. At the time of the apportionment of money in the state distributive school fund in January and July of each year, the superintendent of public instruction, before making such apportionment, shall set aside from said fund the sum of three thousand dollars, the same to constitute and be known as the emergency school fund; and he shall at once notify the state controller and the state treasurer of his action.

**3330. Used how.**

SEC. 91. The emergency school fund, or such portion thereof as the state board of education shall deem advisable, shall be used as hereinafter provided for payment of a teacher's salary in any legally constituted school district formed after the regular apportionment in January and July of any year and not consisting mainly or wholly of census children and territory theretofore included in an established school district.

**3331. Conditions before money is distributed.**

SEC. 92. Before any portion of the emergency school fund is distributed to any school district that may be entitled thereto under the provisions of this act, the superintendent of public instruction shall cause a census to be taken and shall satisfy himself that a competent teacher has been employed and that a suitable building has been provided.

**3332. Basis of distribution.**

SEC. 93. The money in the emergency school fund, or such part thereof as may be necessary, shall be distributed to the various districts entitled thereto on the basis of teachers—one teacher to every fifty census children or fraction thereof; and not more than two hundred and fifty dollars shall be allowed for any one teacher. The money thus distributed shall be used only for the payment of salaries of teachers. The superintendent of public instruction shall submit to the state board of education lists of school districts entitled to money under the provisions of this act, and estimates of the amount of money necessary for each district.

**3333. But one apportionment from emergency fund.**

SEC. 94. No more than one apportionment shall be made to any one school district from the emergency school fund. But at the general apportionments thereafter such district shall be entitled to its share of the state distributive school fund and of the general school fund of the county in which the district is located, the census provided for in section 92 of this act serving as the basis of apportionment until the general school census is available therefor.

**3334. State board to approve distribution.**

SEC. 95. Upon approval by the state board of education of the amounts to be distributed, the superintendent of public instruction shall draw his order on the state controller for the sum to be sent from the emergency school fund to any county, and the state controller shall thereupon draw his warrant on the state treasurer therefor, and the state treasurer shall pay over the money to the county treasurer, or any treasurer named. The superintendent of public instruction shall inform the county auditor and the county treasurer of any county to which money is thus sent, of the amount set aside for any school district or districts in that county; and such money shall be applied by the board or boards of school trustees thereof for the purpose named in this act, and disbursed in the manner prescribed by law.

**3335. Residue to revert.**

SEC. 96. Any money remaining in the emergency school fund on the thirtieth day of June and the thirty-first day of December of any year shall revert to the state distributive school fund.

**3336. District abolished, when.**

SEC. 97. Upon notice from the deputy superintendent of public instruction that a district has fewer than three resident children in actual school attendance, the board of county commissioners shall abolish such district.

**3337. Funds to revert.**

SEC. 98. All moneys remaining to the credit of any school district which has been legally abolished, by action of the board of county commissioners of the county in which the district is situated, shall revert to the county school fund of the said county.

**3338. Property of abolished district.**

SEC. 99. All property, real and personal, of any abolished school district shall revert to the county in which the said district is situated, and the board of county commissioners are hereby authorized to control and manage, rent or sell such reverted school property in the manner prescribed for the sale of county property; *provided*, that in case the said board of county commissioners shall find all of the real and personal property of any abolished district to be of a value less than one hundred dollars, the same may be sold without publication of notice and to the highest bidder for cash at private sale.

**3339. Disposal of proceeds.**

SEC. 100. All the moneys derived from the sale or rent of reverted school property shall be paid into the county school fund.

**CHAPTER 8****GENERAL PROVISIONS**

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**3340. Public schools defined.**

SEC. 101. Public schools within the meaning of this act shall include all elementary schools, and all district and county high schools.

**3341. Elementary and high school defined.**

SEC. 102. An elementary school within the meaning of this act shall be one in which no grade work above that included in the eighth grade according to the regularly adopted state course of study shall be given.

A high school within the meaning of this act shall be a school in which subjects above the eighth grade according to the state course of study may be taught.

**3342. School year.**

SEC. 103. The public school year shall commence on the first day of July and shall end on the last day of June.

**3343. School month.**

SEC. 104. A school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when an intermission of less than six days is ordered by the trustees no deduction of salary shall be made therefor.

**3344. Sectarian literature prohibited.**

SEC. 105. No books, tracts, or papers of a sectarian or denominational character shall be used or introduced in any schools established under the provisions of this act; nor shall any sectarian or denominational doctrines be taught therein; nor shall any school whatever receive any of the public-school funds which has not been taught in accordance with the provisions of this section.

See secs. 361, 362.

**3345. School property exempt from taxation or execution.**

SEC. 106. All lots, buildings, or other school property, owned by any district, town, or city, and devoted to public-school purposes, shall be, and the same are hereby, exempted from taxation, and from sale on any execution or other writ or order in the nature of an execution.

**3346. Hygiene to be taught.**

SEC. 107. Physiology and hygiene shall be taught in the public schools of this state, and especial attention shall be given to the effects of stimulants and narcotics upon the human system.

### 3347. Instruction relative to birds, fish and game.

SEC. 108. It is hereby made the duty of each and every teacher in the public schools of this state to give oral instruction at least once a month, to all children attending such schools, relative to the preservation of song-birds, fish, and game; and to explain to such children of suitable ages, at least twice each school year, the fish and game laws of the State of Nevada.

### 3348. Teachers to comply with provisions—Penalty.

SEC. 109. No teacher shall be entitled to receive any portion of the public-school moneys as compensation for services, unless such teacher shall have complied with the provisions of the last preceding section.

### 3349. Arbor day.

SEC. 110. Arbor Day is hereby established in the State of Nevada, and shall be fixed each year by proclamation of the governor at least one month before the fixing of such date, and it shall be observed as a holiday by the public schools of this state; *provided*, that nothing in this act shall be so construed as making this a legal holiday, so far as the courts and civil contracts are concerned.

### 3350. Governor to make proclamation of.

SEC. 111. His excellency the governor is requested to make proclamation setting forth the provisions of the preceding section of this statute, and recommending that Arbor Day so established, be observed by the people of the state in the planting of trees, shrubs, and vines, in the promotion of forest growth and culture, in the adornment of public and private grounds, places, and ways, and in such other efforts and undertakings as shall be in harmony with the character of the day so established.

### 3351. Holidays—Election days.

SEC. 112. No school shall be kept open on the first day of January, the thirtieth day of May, the fourth day of July, the first Monday of September, Thanksgiving Day, and the twenty-fifth day of December of each year, nor on any day appointed by the president of the United States or the governor of this state for public fast, thanksgiving, or holiday.

All schools shall be kept open and shall observe with appropriate exercises the twelfth day of February, the twenty-second day of February, Arbor Day, and the thirty-first day of October of each year, if such days occur on regular school days.

No school shall be closed on the date of any primary or general election, except in cases of school elections when the school building is needed as a polling-place.

### 3352. The national flag to be provided.

SEC. 113. Boards of school trustees in all school districts throughout the state shall provide for their respective schoolhouses a suitable flag of the United States, which shall be hoisted on the respective schoolhouses on all suitable occasions. The respective boards of trustees are hereby authorized and directed to cause said flags to be paid for out of any county school money in their respective school district funds not required for regular expenses. If the trustees in any school district fail or neglect to provide such flag, the deputy superintendent of public instruction shall himself provide the school with a flag and shall install the same upon the schoolhouse, and shall pay the expenses incurred in such action by drawing his order on the county auditor, and the county auditor shall draw his warrant on the county treasurer in payment of same.

### 3353. The state flag.

SEC. 114. The flag of the State of Nevada shall be of blue bunting with

the following devices thereon, to wit: The word "NEVADA" in silver-colored block letters, equidistant between the top and bottom; near the top the word "SILVER" in silver color, and near the bottom the word "GOLD" in gold color, each of which shall be in Roman capital letters, and there shall be under the word "Silver" a row of eight stars in silver color, under which and above the word "Nevada" a row of nine stars in gold color, at each end of the word "Nevada" a silver-colored star, and under the word "Nevada" a row of nine stars in gold color, under which and above the word "Gold" a row of eight stars in silver color. Each star shall have five points and be placed with one point up.

### 3354. District attorney legal adviser.

SEC. 115. The district attorneys of the several counties of Nevada must give, when required, and without fee, his opinion in writing to school trustees, on matters relating to the duties of their offices.

### 3355. Attorney-general legal adviser of deputy superintendents.

SEC. 116. The state attorney-general shall give, when required, and without fee, his opinion in writing to deputy superintendents of public instruction on matters relating to the duties of their offices.

### 3356. Teachers exempt from jury duty.

SEC. 117. Teachers actually engaged in teaching in the public schools of the state and members of the faculty of the state university shall be exempt from jury duty during the session of the public schools or university, but nothing in this act shall be construed as to excuse said teachers from liability to jury duty during a vacation.

### 3357. Classification of funds.

SEC. 118. On and after the fifteenth day of September, nineteen hundred and eleven, the county auditors and the county treasurers of the several counties of the State of Nevada shall keep separate accounts in their books for the library fund, the county school fund, and the state school fund of each district within their respective counties, and in no case shall they keep any school fund account in such manner that its balance shall at any time include the amounts on hand in any two school funds.

If on the said fifteenth day of September, nineteen hundred and eleven, the county auditor and the county treasurer in any county shall not have their respective school fund accounts arranged so that no school fund account shall show by its balance the amount on hand in any two or more school funds, the said county auditor and the county treasurer shall adjust their school fund accounts in the following manner:

The county auditor shall determine the total amount of money in the county treasury to the credit of each school district on the said fifteenth day of September, nineteen hundred and eleven. He shall then deduct from the said total amount to the credit of each school district at the time mentioned, the amount of money which should be in the library fund of each of the said school districts on the fifteenth day of September, nineteen hundred and eleven, and the amount so deducted shall constitute, for each school district, a separate fund which shall thereafter be designated as the library fund for such school district, and the county auditor shall thereafter make such entries in the said library fund as will show, at all times, the apportionments made to that fund, and all amounts drawn from the said fund in payment of legal claims.

If for any reason the auditor cannot tell the exact amount which should be in the library fund of any school district on the date mentioned above, he shall deduct from the total amount to the credit of the school district an amount equal to the apportionment to the library fund of that district made

in July, nineteen hundred and eleven, and the amount so deducted shall constitute, for such school district, a separate fund which shall thereafter be designated as the library fund as provided above.

After the auditor has established the library fund for each school district, as described above, he shall deduct from the remainder of the total amount to the credit of each school district, the amount apportioned to the state school fund of that district in July, nineteen hundred and eleven, and the amount so deducted shall constitute the state school fund of that school district, and the auditor shall open a separate account in his books for the said state school fund, and he shall thereafter make such entries in the state school fund account as will show, at any time, the apportionments made to such state school fund, and all amounts drawn from the said fund in payment of teachers' salaries; *provided*, that only the salaries of teachers shall be paid from such fund.

After establishing a library fund, and a state school fund, for each school district in the manner described above, the auditor shall establish a county school fund for each school district in the county by opening a separate account in his books and making proper entry therein of the amount left to the credit of each district after deducting from the said total amount the several amounts described above as constituting the library fund and the state school fund for each district, and the remainder left when the said two amounts shall have been deducted from the total amount to the credit of each school district, shall constitute the county school fund of each school district, and the county auditor shall thereafter make such entries in the county school fund account as will show, at all times, the apportionments made to that fund, and all amounts drawn from the said fund in payment of legal claims.

After the county auditor in each county has established the library fund, the state school fund, and the county school fund for each school district in the manner described above, he shall certify the amounts in each of the said funds to the county treasurer, and the county treasurer shall immediately open a separate account in his books for each of the three funds mentioned above, and he shall, thereafter, make such entries in each of the said accounts as will show, at all times, the apportionments made to each fund, and all amounts drawn from each fund in payment of legal claims.

### 3358. Penalty for failure of treasurer or auditor to comply.

SEC. 119. In case of failure or neglect on the part of the county auditor or the county treasurer of any county to comply with the provisions of the foregoing section, he shall forfeit for the benefit of the county school fund the sum of one hundred dollars from his official compensation, and it is hereby made the duty of the county commissioners, on notice from the deputy superintendent of public instruction of such failure or neglect on the part of any county auditor or county treasurer to comply with the provisions of the foregoing section, to deduct the said one hundred dollars from the compensation of the said negligent officer, and the commissioners shall place the said amount to the credit of the county school fund.

### 3359. Penalty of teacher for nonfulfilment of contract.

SEC. 120. Should any teacher employed by a board of school trustees for a specified time, leave the school before the expiration of such time, without the consent of the trustees, in writing, said teacher shall be deemed guilty of unprofessional conduct, and the deputy superintendent of public instruction is authorized, upon receiving notice of such fact, to suspend the certificate of such teacher for the period of one year.

### 3360. Appeal, how made, and to whom.

SEC. 121. From any decision made by a deputy superintendent affecting adversely the rights, powers or duties of any teacher or school board as

fixed by law, in any case in which no appeal is allowed to the board of education, an appeal may be taken to the superintendent of public instruction, and his decision in the premises shall be final.

CHAPTER 9

CENSUS MARSHALS

- 3361. Appointment of—Females may act as.
- 3362. Blanks for marshal.
- 3363. Duties of marshal.
- 3364. Idem.
- 3365. Report—What shall contain.
- 3366. In case of districts in two counties.
- 3367. Clerk to examine marshal's report—Approval—Transmission.
- 3368. Dates for completing reports.
- 3369. Deputy superintendents to compare reports.
- 3370. Special census marshal, when.
- 3371. Negligence of marshal—Punishment.
- 3372. Compensation—County to pay.

3361. Appointment of—Females may act as.

SEC. 122. It shall be the duty of the board of school trustees of each school district to appoint a competent person over twenty-one years of age as school census marshal before the first day of March of each school year and to notify the deputy superintendent of public instruction of such appointment immediately after it is made. This section shall not be construed in such a way as to prevent the appointment of a member of the board of school trustees or of a woman as school census marshal. Before the school census marshal shall enter upon the performance of his duties he shall take and subscribe to the oath of office, and such oath shall be filed in the office of the deputy superintendent of public instruction.

If the board of school trustees of any district shall fail to appoint a school census marshal and to notify the deputy superintendent of public instruction of the same, as provided in section 122 of this act, it shall be the duty of the deputy superintendent of public instruction to call the attention of the clerk of the board of such district to such failure, and if a notification of an appointment is not received at his office before the fifteenth day of March, the deputy superintendent of public instruction shall appoint the school census marshal for such district, such appointee to proceed in like manner as if appointed by the board of school trustees, and any appointment of census marshals made by the board of school trustees of such district shall be void.

3362. Blanks for marshal.

SEC. 123. The superintendent of public instruction shall supply each school census marshal with printed instructions as to his duty, and with all blank forms required for taking and reporting the census.

3363. Duties of marshal.

SEC. 124. It shall be the duty of the school census marshal of each district to take annually in the month of April a census of the resident children of the district for which he shall have been appointed, and to report the same to the deputy superintendent of public instruction. The term "resident children," as used in this section, shall be defined in such a way as to include:

1. Children residing with their parents or guardians in such district;
2. Children temporarily residing outside of said district for the purpose of attending institutions of learning or benevolent institutions, except those children who are in the state orphans' home and the said children in the state orphans' home shall be taken in the Carson City school district; *provided*, that the parents of such children shall be residing in such district on the first day of April; *and provided further*, that the children themselves shall have been actual residents of the district immediately previous to the

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time of such outside residence. The term "resident children" shall be further defined in such a way as to exclude:

1. Indian children who shall not have attended public school at least eighty days in the twelve months preceding the date of taking the census during the last preceding year;

2. Children temporarily visiting in or passing through said district;

3. Children who have never actually resided within the district, even in cases where the parents or guardians shall reside in such district;

4. Children who are residing in the district for the purpose of attending institutions of learning or benevolent institutions, except the children of the state orphans' home and the census of the children in the state orphans' home shall be taken in Carson City school district; and, in general, all children who may properly be included in the census of some other district.

The wards of the state at the orphans' home should not be counted as a part of the children of Ormsby County, in the apportionment of the school fund as required by Const. sec. 355, as their education is provided for by the state at the orphans' home,

and they have not the right to attend the public school. State ex rel. Wright v. Dovey, 19 Nev. 396, 397 (12 P. 910). But see Stats. 1911, 135, secs. 4106-4108, providing for education of these children in Carson City schools.

### 3364. *Idem.*

SEC. 125. The school census marshal shall visit each home, habitation, residence, domicile, or place of abode in his district and require the necessary information of parents or others competent to give accurate information, supplementing and correcting this by actual observation when necessary. The school census marshal shall have power to administer the legal oath to parents, guardians, and other persons furnishing such information.

### 3365. Report—What shall contain.

SEC. 126. The report of the school census marshal shall be made upon blank forms to be furnished by the superintendent of public instruction, and shall show the following facts:

1. The full names of all children less than twenty-one years old and residing in the district on the first day of April, such names to be given by families under the name of the parents or guardian;

2. The year, month, and day on which each child was born, and the age in years, counting to the first day of April;

3. The sex and race of each child;

4. The place of birth of each child and of each parent;

5. The total number of children less than six years of age; the total number not less than six nor over eighteen years of age, and the total number of children over eighteen and less than twenty-one years of age, counting from the first day of April. Only those children who are not less than six nor over eighteen years of age shall be considered as school census children;

6. Such other facts as the superintendent of public instruction may require.

### 3366. In case of districts in two counties.

SEC. 127. In the case of districts lying partly in two or more counties, the school census marshal shall report separately the children of each county.

### 3367. Clerk to examine marshal's report—Approval—Transmission.

SEC. 128. Immediately after the school census marshal shall have completed the work of taking the census, he shall submit a report of the same, according to a form to be prescribed by the superintendent of public instruction, to the clerk of the board of school trustees, and if the clerk finds the report to be correct, according to the best of his knowledge, he shall approve the same and certify to its correctness, after which the census marshal shall transmit it to the deputy superintendent of public instruction with a sworn

statement to the effect that reasonable diligence and care have been exercised and that, to the best of his knowledge, all parts of the report are correct.

### 3368. Dates for completing reports.

SEC. 129. In the case of districts having a school census population of less than three hundred the report shall be sent to the deputy superintendent of public instruction before the fifteenth day of May. In the case of districts having over three hundred census children the report shall be sent to the deputy superintendent of public instruction before the first day of June.

### 3369. Deputy superintendents to compare reports.

SEC. 130. The deputy superintendent of public instruction shall compare the census reports submitted to him by the various school census marshals so far as he shall consider needful, and he shall strike from them the names of any children whose names are, according to his best knowledge, wrongly included in the reports, and it shall be his duty to correct all manifest errors in such reports. In all cases he shall make sufficient investigation to confirm him in his action before correcting any report.

Upon a review of sections 31 and 32 of the act of 1865, 413, and section 1 of the act of 1887, 138, it was held that the superintendent has no power to correct, without ordering a new census, a census marshal's report and make his apportionment of school moneys on the basis of such corrected report. *State ex rel. Miles v. Trustees*, 27 Nev. 61-69 (72 P. 817).

### 3370. Special census marshal, when.

SEC. 131. If at any time the deputy superintendent shall have reason to believe that a report contains errors which he is unable to correct, or if at any time the report of the school census marshal is not transmitted as provided by section 129 of this act, he may appoint a special school census marshal who shall retake the census as soon as practicable and not later than the thirtieth day of June, conforming otherwise to the rules governing the original census.

### 3371. Negligence of marshal—Punishment.

SEC. 132. If the school census marshal of any district neglects or refuses to make his report at the time and in the manner prescribed by law, or if he, with intention to defraud the state, or through failure to exercise reasonable care, include the names of children in violation of law, or if he report their names, ages or number falsely, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine in any amount not less than five or more than one hundred dollars, or by imprisonment in the county jail not less than five nor more than thirty days, and it shall be the duty of the various district attorneys to cause the arrest and prosecution of such persons upon information furnished by the superintendent of public instruction, other school officers, or by other persons.

### 3372. Compensation—County to pay.

SEC. 133. Every bill for the compensation of a school census marshal shall be presented to the board of county commissioners of the county in which the district for which he shall have been appointed lies, and upon the order of said board shall be paid as other claims out of the general fund of the county. No bill for the compensation of any school census marshal shall be ordered paid unless the bill shall be accompanied by a statement from the deputy superintendent of public instruction to the effect that a satisfactory census report has been returned as provided by law. In any school district containing ten or less school census children the compensation for taking the school census shall not exceed eight dollars. In school districts having more than ten school census children there may be allowed not more than twenty-five cents additional for the name of each school census child above the said ten

names; *provided*, that in districts in which there are less than three families having school census children, the compensation shall not exceed five dollars.

CHAPTER 10

SCHOOL FUNDS

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**3373. State permanent school fund.**

SEC. 134. All moneys accruing to this state from the sale of lands heretofore given or bequeathed, or that may hereafter be given or bequeathed, for school purposes; all fines collected under the penal laws of the state; two per cent of the gross proceeds of all toll roads and bridges, and all estates that may escheat to the state, shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses, but shall constitute an irreducible and indivisible fund, to be known as the state permanent school fund, which shall be invested as provided in section 148 of this act.

See secs. 355, 956, 1619, 1625, 3758, 3478.

The method of ascertaining the true discount and premium, and the amount to be paid for the bonds arithmetically demonstrated. *Livingston v. State*, 18 Nev. 352 (4 P. 708).

An act of the legislature, not authorized

by the state constitution at the time of its passage, is absolutely null and void, and is not validated by a subsequent adoption of an amendment authorizing it. *State ex rel. Stevenson v. Tutty*, 20 Nev. 427, 428 (22 P. 1054).

**3374. Ad valorem state school tax.**

SEC. 135. An ad valorem tax of ten cents on the hundred dollars of all taxable property in the state is hereby levied and directed to be collected and paid in the same manner as other state taxes are required to be paid; and said tax shall be known as the state school tax, and the board of county commissioners of the several counties shall, annually, at the same time other state taxes are levied, add this to the other taxes provided by law to be levied and collected, and it shall be annually collected at the same time and in the same manner as other state taxes are collected, and if, from any reason whatever, in any year said taxes are not levied as herein required, by the board of county commissioners, the county auditor shall enter them on the assessment roll, as required by law for other taxes.

**3375. State distributive school fund.**

SEC. 136. All moneys derived from interest on the state permanent school fund, together with all moneys derived from the state school tax, shall be placed in and constitute a fund to be known as the state distributive school fund, and be apportioned semiannually among the several school districts of the state in the manner provided in this act for the apportionment of the state distributive school fund to the several school districts of the state.

**3376. Use of this restricted.**

SEC. 137. The school moneys distributed from the state distributive school fund, shall not be used for any other purpose than the payment of qualified

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teachers, under this act; and no portion of said fund shall, either directly or indirectly, be paid for the erection of schoolhouses, the use of schoolrooms, furniture, or any other contingent expenses of public schools.

### 3377. State tax, use restricted.

SEC. 138. No portion of the public-school funds, nor of the moneys raised by the state tax, or specially appropriated for the support of public schools, shall be devoted to any other object or purpose; nor shall any portion of the public-school funds, nor of money raised by state tax for the support of public schools, be in any way segregated, divided, or set apart for the use or benefit of any sectarian or secular society or association.

### 3378. County school tax.

SEC. 139. The board of county commissioners of each county shall, annually, at the time of levying other county taxes, levy a county school tax, not to exceed fifty cents nor less than twenty cents on each one hundred dollars valuation of taxable property, which tax shall be added to the county tax and collected in the same manner, and paid into the county treasury as a special deposit, to be drawn in the same manner, as other public-school moneys; and should said county commissioners fail or neglect to levy said tax as required it shall be the duty of the county auditor to add such tax as the superintendent of public instruction may deem sufficient, between the limits of twenty and fifty cents on each one hundred dollars valuation of taxable property in the county, to the assessment roll, to be collected as specified in this section.

The repeal of a former school law does not interfere with the disposition of funds already collected under the old law. *Trustees v. Ormsby County*, 1 Nev. 334, 337.

This act (1861, 273) sets apart ten per cent of the property tax, but not of licenses for school purposes. *Idem*.

Such ten per cent is only to be taken from the tax collected for county purposes and not that collected for territorial purposes. *Idem*.

The act to regulate the finances of Ormsby

County (Stats. 1864, 92) exempts the building fund from operation of this section and substitutes a special school tax. *Idem*.

The tax of forty-five cents levied for building fund and sixty cents for current expense fund are specified funds, exempted from the operation of the school law requiring ten per cent of the property tax to be set aside for school purposes. The eighty-cent tax for a general and contingent fund is subject to the provisions of the school law, and ten per cent of that amount must be added to the school fund. *Idem*.

### 3379. Special school tax, when.

SEC. 140. When, in the judgment of the board of school trustees of any district, the school moneys to which such district shall be entitled for the coming school year will not be sufficient to maintain the school properly and for a sufficient number of months, said board shall have power to direct that a tax not more than twenty-five cents on the one hundred dollars of assessed valuation of such district shall be levied, and, upon notification by the clerk of the board of school trustees of such district that such action has been taken, the board of county commissioners shall levy and cause to be collected such tax upon the taxable property of such district.

### 3380. Election to decide tax levied—Tax, when due and how enforced.

SEC. 141. The board of trustees of any school district may, when in their judgment it is advisable, call an election and submit to the qualified electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to keep any school or schools in such district open for a longer period than the ordinary funds will allow or for building an additional schoolhouse or houses, or for any two or for all these purposes. Such election shall be called by posting notices in three of the most public places in the district for twenty days, and also if there be a newspaper in the county by advertisement therein once a week for

three weeks. Said notice shall contain time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The trustees shall appoint three judges to conduct the election, and it shall be held in all other respects as nearly as practicable in conformity with the general election law. At such election the ballot shall contain the words: "Tax—Yes," or "Tax—No." If a majority of the votes cast are "Tax—Yes," the officers of the election shall certify the fact to the county commissioners, together with a statement of the amount of money proposed to be raised, who shall ascertain the necessary percentage on the property of said district, as shown by the last assessment made thereof after equalization, to raise the amount of money voted, and shall add it to the next county tax to be collected on the property aforesaid; and the same shall be paid into the county treasury as a special deposit in favor of said school district, to be drawn in the same manner as other school moneys; *provided*, if in any school district the school trustees shall certify to the county commissioners that the state and county money to which any district is entitled is not sufficient to keep school open in such district up to the date when state and county taxes shall become due, the tax provided for in this section shall be due and payable to the assessor of such county in which the tax is levied immediately after he shall make the assessment and demand for payment of the tax; *provided*, the owner of the property shall, if he deem the assessment too high, have the privilege of submitting the assessment to the board of county commissioners, for equalization within ten days after the demand made for the payment of the tax, and the county commissioners, within five days after complaint made to them, shall meet and determine the correct valuation of the property assessed, and may change the same by adding to or deducting from the sum fixed either by the owner or assessor, and upon notice to the owner of the result of their equalization the tax shall be immediately payable to the assessor, and if not paid shall become delinquent; and all taxes so assessed shall constitute a lien on the property charged therewith, from the date of the levy thereof by the county commissioners, or entry thereof on the assessment roll by the county auditor, until the same are paid, and thereafter if allowed to become delinquent shall be enforced in the same manner as provided by law for the collection of state and county taxes. If for any reason said tax is not added to the county tax by the county commissioners, the county auditor shall enter it upon the assessment roll to be charged against the property of that district, on application from the trustees of said district.

The "State of Nevada" is the proper party plaintiff in a suit for delinquent school taxes. *State v. First National Bank*, 4 Nev. 491, 492.

This section means not only that the form of action and mode of procedure shall be the same, but that the State of Nevada shall be the party plaintiff in both. *Idem*.

"Once a week for three weeks." It is not necessary for the call to be published twenty-one days before the day of election. Three insertions upon three successive weeks and at any time of any such weeks before the election, are sufficient. *State v. Y. J. S. M. Co.*, 5 Nev. 416, 422-437.

### 3381. Use of county school funds, for what.

SEC. 142. The board of trustees, or board of education, of each city, town, and district, may use the moneys from the county school funds to purchase sites, build, or rent schoolhouses, to purchase libraries, and to pay teachers or contingent expenses as they may deem proper, or for transportation of pupils to and from school.

### 3382. Controller to keep separate accounts.

SEC. 143. The state controller shall keep a separate and distinct account of the state permanent school fund, of the interest and income thereof, of such moneys as shall be raised by the state school tax, and of all moneys

derived from special appropriations or otherwise for the support of public schools.

### 3383. Controller to report school securities.

SEC. 144. The state controller shall, on or before the tenth day of April and the tenth day of October of each year, make to the state board of education a statement of the securities belonging to the state permanent school fund. He shall also, on or before the tenth day of January and the tenth day of July of each year, render to the superintendent of public instruction a statement of the moneys in the treasury subject to distribution to the several districts of the state, as provided in section 151 of this act.

### 3384. State treasurer custodian of school securities.

SEC. 145. The state treasurer shall be the legal custodian of all state and national securities in which the moneys of the state permanent school fund of the State of Nevada are or may hereafter be invested, and for their safe keeping he shall be liable on his official bond. It shall be the duty of the state treasurer to pay over all public-school moneys received by him only on warrants of the state controller, issued upon the orders of the superintendent of public instruction, under the seal of the board of education, in favor of county treasurers, or on orders of the state board of education, for purposes of investment, as provided in section 148 of this act, which orders, duly endorsed, shall be valid vouchers in the hands of the state controller for the disbursement of public-school moneys.

### 3385. County treasurers to receive school moneys semiannually.

SEC. 146. All school moneys due each county in the state shall be paid over by the state treasurer to the county treasurers on the tenth day of January and the tenth day of July of each year or as soon thereafter as the county treasurer may apply for the same upon the warrant of the state controller drawn in conformity with the apportionment of the superintendent of public instruction, as provided in section 151 of this act.

### 3386. State treasurer, duty of.

SEC. 147. When the interest on any securities belonging to the state permanent school fund is due, the state treasurer shall, upon the warrant of the state controller and in the presence of a majority of the members of the state board of education, cut off and pay the coupon on such securities, and place the moneys so paid into the state distributive school fund, and keep a correct account thereof in his books.

### 3387. Duties of state controller.

SEC. 148. It is hereby made the duty of the state controller, quarterly, to notify the state board of education of the amount of money in the state permanent school fund, and whenever there shall be a sum in said fund sufficient for investment said board shall direct the state treasurer to negotiate for investment of the same in United States securities, or in the bonds of this state, or in the bonds of other states, at the lowest purchasable rates, and the board shall then draw their order upon the controller in favor of the state treasurer, for the amount to be invested. Said controller shall thereupon draw his warrant as directed, and the state treasurer shall complete the purchase of the securities negotiated for by him in pursuance of this act; *provided*, that before any such investment of said school moneys as is contemplated by the provisions of this act is made, said board of education shall require of the attorney-general of this state his legal opinion as to the validity of any act or acts of any state under which said bonds are issued and in which said board of education are about to make an investment; *and provided further*, that in no case shall any bonds be purchased as herein pro-

vided without said board of education making due and diligent inquiry as to the financial standing and responsibility of the state or states whose bonds it is proposed to purchase.

### 3388. Duties of county treasurer.

SEC. 149. It shall be the duty of the county treasurer of each county:

1. To receive and hold as a special deposit all public-school moneys, whether received by him from the state treasurer or raised by the county for the benefit of the public schools, or from any other source, and to keep separate accounts thereof and of their disbursements;

2. On the second Monday of June and on the second Monday of December of each year to notify the superintendent of public instruction of the amount of money in the county school fund subject to distribution;

3. To pay over all public-school moneys received by him only on warrants of the county auditor, issued upon orders of the board of school trustees for their respective school districts. All orders issued by the said trustees shall be valid vouchers in the hands of county auditors for warrants drawn upon such orders; *provided*, that orders for the payment of money for new school buildings and for repairs of furniture amounting to over five hundred dollars must be approved by the superintendent of public instruction before such warrants are drawn;

4. On or before the tenth day of July, annually, to make full report to the superintendent of public instruction of the public-school moneys received into the county treasury within the school year ending on the last day of June next previous thereto, with a particular statement of the disbursement of the said school moneys, and of any amount of said school moneys which may remain in his hands at the close of the school year, designating the part remaining in the state school fund and the part remaining in the county school fund; and in case of failure or neglect of said county treasurer to make such report, he shall forfeit for the benefit of the county school fund the sum of one hundred dollars from his official compensation, and it is hereby made the duty of the county commissioners, on notice from the superintendent of public instruction of such failure or neglect on the part of any county treasurer, to deduct said one hundred dollars from his compensation and place said amount to the credit of the county school fund.

### 3389. No fees for handling school moneys.

SEC. 150. No tax collector or county treasurer shall receive any fees or compensation whatever for collecting, receiving, keeping, transporting, or disbursing any school moneys mentioned in the preceding sections of this act. In case of a special school tax for any school district, as provided in sections 140 and 141 of this act, the board of county commissioners may allow a reasonable compensation for assessing and collecting if such taxes are assessed and collected independently and separate from the regular taxes, such compensation to be paid out of the special taxes thus collected.

### 3390. Apportionment of state distributive school fund.

SEC. 151. It shall be the duty of the superintendent of public instruction immediately after the state controller shall have made his semiannual report, as provided in section 144 of this act, to apportion to the several school districts in the state the moneys in the state distributive school fund, subject to apportionment at such time. He shall apportion the moneys of said fund among the several school districts of the state in the following manner:

1. He must ascertain the number of teachers to which each school district is entitled by calculating one teacher for every thirty school census children or fraction thereof, as shown by the last preceding school census;

2. He must ascertain the total number of teachers in the state by adding together the number of teachers assigned to the several school districts upon

the basis of one teacher to each thirty school census children or fraction thereof;

3. He must apportion seventy per cent of the state distributive school fund, subject to apportionment at that time among the several school districts of the state in proportion to the number of teachers in each school district, upon the basis of one teacher to each thirty school census children or fraction thereof as shown by the last preceding school census;

4. He must apportion thirty per cent of the state distributive school fund, subject to apportionment at that time, among the several school districts of the state in proportion to the number of children between the ages of six and eighteen years in each school district as shown by the last preceding school census.

Immediately after making the apportionment of the state distributive school fund in the manner prescribed in this act, the superintendent of public instruction shall, by means of a printed report, notify the state controller, the county treasurer, the county auditor, and the clerk of each board of school trustees of the apportionments in detail. He shall also furnish to each county treasurer, under seal of the state board of education, an order on the state controller for an amount of money equal to the full amount of school moneys apportioned to the several school districts of that county from the state distributive school fund, and he shall take such county treasurer's receipt for the said order.

The term "census children" means the number of children officially registered. State ex rel. Schulz v. Sweeney, 24 Nev. 350 (55 P. 88).

### 3391. Apportionment of county school funds.

SEC. 152. The superintendent of public instruction shall, immediately after he has apportioned the state distributive school fund, as provided in this act, proceed to apportion the county school fund of each county among its several school districts. He shall apportion the county school fund as follows:

1. He must ascertain the number of teachers to which each district is entitled by calculating one teacher for every seventy-five census children or fraction thereof as shown by the last preceding census report;

2. He must ascertain the total number of teachers for the county by adding together the number of teachers assigned to the several school districts upon the basis of one teacher to each seventy-five census children or fraction thereof;

3. Forty per cent of the amount of the county school fund shall be apportioned equally to each school district for every teacher assigned to it upon the basis of seventy-five census children or fraction thereof;

4. All school moneys remaining on hand in the county school fund after apportioning forty per cent of the county school fund equally to each school district for every teacher assigned it upon the basis of seventy-five census children or fraction thereof, must be apportioned to the several school districts in proportion to the number of school census children between the ages of six and eighteen years as shown by the last preceding school census.

The superintendent of public instruction shall by means of a printed report notify the county treasurer, the county auditor, and the clerk of each board of school trustees of such apportionment in detail.

This act construed. State ex rel. Love v. Elko Co., 21 Nev. 19, 21. See citation of this case under sec. 275, pp. 77-78, ante.

The superintendent has no power to correct, without ordering a new census, the census marshal's report, and make his apportionment of school moneys on the basis of such corrected report. State ex rel. Miles v. Wedge, 27 Nev. 61, 67 (72 P. 817).

### 3392. Duties of state superintendent in regard to distribution of funds.

SEC. 152½. On or before the tenth day of July of each school year the

county auditor in each county shall report to the superintendent of public instruction the amount of moneys in the state and county funds to the credit of each school district in his county.

The superintendent of public instruction shall, upon receipt of such report, deduct from the total amount of money to the credit of each of the school districts, all amounts over and above two hundred and fifty dollars for each teacher assigned to said district upon the basis of one teacher for every thirty census children or fraction thereof, as shown by the last preceding school census; *provided*, that if the county auditor shall have his accounts so arranged that the state school fund account is entirely separate from the county school fund account, then he shall notify the superintendent of public instruction of the amount in each fund to the credit of each school district, and the superintendent of public instruction shall deduct from the state school fund all amounts in excess of one hundred and fifty dollars for each teacher assigned to such school district on the basis of one teacher to every thirty school census children or fraction thereof, as shown by the last preceding school census, and he shall also deduct from the county school fund all the amounts in excess of one hundred dollars for each teacher assigned to the district on the basis of one teacher for every thirty school census children or fraction thereof, as shown by the last preceding school census; *provided, further*, that if the sum of the balances in the state school fund and the county school fund of any school district on the first day of July does not exceed two hundred and fifty dollars for each teacher assigned to the district on the basis of one teacher to each thirty census children or fraction thereof as shown by the last census, the superintendent of public instruction shall not make the deductions as provided in this section, and in no case shall the superintendent of public instruction deduct such amounts from the school funds of any district as will make the balance in the funds of the district less than two hundred and fifty dollars for each teacher assigned to the district upon the basis of one teacher to every thirty school census children or fraction thereof, as shown by the last preceding school census.

The amounts deducted from the several school funds of each county as provided in the above paragraph shall be placed to the credit of the unapportioned county school fund of the county, and be apportioned with the said county fund.

The superintendent of public instruction shall, at the time of making the deductions in accordance with this act, notify each county auditor and county treasurer of his action, and the county auditor and county treasurer shall make such entries in their accounts as will show that such deductions have been made; *provided*, that this section shall not apply so as to remove from the funds of any school district any moneys derived from any source other than by apportionments from the state fund or the county fund.

If the trustees of any school district shall certify to the superintendent of public instruction that a new building, or repairs on an old school building, are necessary to the district, and that the trustees have been authorized by vote of the district, if a vote is required, to build such new school building, or to make such needed repairs, or that the balance in the funds of the district is necessary for the maintenance of school in the district, and that the trustees have estimated that the cost of such new school building, needed repairs, or school maintenance is to be \_\_\_\_\_ dollars, the superintendent of public instruction shall make whatever investigation he may deem best, and if he shall become satisfied that such new building or repairs are necessary in the district, or that the balance in the funds of the district is necessary for the maintenance of school in the district, and that the amount estimated to be spent for such new building, repairs, or maintenance of school is a reasonable amount to be set aside for the purpose mentioned, he shall not

make the deductions as provided in this section, but he shall make such deductions as will leave the funds in the district, an amount equal to the estimated amount to be spent for such new building, repairs, or maintenance of school, together with two hundred and fifty dollars for each teacher assigned to that district upon the basis of one teacher for every thirty census children or fraction thereof as shown by the last preceding school census.

## CHAPTER 11

### DISTRICT SCHOOL LIBRARIES

3393. Apportionment of district school library fund. 3395. How expended.  
 3394. Amount for libraries, how determined. 3396. Idem.  
 3397. Rules for libraries.

#### 3393. Apportionment of district school library fund.

SEC. 153. It shall be the duty of the superintendent of public instruction in July of each year, after apportioning the public-school moneys of each county among its respective districts, to set apart for each district out of the money thus appropriated to such district a sum of not less than three dollars nor more than five dollars for each teacher to which the district is entitled, calculating one teacher for every seventy-five census children or fraction thereof, and the further sum of not less than five cents nor more than ten cents for each census child as shown by the last school census, and the sums thus apportioned shall constitute for each district a library fund.

#### 3394. Amount for libraries, how determined.

SEC. 154. The amount of money to be set apart and apportioned, within the limits provided by the preceding section, shall be determined by the superintendent of public instruction.

#### 3395. How expended.

SEC. 155. The moneys herein designated and apportioned shall be expended for the purchase of books, approved by the superintendent of public instruction for the public-school library of each district, and for no other purpose and shall be paid out and expended as the other school funds of such district are now paid out.

#### 3396. Idem.

SEC. 156. The board of school trustees of each district in this state is hereby authorized and directed to purchase books for public-school libraries in accordance with the provisions of this act.

#### 3397. Rules for libraries.

SEC. 157. The superintendent of public instruction is hereby authorized and directed to make such rules and regulations for the purchase of books provided for, and for the preservation and use thereof, as may be proper, provided such rules and regulations do not in any wise conflict with the laws of the state.

## CHAPTER 12

### SCHOOL BOOKS

3398. Text-book commission, how composed. 3405. Commission shall make contracts.  
 3399. Officers of—Meetings public. 3406. Contractors to give bonds—Proviso.  
 3400. Method of adopting text-books. 3407. Contracts, when in effect.  
 3401. Meetings of commission. 3408. Contracts void, when.  
 3402. Geographies to contain special matter for Nevada. 3409. Price of text-books promulgated.  
 3403. Commission to adopt text-books. 3410. Use of authorized books compulsory.  
 3404. Commission's choice of books to be used in schools. 3411. Per diem of appointed commissioners.  
 3412. Penalty for overcharge on books.

**3398. Text-book commission, how composed.**

SEC. 158. As now and heretofore provided by law, there shall be a text-book commission, to consist of members of the state board of education and of four additional members appointed by the governor. The four members appointed on this commission by the governor during the month of January, 1911, shall hold office from the date of appointment to the first day of March, 1915. During the month of February, 1915, and during the month of February every four years thereafter, the governor shall appoint four members of said commission, who shall hold office for four years from and after the first day of March succeeding their appointment, and who, with the members of the state board of education, shall constitute the state text-book commission. Such appointees shall be persons actively engaged in school work. They shall take the constitutional oath and have the same filed in the office of the secretary of state before entering upon the duties of their office. If any vacancy occur during the terms of such appointees, by death, resignation, or removal, the governor shall fill such vacancy by the appointment of some person eligible as provided above.

The state board of education may, after it has passed a resolution prescribing a certain series of text-books, reconsider its action and rescind such resolution at any

time before the adoption of such books by the different school districts. State ex rel. Newnham v. State Board of Education, 18 Nev. 173, 174, 180, 181 (1 P. 844).

**3399. Officers of—Meetings public.**

SEC. 159. The governor shall be ex officio president and the superintendent of public instruction ex officio secretary of said text-book commission. The commission shall adopt rules of procedure in harmony with the provisions of this act. Four members of the commission shall constitute a quorum for the transaction of business, but no action shall be taken by the commission unless a majority of the entire commission shall vote in favor thereof. All meetings of the commission shall be public, and the secretary shall keep a full and correct record of all proceedings, which record shall be open to the inspection of the public. Vote on the adoption of all text-books shall be by roll-call and the secretary shall record the name and vote of each member.

**3400. Method of adopting text-books.**

SEC. 160. The state text-book commission shall hold its meetings to adopt text-books in the office of the superintendent of public instruction in Carson City on the third Tuesday in June, nineteen hundred and eleven, and on the third Tuesday in June every four years thereafter. The secretary at the request or with the consent of any three members of the board, may call special meetings of the text-book commission whenever there may be business to transact of such importance as to justify the call, stating definitely the purpose of the meeting. At the meeting held on the third Tuesday in June, nineteen hundred and eleven, and every four years thereafter on the third Tuesday in June, the commission shall adopt a uniform series of text-books for exclusive use as text-books in all the public schools of the state. If a contract for any text-book adopted at any regular meeting of the text-book commission shall expire, either through the failure of the publishers of said book to fulfil the conditions of the contract, or for any other reason, the text-book commission may adopt another book to take the place of the one on which the contract has lapsed, after notifying the text-book publishers as herein-after provided for in cases of regular adoption. When regular adoptions are being made the commission may adjourn from day to day; *provided*, the session shall not continue beyond ten actual days.

**3401. Meetings of commission.**

SEC. 161. Immediately after the first meeting of the commission, and not later than the first day of April, 1911, and every four years thereafter,

if the commission shall deem it advisable to make changes in the list of prescribed text-books, the secretary of the commission shall notify all publishers of text-books who shall have placed their names and postoffice addresses on file with the superintendent of public instruction, to be kept on file in the office of said superintendent of public instruction, that the text-book commission will meet, as herein provided, and will receive sealed proposals, up to 12 o'clock, noon, of said third Tuesday of June, 1911, and up to 12 o'clock, noon, of the third Tuesday of June every four years thereafter, for supplying the State of Nevada with a series of text-books for use in all the public schools of the state, for a period of four years from and after the first day of September, 1911, and for like periods of four years from and after the first day of September every four years thereafter, in the following branches, viz.: Reading, grammar, arithmetic, geography, history of the United States, physiology and hygiene, writing, spelling, drawing, music, and will also approve other books for supplemental use, as permitted in this act. Said sealed proposals shall be made in accordance with a form to be prescribed by the commission and shall be addressed to the superintendent of public instruction, Carson City, Nevada; and shall be indorsed "Sealed proposals for supplying text-books for use in the State of Nevada." Said proposals shall include a statement of the introductory price, the exchange price for new books in the hands of the dealers, the exchange price for second-hand books, and the retail price at which publishers will agree to furnish each text-book to the school children of Nevada at one or more places in each county as shall be designated by the commission. Whenever any contract shall be terminated by reason of the failure of any contracting publisher to observe the terms of the contract, or when any contract shall cease to be in force and effect, the text-book commission shall notify publishers to this effect, in a manner hereinbefore prescribed, that adoptions will be made to fill out the unexpired term of such contract, and that sealed bids shall be filed with the superintendent of public instruction on or before a date to be determined by the commission, to be specified in the notification to publishers.

#### 3402. Geographies to contain special matter for Nevada.

SEC. 162. The publishers, contracting and agreeing to furnish books for use in the State of Nevada under the provisions of this act, shall cause to be prepared a special map and a special supplement descriptive of Nevada for the geography adopted by said commission. The map and special descriptive geography of Nevada shall be revised every four years by the publishers. They shall further agree to maintain the mechanical excellence of the books adopted by said commission, fully equal to the samples submitted, in binding, printing, quality of paper, and other essential features, and the books shall be of the latest revised edition.

#### 3403. Commission to adopt text-books.

SEC. 163. It shall be the duty of said text-book commission to meet at the time and place mentioned in said notice and to open all sealed proposals in public, in the presence of a quorum of said commission, to select and adopt such text-books for use in the public schools, and to approve such supplemental books as in the opinion of the commission will best subserve the educational interests of the state; *provided, however*, that the text-book commission may, at its discretion, reject any and all proposals, if it be deemed by it to be to the interest of the state so to do, and call for new proposals, stating the time when such new proposals shall be opened, which time shall not be later than thirty days from the rejection of the previous proposals.

#### 3404. Commission's choice of books to be used in schools.

SEC. 164. The series of text-books so selected and approved by said text-

book commission shall be certified to by the president and secretary, and said certificate, with a copy of the books named therein, shall be placed on file in the office of the superintendent of public instruction. Such certificate must contain a complete list of all books adopted and approved by said commission, giving introductory, exchange, and retail prices for which each text-book will be furnished, and the names of the publishers agreeing to furnish the same. The said books named in said certificate shall, for a period of four years, from and after the first day of September next following the date of such adoption, be used in all the public schools of the state to the exclusion of all others; *provided, however*, that nothing in any part of this act shall be construed so as to prevent the purchase or use by the district of any supplemental or reference books for use in the schools of this state.

### 3405. Commission shall make contracts.

SEC. 165. The text-book commission shall have power to make such contracts for the purchase and use of text-books in the name of the state as they shall deem necessary, for the interests of the public schools of the state. Such contracts shall set forth the introductory, exchange, and retail price of each text-book, and such prices shall not be less favorable than the prices at which such books are sold in any other state; and such contract shall provide, further, that the contracting publisher shall, during the life of the contract, keep on hand at one or more depositories, in each county as shall be designated by the commission, a sufficient number of copies of such text-books to supply the needs of the schools of the state, as ordered by the keepers of said depositories.

### 3406. Contractors to give bonds—Proviso.

SEC. 166. All publishers contracting to furnish text-books adopted by the text-book commission shall be required to give bonds in an amount equal to one-half of the value of the books to be furnished during one school year, as estimated by the text-book commission, and such bonds shall be forfeited to the state distributive school fund, if such publishers fail to comply with the terms of the contract in any county of the state; *provided, however*, that such bonds shall not be forfeited through the unauthorized action of text-book dealers in this state if such publisher shall, upon notification by the superintendent of public instruction, promptly correct any violation of contract prices on the part of any local dealer. Upon information furnished by the state text-book commission, the attorney-general shall bring action for the recovery of the amount of any such bond of any publisher who shall have failed to comply with the terms of any contract, and the full amount named in such bond shall be deemed to be fixed and liquidated damages for the breach of such contract.

### 3407. Contracts, when in effect.

SEC. 167. Such contract with the publishers of text-books shall not take effect until such publishers shall have filed with the secretary of state, their bond, with at least two sufficient sureties, or a bond from a bonding company authorized to do business in this state, to be approved by the governor, and in such sum as shall be determined by the text-book commission.

### 3408. Contracts void, when.

SEC. 168. In case the publishers of any text-books adopted by the text-book commission shall not, on or before the fifteenth day of July next following such adoption, have filed with the secretary of state a bond as hereinbefore provided, or in case such publishers shall at any time thereafter fail to comply with the terms of such contract, and if within reasonable time, after due notice shall have been given by the superintendent of public instruction, they shall have failed to comply with the conditions of the contract in any

respect, the adoption of said books shall become null and void. The text-books adopted by the said text-book commission under this act shall, upon the compliance of the publishers with the aforesaid conditions, continue in use for the period of four years after the first day of September next following the date of such adoption, to the exclusion of all other text-books.

#### 3409. Price of text-books promulgated.

SEC. 169. Whenever the publishers of the books adopted under the provisions of this act shall have filed their bond as herein provided, it shall be the duty of the superintendent of public instruction to cause all prices of text-books as guaranteed by the publishers to be printed and distributed among the superintendents and school trustees, and it shall be the duty of the school trustees in each district to cause such prices to be kept constantly posted in a conspicuous place in each schoolroom.

#### 3410. Use of authorized books compulsory.

SEC. 170. The text-books adopted by the text-book commission shall be used in every public school in the state in the grades for which they are adopted, and no other books shall be used as text-books in such grades; *provided, however*, that this section shall not be interpreted in such a manner as to prohibit the use of supplemental books purchased by the district. Any school officer or teacher who shall violate the provisions of this act by requiring the pupils to use text-books other than those adopted by the text-book commission, or by permitting the use of such other books as texts, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars, nor more than one hundred dollars. All superintendents and school officers are charged with the execution of this law, and the superintendent of public instruction shall require the trustees of the several school districts, or the clerks thereof, to report annually as to the text-books used in their schools.

#### 3411. Per diem of appointed commissioners.

SEC. 171. The members of the state text-book commission shall, with the exception of the governor, the superintendent of public instruction, and the president of the university, receive the sum of five dollars per diem for each day actually engaged in transacting the business of the commission, and actual traveling expenses. There is hereby appropriated the sum of five hundred dollars per year, or so much thereof as may be necessary to carry out the provisions of this act, from the state general fund. Bills for such compensation shall be allowed and paid in the usual manner. The state text-book commission shall not be in session more than ten days in any one year.

#### 3412. Penalty for overcharge on books.

SEC. 172. Any person who shall sell or bargain to sell any of the regularly adopted text-books for any amount more than the prices agreed upon by the several text-book publishers and the text-book commission, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars, nor more than one hundred dollars; *provided*, that any local dealer in the state may, when sending out such books by mail, include in the selling price the cost of the postage necessary to send such books by mail.

### CHAPTER 13

#### COUNTY HIGH SCHOOLS

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### 3413. County high schools, how established.

SEC. 173. There may be established in any county in this state a high school; *provided*, that at any general or special election held in said county after the passage of this act, a majority of all the votes cast at such election, upon the proposition to establish a high school shall be in favor of establishing and maintaining such high school at the expense of said county.

### 3414. *Idem*—Election—Ballots.

SEC. 174. The board of county commissioners at any general election to be held in any county after the passage of this act, upon the presentation of a petition signed by fifty or more qualified electors, taxpayers of said county, at any regular meeting of said board held not less than eight weeks before any general or special election, must make an order submitting the question of establishing, constructing and maintaining a county high school to the qualified electors thereof. The board of county commissioners, upon the presentation of said petition, may order a special election for said purpose. Said election shall be conducted in the manner prescribed by law for conducting elections, and the ballots at such election shall have printed thereon the words "For a County High School" and the words "Against a County High School." The votes cast for and against said county high school at any election therefor, shall be counted and the returns thereof made and canvassed in the manner provided for by law for counting, making returns, and canvassing the votes of a general election; *provided*, that the election officers appointed to conduct any special election held in accordance with this act, as required by law, shall perform all services required of them by law in holding and conducting such elections, without any fees or pay therefor.

### 3415. Location of school, how determined.

SEC. 175. If a majority of the votes cast on a proposition to establish a county high school shall be in the affirmative, it shall be the duty of the board of county commissioners, within thirty days after canvassing said vote, to locate the high school in the place in said county where the said board shall deem most suitable and convenient for the purpose. If, after the county commissioners shall have located said high school, there shall be presented a certified petition bearing the signatures of at least one-fourth of the qualified voters of such county according to the last general election returns, said petition requesting a vote on the question of the location of the county high school and specifying a desired location, said board of county commissioners shall submit the question of such location to the voters of the county at the next general election, or a special election called for the purpose of voting upon the question of locating or changing the county high school; *provided*, that in all cases where special elections have been called by the board of county commissioners of any county of this state previous to the passage of this act to submit the question of location of any county high school to the voters in any such county wherein two thousand or more votes were cast at the last general election, and wherein the assessed valuation of real and personal property is six million dollars or more, the board of county commissioners may, if said board deems it to the best interest of the people of such county, establish two county high schools; one at the place selected by the board of county commissioners and one at the place named in the petition presented to the said board of county commissioners praying for said special election in said county, and thereupon the said board may revoke the order calling said special election, and in such cases no special election shall be held. At any general or special election at which the location of any county high school is submitted to the voters of the county, the form of ballot shall be:

Shall the county high school be located at \_\_\_\_\_? Yes .....

Shall the county high school be located at \_\_\_\_\_? No .....

In any other respects the provisions of the general election law shall be followed. If at any such election a majority of all voters who shall vote on the question of such location shall vote in favor of locating the county high school at the place designated in the petition, it shall be the duty of the county board of education to cause the high school to be located at such place, not later than the first day of the next following September. While the vote on the question of changing the location of any county high school is pending, no contract for the purchase of grounds or for the erection of a building shall be made. When the location of the county high school has been finally determined, the board of county commissioners shall estimate the cost of purchasing suitable grounds, procuring plans and specifications, erecting a building, furnishing the same, fencing and ornamenting the grounds, and the cost of running said school for the following twelve months; *provided*, that the estimate mentioned herein for purchasing suitable grounds, procuring plans and specifications, erecting a building, furnishing the same, and fencing and ornamenting the grounds shall not be made, if previous to the time when the commissioners are to make such estimate the legislature shall have authorized said county to issue bonds for such purpose.

### 3416. Tax levy to raise amount estimated.

SEC. 176. When such estimate shall have been made, the board of county commissioners shall thereupon immediately proceed to levy a special tax upon all the assessable property of the county, sufficient to raise the amount estimated. Said tax shall be computed, entered on the tax roll and collected, and the amount so collected shall be deposited in the county treasury and be known and designated as the "County High-School Fund," and shall be drawn from the treasury in the manner now provided by law for drawing money from the treasury by school trustees; *provided, however*, that the tax levy for purchasing suitable grounds, procuring plans and specifications, erecting a building, and furnishing the same, fencing and ornamenting the grounds, may be deferred as long as a sufficient number of suitable rooms in a public school building can be secured for the purposes of such county high school at a reasonable rental. In case such levy be deferred until after the election of a county board of education, the levy shall be made by the board of county commissioners whenever so ordered by the county board of education, and the board of education shall be charged with the duty of purchasing grounds and erecting and furnishing such school building.

### 3417. Temporary board.

SEC. 177. The board of county commissioners shall act as a county board of education in the performance of the duties hereinbefore mentioned and shall continue to perform the duties of the county board of education until a county board of education shall have been elected or appointed and qualified as hereinafter provided, and at such time the board of county commissioners shall transfer all property and control of said school to the county board of education, who shall hold the same in trust for the county.

### 3418. County board of education elected.

SEC. 178. At each general election there shall be elected a county board of education, to consist of three members, two of whom shall serve two years, and the other four years, and thereafter at each regular biennial election there shall be elected two members of said board, one of whom shall serve for two years and the other for four years. Each person elected as herein provided shall enter upon the duties of his office on the first Monday in January next following his election, and shall hold office until his successor is elected and qualified. If at any time a vacancy shall occur on said board, it shall be the duty of the superintendent of public instruction to appoint a member for the unexpired term.

**3419. Duties of board.**

SEC. 179. It shall be the duty of the county board of education to furnish annually, an estimate of the amount of money needed to pay all the necessary expenses of running said school; to enforce the uniform high-school course of study adopted by the state board of education; to employ teachers holding Nevada state certificates of the high-school grade in full force and effect; to hire janitors and other employees, and discharge such employees when sufficient cause therefor shall exist; and to do any and all other things necessary to the proper conduct of the school.

**3420. Tax levy.**

SEC. 180. It shall be the duty of the board of county commissioners to include in their annual tax levy the amount estimated by the county board of education as needed to pay the expenses of conducting the county school; and such amount when collected, and paid into the county treasury, shall be known as the "County High-School Fund," and may be drawn therefrom for the purpose of defraying the expenses of conducting said county high school in the manner now provided by law for drawing money from the county treasury by school trustees.

**3421. Eligible pupils.**

SEC. 181. All county high schools shall be open for the admission of graduates holding diplomas from the eighth grade of the elementary schools of the state; *provided*, that the examinations for the said diplomas shall have been given under the direction and authority of the state board of education; and to such other pupils as shall pass the examination for admission to the county high school, which examination shall be conducted under the direction and authority of the state board of education.

**3422. Principal may supervise other schools.**

SEC. 182. Nothing in this act shall be construed so as to prevent the principal of the county high school from acting as principal of the grammar school of the district in which the county high school is located if so desired by the trustees of said school district and the county board of education.

**3423. Conducted under general laws.**

SEC. 183. The county high school shall be under the same general supervision and shall be subject to the same laws, rules, and regulations governing the other schools of the state school system.

**3424. Dormitories and dining-halls.**

SEC. 184. The county board of education is hereby empowered to provide for the rental, purchase, or erection of a suitable dormitory or dormitories and dining-hall for high-school students, and to provide for the support, maintenance, and management of the same. The said dormitory or dormitories shall be considered part of the regular high-school equipment and organization.

## CHAPTER 14

## NORMAL TRAINING SCHOOLS

3425. How established.

3428. Graduation certificate.

3426. Training school board.

3429. Provisions for maintaining schools.

3427. Duties of board.

3430. Authority conferred.

**3425. How established.**

SEC. 185. Upon notification by the county board of education in counties where a county high school is in operation, or of the board of trustees of the school district in which the county-seat is located, in counties not having an established county high school, that the said county board of education or

board of trustees and the board of county commissioners of the county have decided by a majority vote of each of the said boards to establish a normal training school, and that there are at least five bona fide applicants for a normal training course in such school, the state board of education shall, subject to the provisions herein named, grant permission to establish and maintain a normal training school for the purpose of giving free instruction and training in the principles of education and methods of teaching to residents of this state; *provided*, that no such normal training school shall be established in any county having within its borders a state normal school or state university; *and, provided further*, that but one such normal training school shall be established in any county.

### 3426. Training school board.

SEC. 186. The state board of education shall constitute the normal training school board.

### 3427. Duties of board.

SEC. 187. The duties of the normal training school board shall be as follows:

1. To determine the qualification for admission to the normal training school; *provided*, that applicants who do not hold a diploma from an accredited high school or a teacher's certificate of at least the primary grade shall be required to pass an entrance examination. And said examination shall include all subjects taught in the high schools as provided by the laws of this state;

2. To establish a course of study to be pursued for a period of not less than thirty-six weeks;

3. To grant certificates of graduation to such persons as finish the course adopted in such form as the normal training school board shall prescribe.

### 3428. Graduation certificate.

SEC. 188. The certificate of graduation shall entitle the holder thereof to a second-grade elementary certificate without further examination, and said certificate shall entitle the holder thereof to teach in any of the rural schools of this state not employing more than one teacher, and said certificate shall not be good for more than two years.

### 3429. Provisions for maintaining schools.

SEC. 189. For the purpose of maintaining such normal training schools as are herein described, it is further provided:

1. That the county in which a normal training school shall be established shall provide rooms with heating and equipment satisfactory to the normal training school board for the purposes of such school;

2. Upon certification of the state board of education that a normal training school has been established in any county, that the school has been properly equipped, that at least five bona fide students are in actual attendance, and that a competent normal training teacher is employed, the state controller shall on the first day of October and the first day of February of each year set aside from any money in the state general fund not otherwise appropriated, a sum designated by the state board of education not exceeding nine hundred dollars and not less than six hundred dollars, to be known as the normal training school salary fund for ..... County, to be used in payment of the teacher's salary and to be drawn from the state treasury in the usual manner. Any money remaining in such fund on the thirty-first day of August of each year shall revert to the state general fund;

3. In any county establishing a normal training school the normal training school board shall, previous to the first day of September in each year,

estimate the cost of maintaining the rooms and equipment of the normal training school for the ensuing year and certify the amount estimated to the board of county commissioners of said county; *provided*, such estimate shall not exceed the amount of five hundred dollars for any one year. Claims for equipment and maintenance shall be just and legal charges upon the general fund of said county; *provided*, that not more than the amount estimated shall be allowed for any one year.

### 3430. Authority conferred.

SEC. 190. The normal training school board is hereby given the power to make and put into effect any and all rules and regulations necessary to the proper conduct of any normal training school established under and by virtue of the provisions of this act.

## CHAPTER 15

### SCHOOL DISTRICT BONDS

3431. Bonds may be issued.

3432. Submitted to popular vote.

3433. Election how conducted—Notice.

3434. Maturity—Sale to be published.

3435. Bonds signed—Seal.

3436. Register of bonds.

3437. Special bond tax.

3438. Not affected by change in boundary.

3439. Taxes lien on property.

3440. Bonds for various purposes.

3441. Under general act.

3442. Not affected by change in districts.

### 3431. Bonds may be issued.

SEC. 191. Any school district of the state, now existing or which may hereafter be created, is hereby authorized to borrow money for the purpose of erecting and furnishing a school building or buildings, maintaining the same, purchasing grounds on which to erect such building, or buildings, or for refunding floating indebtedness, or for any or all of these purposes, by issuing negotiable coupon bonds of the district in the manner by this act provided.

The jurisdiction of school district trustees is limited to the legislative authority conferred upon them. *State ex rel. Henderson Banking Co. v. McBride*, 31 Nev. 57, 63, 64, 66, 69 (99 P. 705).

Under this act a school district cannot issue bonds maturing at the rate of \$1,000

annually for the first eight years and at the rate of \$1,500 during the remaining eight years. *Idem*.

Mandamus will not lie to compel officers to execute bonds not in accordance with law. *Idem*.

### 3432. Submitted to popular vote.

SEC. 192. When the board of trustees of any school district shall deem it necessary to incur an indebtedness authorized by this act by issuing the negotiable coupon bonds of the district, said board of trustees shall first determine the amount of such bonds to be issued, and a certificate of such determination shall be made and entered in and upon the records of said district. Thereupon the board of school trustees shall, by resolution duly made and entered in and upon the records of said board, submit the question of contracting a bonded indebtedness for any of the purposes authorized by this act to a vote of the duly qualified electors of the district at the next general election of the school trustees, or at a special election which the school trustees are hereby authorized to call for such purpose.

### 3433. Election, how conducted—Notice.

SEC. 193. The election provided in this act shall be called and held, and the vote canvassed and returned, in all respects as nearly as may be in accordance with the provisions of law now governing the election of school trustees; *provided*, that if there is a newspaper published in the school district, the notice shall be published for at least once a week for two successive weeks, preceding said election. The election notice must contain:

First—The time and place of holding such election.

Second—The names of inspectors to conduct the same.

Third—The hours during the day in which the polls will be open.

Fourth—The amount and denomination of the bonds, the rate of interest and the number of years, not exceeding twenty, the bonds are to run. All persons voting on the question submitted at such election shall vote by separate ballot whereon is placed the words "For the Bonds" or "Against the Bonds." The ballots shall be deposited in a separate box provided by the school trustees for that purpose.

#### 3434. Maturity—Sale to be published.

SEC. 194. If upon the official determination of the result of such election it appear that a majority of all the votes cast are "For the Bonds," the board of trustees, as soon as practicable, shall issue the negotiable coupon bonds of the district in such form and denomination as the board of trustees may direct, said bonds to run for a period not to exceed twenty (20) years from the date of issue, and bearing interest at a rate not exceeding eight (8%) per cent per annum, payable semiannually, both principal and interest payable at such place as the board of trustees may direct, said bonds not to be sold for less than their par value. And before said sale is made notice of such proposed sale must be given by publication, in a newspaper, if there is a newspaper published in the district, for at least one week before said bonds are disposed of, inviting sealed bids to be made for said bonds, and said bonds are to be sold to the highest and best bidder for said bonds; *provided*, if there is no newspaper published in said school district, the notice herein provided for shall be given by posting in three public places in said school district for at least ten days before said bonds are disposed of.

#### 3435. Bonds signed—Seal.

SEC. 195. All bonds issued under the provisions of this act shall be signed by the chairman of the board of trustees and be duly attested by the clerk thereof, and shall bear the seal of the district if the district has a seal, and shall be countersigned by the county treasurer.

#### 3436. Register of bonds.

SEC. 196. Before any district shall issue bonds under the provisions of this act, all such bonds shall be presented to the treasurer of the county to be duly registered by him in a book kept for that purpose in his office, which registry shall show the school district, the amount, the time of payment, and the rate of interest, and all such bonds shall bear the certificate of the county treasurer to the effect that they are issued and registered under the provisions of this act. After such registry the bonds shall be at the disposal of the board of trustees of the district issuing the same, to be sold for the purpose of raising funds for the objects designated by this act.

#### 3437. Special bond tax.

SEC. 197. Whenever any school district shall issue any bonds under the provisions of this act it shall be the duty of the board of commissioners of the county in which such district may be situated to levy and assess a special tax on all the taxable property of such district in an amount sufficient to pay the interest thereon when the same shall become due according to the tenor and effect of said bonds, and the county treasurer shall collect the same as other taxes are collected, in cash only, keeping the same separate from other funds received by him; and if there shall be any surplus after paying said interest and the expenses of collecting such special tax, the treasurer shall without delay pass the same to the credit of such school district, and such funds so passed to the credit of the district shall be subject to the disposal of the board of trustees; and beginning with the year the bonds are issued, and annually thereafter, until the full payment of said

bonds has been made, the board of county commissioners of the county in which said school district is situated shall levy and assess a special tax, and shall cause said special tax to be collected on all property of the school district, including the net proceeds of mines, sufficient to pay annually a proportion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run, which amount shall be levied, assessed, and collected in the same manner as the tax for the payment of the interest coupons and when collected shall be known as the "Sinking Fund," and shall be used only in the payment of such bonds. The sinking fund thus provided may be applied to the purchase and cancelation of the outstanding bonds of the district. At the maturity of such bonds the county treasurer shall call in and pay such bonds and accrued interest thereon and duly cancel the same, and certify his action to the board of trustees of the school district.

### 3438. Not affected by change in boundary.

SEC. 198. No change in the boundary lines of any school district shall release the taxable real property of the district from assessment and levy of the taxes to pay the interest and principal of such bonds, and if there shall be any change in the boundary of such school district so as to leave any portion of the taxable real property of the district which was subject to taxation in the district at the time of the issue of such bonds, the assessment and levy of taxes for the payment of the principal and interest of such bonds shall be made on such property as if it were still within the district, and if there shall be any change of the boundary lines of such school district so as to annex or include any taxable or real property, after the issue of such bonds, the real property so included or annexed shall thereafter be subject to the assessment and levy of a tax for the payment of the principal and interest of such bonds.

### 3439. Taxes lien on property.

SEC. 199. All taxes levied and assessed as in this act provided shall constitute a lien on the property charged therewith, from the date of the levy thereof by the county commissioners, or the entry thereof on the assessment roll of the county auditor, until the same are paid, and thereafter, if allowed to become delinquent, shall be enforced in the same manner as is now provided by law for the collection of state and county taxes. And no additional allowance fee, or compensation whatever shall be paid to any officer for carrying out the provisions of this act.

### 3440. Bonds for various purposes.

SEC. 200. Any school district of the state is hereby authorized to borrow money for the purpose of purchasing grounds, erecting buildings, and furnishing, equipping, and maintaining the same, for instruction in industrial training, manual training, domestic science, and agriculture, or for any one or all of these purposes, by issuing negotiable coupon bonds of the district.

### 3441. Under general act.

SEC. 201. Such bonds shall be determined upon, submitted to vote of the district interested, authorized, issued and paid, in accordance with the provisions of sections 191 to 199, inclusive.

### 3442. Not affected by change in districts.

SEC. 202. No change in the boundary lines of any school district that has been, or may hereafter be, bonded for school purposes shall operate to release any part of the property of such district, as existing prior to such change, from taxation for payment of the outstanding bonds issued prior thereto.



or more than fifty dollars, or to imprisonment for not less than five nor more than twenty-five days, or to both such fine and imprisonment.

#### 3446. School trustees to make investigation.

SEC. 206. The board of trustees of any school district shall, on the complaint of any person, make a full and impartial investigation of all charges against parents or guardians or other persons having control or charge of any such child, for violation of any of the provisions of this act. If it shall appear upon such investigation that any such parent or guardian or other person has violated any of the provisions of this act, it is hereby made the duty of the clerk of such board of trustees to make and file in the proper court a criminal complaint against such parent, guardian, or other person, charging such violation, and to see that such charge is prosecuted by the proper authorities; *provided*, that in such school districts having an attendance officer, such officer shall, if so directed by the board of trustees, make and file such complaint, and see that such charge is prosecuted by the proper authorities.

Any taxpayer, or any school officer or deputy school officer, in the State of Nevada shall be eligible to make and file in the proper court a criminal complaint against any parent, guardian, or other person who shall violate any of the provisions of law requiring the attendance of children in the public schools of the state.

#### 3447. Trustees may appoint and remove attendance officer.

SEC. 207. The board of trustees of any school district may appoint and remove at pleasure an attendance officer and shall fix the compensation therefor, and shall prescribe the duties of said officer, not inconsistent with law, and make rules and regulations for the performance thereof. It shall be the duty of the attendance officer, or any peace officer, or any other school officer, to arrest during school hours, without a warrant, any child between the ages of eight and sixteen years, who has been reported to him by the teacher, the city superintendent, or other person connected with the schools, as an absentee from instruction upon which he is lawfully required to attend within the school district. Such arresting officer shall forthwith deliver the child so arrested to the teacher, parent, guardian, or other person having control or charge of said child.

#### 3448. Separate rooms for habitual truants.

SEC. 208. Boards of trustees are hereby authorized to set apart any school building or buildings or any room or rooms in any school building or buildings for the establishment of special or ungraded schools, to provide for the instruction of habitual truants as defined in section 2 of this act, or for pupils who have been insubordinate or disorderly during attendance at school. Boards of trustees are also authorized to purchase sites and erect buildings for such purposes, in the same manner as other school sites and school buildings may be purchased and erected; or boards of trustees may rent suitable property for special or ungraded rooms without being so directed by vote of the district. Teachers of such special or ungraded schools shall have the same qualifications as other teachers in the grades, and shall be paid from the same funds. Boards of trustees are hereby authorized to assign habitual truants and other pupils who have been insubordinate or disorderly during attendance at school to such special and ungraded schools for a period not to exceed the remainder of the school year. Such pupils, however, may be restored to their former room or grade when in the judgment of the board there has been sufficient improvement to warrant the belief that their example and influence will no longer be a detriment to the room to which they shall return.

**3449. Persons encouraging truancy punished.**

SEC. 209. Any person who induces or attempts to induce any child to be absent unlawfully from school, or who knowingly employs or harbors while school is in session any child absent unlawfully from school, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than fifty dollars or by imprisonment of not more than twenty-five days, or by both such fine and imprisonment. The attendance officer or any other school officer is hereby empowered to visit any place or establishment where minor children are employed to ascertain whether the provisions of this law are duly complied with, and may demand from all employers of such children a list of children employed, with their names and ages.

**3450. Punishment for false statements.**

SEC. 210. Any parent, guardian, or other person who makes a false statement concerning the age or school attendance of a child between the ages of eight and sixteen years who is under his control or charge, such false statement being made with intent to deceive under this act, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine of not more than fifty dollars or by imprisonment of not more than twenty-five days, or by both such fine and imprisonment.

**3451. Disposal of fines.**

SEC. 211. All fines collected under the provisions of this act shall be paid into the permanent school fund of the state.

## CHAPTER 17

## PROTECTION OF SCHOOL CHILDREN

3452. Misdemeanor to interfere with pupils. 3454. Penalty.

3453. Misdemeanor to disturb school.

**3452. Misdemeanor to interfere with pupils.**

SEC. 212. It shall be a misdemeanor for any person or persons to detain, beat, whip, or otherwise interfere with any pupil or pupils attending any public school in the State of Nevada on his, her, or their way to or from such school against the will of such pupil or pupils.

See sec. 6599.

**3453. Misdemeanor to disturb school.**

SEC. 213. It shall be a misdemeanor for any person or persons to disturb the peace of any public school in the State of Nevada by using vile or indecent language, or by threatening or assaulting any pupil or teacher within the building or grounds of such school, and for the purpose of this act the ground of every public school in the State of Nevada shall extend to a distance of fifty yards in all directions from the school building.

See sec. 6600.

**3454. Penalty.**

SEC. 214. Any person or persons convicted of a misdemeanor under either of the foregoing sections of this act shall be subject to a fine not exceeding three hundred dollars or imprisonment in the county jail not to exceed six months, or to both such fine and imprisonment.

## CHAPTER 18

## PROTECTION OF SCHOOL PROPERTY

3455. Misdemeanor to injure or deface property. 3456. Penalty.

**3455. Misdemeanor to injure or deface property.**

SEC. 215. It shall be a misdemeanor for any person or persons to wilfully

and maliciously injure, mark, or deface any church edifice, schoolhouse or other building, public or private, its fixtures, books, or appurtenances, or to commit any nuisance therein, or to purposely and maliciously commit any trespass upon the grounds attached thereto, or any fixtures placed thereon, or any inclosure or sidewalk about the same, or in any manner to maliciously and purposely interfere with or disturb those peaceably assembled within such building or buildings.

### 3456. Penalty.

SEC. 216. Any person or persons convicted of a misdemeanor under the foregoing section of this act shall be subject to a fine, not exceeding two hundred dollars, or to imprisonment in the county jail not to exceed six months, or to both such fine and imprisonment.

See sec. 6761.

## CHAPTER 19

### LOCATION OF HOUSES OF ILL-FAME

3457. Restriction on disreputable houses.

3459. Duties of sheriff and district attorney.

3458. Penalty.

### 3457. Restriction on disreputable houses.

SEC. 217. It shall be unlawful for any owner or agent of any owner, or any other person, to keep any house of ill-fame, or to let or rent to any person whomsoever, for any length of time whatever, to be kept or used as a house of ill-fame, or resort for the purpose of prostitution, any house, room, or structure situated within eight hundred yards of any schoolhouse or schoolroom used by any public or common school in the State of Nevada, or within eight hundred yards of any church edifice, building, or structure, erected and used for devotional services or religious worship in the State of Nevada.

A proceeding to test the constitutionality of this section is pending before the supreme court at the time these laws are being printed, and it may be expected that a decision will be found in *Ex parte Ah Pah*, 34 Nev. —.

See sec. 6570.

### 3458. Penalty.

SEC. 218. Any person violating the provisions of section 217 of this act shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than twenty-five dollars nor more than three hundred dollars, or to be imprisoned in the county jail not less than five nor more than sixty days, or by both such fine and imprisonment, in the discretion of the court.

### 3459. Duties of sheriff and district attorney.

SEC. 219. It shall be the duty of the district attorney and sheriff of each county in this state to see that the provisions of this act are strictly enforced and carried into effect, and upon neglect so to do they, or either of them, shall be deemed guilty of a misdemeanor in office, and may be proceeded against as provided in sections 63 to 72, inclusive, of an act entitled "An act relating to elections," approved March 12, 1872.

## CHAPTER 20

### CONSTRUCTION OF ACT

3460. Provisions construed as continuance of old act where similar.

3461. Acts repealed.

### 3460. Provisions construed as continuance of old act where similar.

SEC. 220. The provisions of this act, so far as they are substantially the same as those of existing statutes, shall be construed as a continuation thereof, and not as new enactments.

## 3461. Acts repealed.

SEC. 221. An act entitled:

1. An act to define the constitution, organization, powers, and duties of the state board of education and matters properly connected therewith, approved March 16, 1895;
2. An act to provide for the reorganization of the system of school supervision and maintenance, to repeal all acts and parts of acts in conflict therewith, and matters properly connected therewith, approved March 29, 1907;
3. An act to create a state text-book commission and to authorize said commission to adopt a uniform series of text-books for the public schools of Nevada, and matters properly connected therewith, approved March 22, 1907;
4. An act providing for the date of election of school trustees, and matters properly connected therewith, approved March 16, 1909;
5. An act to provide for the election of school trustees, and matters properly connected therewith, approved March 16, 1897;
6. An act to amplify the powers of boards of school trustees, approved March 20, 1901;
7. An act permitting the establishment of county high schools in the various counties of this state, and providing for the construction, maintenance, management, and supervision of the same, to repeal all acts and parts of acts in conflict herewith, and matters properly connected therewith, approved March 24, 1909;
8. An act for the establishment of normal training schools, and for the maintenance and control of the same, approved March 20, 1909;
9. An act to provide for union school districts, and matters properly connected therewith, approved March 3, 1909;
10. An act to authorize boards of county commissioners to enlarge the boundaries of certain school districts, or to consolidate two or more into one, and matters properly connected therewith, approved March 11, 1909;
11. An act to provide an emergency school fund for new school districts, prescribing its use and manner of disbursement, and other matters properly connected therewith, approved February 13, 1909;
12. An act to provide for the disposal of funds and property of abolished school districts, approved March 5, 1909;
13. An act to amend an act entitled "An act to enable the several school districts of the state to issue negotiable coupon bonds for the purpose of erecting and furnishing school buildings, or purchasing ground, or for refunding floating funded debts, and providing for the payment of the principal indebtedness thus authorized and the interest thereon," approved March 12, 1907, approved February 8, 1908;
14. An act to enable school districts to issue negotiable coupon bonds for the purpose of erecting, furnishing, equipping, and maintaining buildings for industrial training, manual training, domestic science, and agriculture, or any one or all of these purposes, and providing for the payment of the principal indebtedness and the interest thereon, and other matters properly connected therewith, approved March 16, 1909;
15. An act to protect the security of school bonds, approved March 13, 1909;
16. An act providing for compulsory education, and other matters properly connected therewith, providing for penalties for the violation of any of the provisions thereof, and repealing any and all prior laws on the subject of compulsory education, approved March 20, 1909;

17. An act to secure protection to school children and to preserve the peace of public schools, and matters properly connected therewith, approved March 6, 1893;
  18. An act to prevent malicious injury to church, school, and other buildings and property, and to protect persons from malicious annoyance, and matters properly relating thereto, approved March 13, 1895;
  19. An act to regulate houses of prostitution, dance-houses, and houses where beer, wine, or spirituous liquors are sold, approved February 26, 1887;
  20. An act to exempt teachers from jury duty, approved March 14, 1903;
  21. An act to require school trustees to procure and hoist on public school-houses the United States flag, approved March 13, 1909;
  22. An act adopting the design of the flag of the State of Nevada, approved February 25, 1905;
  23. An act establishing Arbor Day, approved February 10, 1887;
  24. An act to provide for the dissemination of knowledge in the public schools relative to the preservation of song-birds, fish, and game, approved March 12, 1901;
- are hereby repealed and all other acts and parts of acts in conflict with this act are hereby repealed.

*An Act to provide books, equipment and materials, and to encourage the economic use thereof by the pupils of the public schools, and fixing penalties for its infraction.*

Approved March 22, 1909, 156

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| 3462. Free text-books, when.                             | 3467. Credits to pupils for good care.   |
| 3463. Trustees to levy tax, when.                        | 3468. Material other than books.         |
| 3464. Books, district property.                          | 3469. Other books may be purchased.      |
| 3465. Books disposed of, how.                            | 3470. Tax levy for books.                |
| 3466. Parents or guardians responsible for books loaned. | 3471. Not invalidate existing contracts. |
|  | 3472. Penalty.                           |

### 3462. Free text-books, when.

SECTION 1. The board of trustees of each school district may upon their own motion, and shall upon written demand by a number of qualified voters equal to ten per cent of the average number of children attending the public schools in said district during the preceding full school month, submit to a vote of the people, at the next ensuing general or special school election, the question of providing free text-books for the pupils attending said schools, and of levying a special tax for this purpose at a rate to be named in the demand, if demand be made, and in a notice of such election, which shall be given as required in the case of other special tax elections.

### 3463. Trustees to levy tax, when.

SEC. 2. If a majority of those voting at such election vote in favor of providing free text-books and of a special tax for the same, the board of trustees shall levy such tax, which shall be collected as other special taxes are collected and, from the fund so provided, which shall be called the book fund, shall purchase a sufficient number of authorized text-books, as they may be required, and shall loan them upon such terms, and under such rules and regulations, as may be made by said board, or as may be provided by law, to parents or guardians for the use of the pupils of the schools of said district.

### 3464. Books district property.

SEC. 3. All property purchased under this act for a school district shall be and remain the property of said district, except as otherwise provided by law.

**3465. Books disposed of, how.**

SEC. 4. Text-books purchased under this act may be disposed of as follows:

(a) They may be sold for cash to pupils of the public schools, or to parents or guardians of such pupils.

(b) If the board of trustees so decide, pupils who have completed the last two years of the course of study for the district, may, as a mark of merit, be given the permanent ownership of such four text-books used by them during their last two years of study in the schools of said district, as said pupils may select.

**3466. Parents or guardians responsible for books loaned.**

SEC. 5. The parents and guardians of pupils shall be responsible for all books loaned to the pupils in their charge, and shall pay to the clerk of the board of trustees, for the book fund of the district, the full purchase price of every such book destroyed, lost, or so damaged as to make it unacceptable to other pupils succeeding to their classes. The board of trustees may also make rules for payment for slighter injuries to books.

**3467. Credits to pupils for good care.**

SEC. 6. Credits shall be given to pupils in a ratio to be fixed by those having authority to fix ratios of credits, for the economic use and care of books in the hands of pupils, whether such books be the property of the district or otherwise.

**3468. Material other than books.**

SEC. 7. Equipment and materials for use in manual training, industrial training and the teaching of domestic science, may be supplied to pupils in the same manner, out of the same fund and on the same terms and conditions as books; *provided*, that no private ownership can be acquired in such equipment or material unless sold according to law when such equipment or material shall be no longer used or required for the schools of the district.

**3469. Other books may be purchased.**

SEC. 8. Authorized supplementary books for the use of the teachers may be purchased under this act, and shall remain the property of the school district for which purchased unless sold in accordance with law.

**3470. Tax levy for books.**

SEC. 9. Each year after the first introduction in any school district of the system provided for in this act, and on or before the tenth day of January thereof, the board of school trustees of such district shall estimate the amount of money necessary for maintaining or increasing the supply of books, equipment, and material, or any or all of these, and proceed to levy the necessary tax therefor in the manner now provided for by law for levying a special tax not in excess of twenty-five cents on the one hundred dollars.

**3471. Not invalidate existing contracts.**

SEC. 10. This act shall not be so construed as to authorize the violation of any valid existing contract, nor to provide a means for the adoption of text-books.

**3472. Penalty.**

SEC. 11. Every person violating the provisions of this act shall be guilty of a misdemeanor, and shall be fined not more than twenty dollars (\$20) or imprisoned not more than ten (10) days, or both so fined and imprisoned.

*An act to authorize the issuance of interest-bearing school warrants in emergencies, to repeal all acts and parts of acts in conflict herewith, and other matters properly connected therewith.*

Approved March 23, 1911, 347

3473. When may be issued.  
3474. How endorsed.

3475. Order in which paid.  
3476. Amount of warrants limited.  
3477. Preliminaries as to issue.

### 3473. When may be issued.

SECTION 1. Whenever the county school fund of any school district is exhausted and there is not available money to meet the necessary expenses involved in maintaining the public schools of the district, the board of trustees of such district may, by unanimous vote, by resolution setting forth the character of the emergency, authorize the clerk of the board to issue orders, for the payment of current bills of the schools of the district, to the county auditor, and said county auditor shall draw warrants for the same on the county treasurer in the usual manner. Such orders shall be in the hands of the county auditor valid vouchers for warrants so drawn.

### 3474. How endorsed.

SEC. 2. When such warrants are presented to the county treasurer he shall endorse thereon the date and "Not paid for want of funds," and such warrants shall draw interest from date at the rate of seven per cent per annum.

### 3475. Order in which paid.

SEC. 3. The county treasurer shall keep a list of all warrants so endorsed and shall pay them in the order of endorsement whenever there is sufficient money in the fund upon which such warrants are drawn. The interest on such warrants shall stop when the county treasurer shall give notice that he has funds with which to pay the same.

### 3476. Amount of warrants limited.

SEC. 4. It shall not be lawful for the clerk of the board of trustees of such district to draw orders on the county auditor in such amount that the total amount of such interest-bearing warrants of the district, outstanding and unpaid, shall exceed the total cost of maintaining the schools of the district for the current year, nor exceed one per cent of the total assessed valuation of the district.

### 3477. Preliminaries as to issue.

SEC. 5. Before the issuance of the first of such interest-bearing warrants the clerk of the board of trustees shall submit to the county commissioners of said county a copy of the resolution of the board of trustees authorizing the same, and said county commissioners shall levy and cause to be collected a special tax upon the taxable property of the school district, sufficient to pay such warrants within three years.

*An Act providing that ten per cent of proceeds from fees which issue to the counties from national forest reserves be paid into the county school fund of the county in which such fees may be collected.*

Approved March 29, 1907, 415

WHEREAS, The president of the United States has been authorized to establish, from time to time, forest reserves in the several states, and legislation is now pending which will grant him further authority to establish grazing districts upon the vacant public lands of the United States; and

WHEREAS, Certain fixed charges will be made for the grazing of live stock upon said lands, ten per cent of such fees to be paid into the treasury of the county in which such fees may be collected; now, therefore,

**3478. Apportionment of fees.**

SECTION 1. That the proceeds from such fees which may be paid into the treasury of the several counties of the state shall be paid into the county school fund of such counties, and shall be apportioned at the same time and in the same manner as other county school funds.

## PUBLIC SUPPLIES

*An Act regulating the purchase of supplies by the State of Nevada and the several counties of the state.*

Approved March 19, 1901, 80

**3479. Supplies, state and county—Local merchants preferred—Condition.**

SECTION 1. All supplies purchased by the state, or by any of the several counties of the state, shall be purchased of resident merchants who do business in the State of Nevada, where the same can be furnished at an advance of not more than ten per cent above San Francisco prices, freight added. The persons bidding to furnish such supplies shall only be those who are regularly in the business of dealing in such goods as they contract to furnish, and are paying a regular license for the conducting of such business.

See sec. 1530.

*An Act relating to the purchase of supplies.*

Approved March 9, 1893, 129

**3480. Bought of resident merchants—Proviso.**

SECTION 1. All supplies and goods purchased for the State of Nevada, or any county in the state, shall be purchased of resident merchants and business men of the State of Nevada, whenever said merchants and business men are ready to supply such supplies and goods at an advance of not more than ten per cent over San Francisco prices, freight added; *provided*, that all supplies for the use of the county shall be purchased by the county commissioners.

See sec. 1530.

## PUBLIC WORK

Fixing wage rate for unskilled labor on buildings erected for state, sections 3481-3482.  
To prohibit employment of Chinese and Mongolians, sections 3483-3485.

*An Act fixing the wage rate for unskilled labor on buildings erected by or for the state.*

Approved March 29, 1907, 428

### 3481. Public works—Wage of unskilled labor.

SECTION 1. On all public works carried on in the erection of public buildings by or for the State of Nevada, or by any individual, firm, company or corporation under contract with the State of Nevada, unskilled labor shall be paid for at a rate of not less than three (\$3) dollars per eight-hour day for each male person over the age of eighteen years who shall be employed at such labor.

### 3482. Idem—Penalty for violation.

SEC. 2. Any person or persons, firm or corporation conducting or carrying on any public work, as specified in section 1 of this act, that shall violate the provisions of this act, upon conviction of such violation in a court of competent jurisdiction, shall be fined the sum of fifty (\$50) dollars for each man employed at such labor for less than three (\$3) dollars per eight-hour day.

*An Act to prohibit the employment of Chinese and Mongolians in certain cases.*

Approved March 6, 1879, 81

### 3483. Mongolians not to be employed on public works.

SECTION 1. From and after the passage of this act, no Chinaman or Mongolian shall be employed, directly or indirectly, in any capacity, on any public works, or in or about any buildings or institutions, or grounds, under the control of this state.

### 3484. Charters not to issue to corporations employing.

SEC. 2. Hereafter no right of way or charter, or other privileges for the construction of any public works by any railroad or other corporation or association shall be granted to such corporation or association, except upon the express condition that no Mongolian or Chinese shall be employed on or about the construction of such work in any capacity.

### 3485. Penalty—Forfeiture of franchise.

SEC. 3. Any violation of the conditions of this act shall work a forfeiture of all rights, privileges, and franchise granted to such corporation or association.

## PURE FOOD LAW

*An Act for preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded, or poisonous or deleterious foods, drugs, medicines and liquors, and for regulating the traffic therein, providing penalties, and making an appropriation for the carrying out of this act.*

Approved March 13, 1909, 103

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### 3486. Adulteration or misbranding of food, drugs or liquor, misdemeanor.

SECTION 1. The manufacture, production, preparation, compounding, packing, selling, offering for sale, or keeping for sale within the State of Nevada, or the introduction into this state from any other state, territory, or the District of Columbia, or from any foreign country, of any article of food, drug, or liquor which is adulterated, mislabeled, or misbranded within the meaning of this act is hereby prohibited. Any person, firm, company, society or corporation who shall import or receive from any other state or territory, or the District of Columbia, or from any foreign country, or who, having so received, shall deliver for pay or otherwise, or offer to deliver to any other person any article of food, drug, or liquor adulterated, mislabeled or misbranded within the meaning of this act, or any person who shall manufacture or produce, prepare or compound, or pack or sell or offer for sale, or keep for sale in the State of Nevada any such adulterated, mislabeled or misbranded food, drug or liquor shall be guilty of a misdemeanor; *provided*, that no article of food shall be deemed adulterated, mislabeled or misbranded within the provisions of this act, when prepared for export beyond the jurisdiction of the United States and prepared or packed according to specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if such foods shall be in fact sold, or kept or offered for sale for domestic uses and consumption, then this proviso shall not exempt said article from the operation of any provisions of this act.

### 3487. Food defined.

SEC. 2. The term "food," as used in this act, shall include all articles used for food, drink, liquor, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

### 3488. Standard of purity defined.

SEC. 3. The standard of purity of foods, drugs, and liquors shall be that proclaimed by the secretary of the United States department of agriculture.

**3489. Adulteration defined.**

SEC. 4. Food shall be deemed adulterated, within the meaning of this act, in any of the following cases:

First—If any substance has been mixed or packed, or mixed and packed with the food so as to reduce or lower or injuriously affect its quality, purity, strength, or food value.

Second—If any substance has been substituted wholly or in part for the article of food.

Third—If any essential or any valuable constituent or ingredient of any article of food has been wholly or in part abstracted.

Fourth—If it be mixed, colored, powdered, coated, or stained in any manner, whereby danger or inferiority is concealed.

Fifth—If it contain any added poisonous, or other added deleterious ingredient.

Sixth—If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or of any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it consists in whole or in part or is the product of a diseased animal, or one that has died otherwise than by slaughter; *provided*, that an article of liquor shall not be deemed adulterated, mislabeled, or misbranded if it be blended or mixed with like substances so as not to injuriously reduce or injuriously lower or injuriously affect its quality, purity or strength.

Seventh—In the case of confectionery: If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor, or compound or narcotic drug.

**3490. "Drug" defined.**

SEC. 5. That the term "drug," as used in this act, shall include all medicines and preparations recognized in the United States pharmacopœia or national formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals.

**3491. Standard of purity of drugs defined.**

SEC. 6. The standard of purity of drugs shall be the United States pharmacopœia and national formulary and the regulations and definitions adopted for the enforcement of the national food and drugs act of June 30, 1906, shall be adopted by the Nevada agricultural experiment station for the enforcement of this act.

**3492. Adulterated drugs defined.**

SEC. 7. Drugs shall be deemed adulterated within the meaning of this act in any of the following cases:

First—If, when a drug is sold under or by a name recognized in the United States pharmacopœia or national formulary, it differs from the standard of strength or purity as determined by the test laid down in the United States pharmacopœia or national formulary official at the time of the investigation; *provided*, that no drug defined in the United States pharmacopœia or national formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the package thereof, although the standard may differ from that determined by the tests laid down in the United States pharmacopœia or national formulary.

Second—If the strength or purity fall below the professed standard of purity under which it is sold.

**3493. "Misbranded" defined.**

SEC. 8. That the term "misbranded," as used herein, shall apply to all

liquors, drugs, or articles of food, or articles which enter into the composition of foods, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substitute contained therein which shall be false or misleading in any particular, into any food product, liquor or drug which is falsely branded as to the county, city, or county, town, state, territory, District of Columbia, or foreign country in which it is manufactured or produced.

#### 3494. When deemed "mislabeled" or "misbranded."

SEC. 9. Food, liquor, and drugs shall be deemed mislabeled or misbranded within the meaning of this act in any of the following cases:

First—If it be an imitation of or offered for sale under the distinctive name of another article of food, liquor or drugs.

Second—If it be labeled or colored or branded so as to deceive, mislead, or tend to deceive or mislead the purchaser, or if it be falsely labeled in any respect, or if it purport to be a foreign product, tend to mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package.

Third—If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth—If the package containing it or its label shall bear any statement, design of device regarding the ingredients or the substance contained therein, which statement, design, or device shall be false or misleading in any particular.

Fifth—When any package bears the name of the manufacturer, jobbers, or sellers, or the grade or class of the product, it must bear the name of the real manufacturers, jobbers, or sellers, and the true grade or class of the product, the same to be expressed in clear and distinct English words in legible type; *provided*, that an article of food shall not be deemed misbranded if it be a well-known food product of a nature, quality and appearance and so exposed to public inspection as not to deceive or mislead nor tend to deceive or mislead a purchaser, and not misbranded and not of the character included within the definitions one and four of this section.

#### 3495. "Package" defined.

SEC. 10. The term "package," as used in this act, shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box, or barrel, or any receptacle, vessel or container of whatsoever material or nature which can be used by a manufacturer, producer, jobber, packer, or dealer for enclosing any article of food.

#### 3496. Possession prima facie evidence.

SEC. 11. The possession of any adulterated, mislabeled or misbranded article of food, liquor, or drug by any manufacturer, producer, jobber, packer, or dealer in food, liquor or drug, or by any broker, commission merchant, agent, employee, or servant of any such manufacturer, producer, jobber, packer, or dealer shall be prima facie evidence of the violation of this act.

#### 3497. Experiment station to make rules.

SEC. 12. The Nevada agricultural experiment station shall make uniform rules and regulations for the carrying out of the provisions of this act including the collection and examination of specimens of food, liquors, and drugs manufactured or offered for sale in the State of Nevada, or which shall be received from any other state, territory, or the District of Columbia, or from any foreign country.

**3498. Idem—To analyze samples.**

SEC. 13. The director of the Nevada agricultural experiment station shall cause to be made by the chemist of the Nevada agricultural experiment station examination and analyses of foods, liquors, and drugs on sale in Nevada suspected of being adulterated, mislabeled or misbranded, at such times and places and to such extent as said director may determine, and may appoint such agent or agents as he may deem necessary, and the sheriffs of the respective counties of the state are hereby appointed and constituted agents for the enforcement of this act, and any agent or sheriff shall have free access, at all reasonable hours, for the purpose of examining any place where it is suspected that any article of adulterated, mislabeled or misbranded foods, liquors, or drugs exist, and such agent or sheriff, upon tendering the market price of said article, if a sale be refused, may take from any person, firm, or corporation, samples of any articles suspected of being adulterated, mislabeled or misbranded, and shall deliver or forward such samples to the Nevada agricultural experiment station for examination and analysis.

**3499. Samples to be divided and sealed.**

SEC. 14. When an agent or sheriff shall obtain by purchase a sample of a suspected adulterated, mislabeled, or misbranded food, liquor, or drug, the said article shall be divided into three parts, and each part shall be sealed by the agent or sheriff with a seal provided for that purpose. If the package be less than four pounds, or in volume less than two quarts, three packages of approximately the same size shall be purchased and the marks and tags upon each package noted as above. One sample shall be delivered to the party from whom procured or to the party guaranteeing such merchandise, one sample shall be sent to the Nevada agricultural experiment station for examination and analysis, and the third sample shall be held under seal by the director of said experiment station. The chemist making the examination and analysis shall report to the said director a certificate of findings, and such certificate shall be admitted in evidence in all courts of this state and shall be prima facie evidence of the truths of the facts contained therein.

**3500. Sheriff to obtain samples, when.**

SEC. 15. It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provisions of this act, at once to obtain a sample of the suspected adulterated, mislabeled, or misbranded food, liquor, or drug complained of, in such manner, and dispose of the same as prescribed in section 14 of this act.

**3501. Fees for sheriff.**

SEC. 16. For his services hereunder the said sheriff shall be allowed the same fees for travel allowed by law to sheriffs on service of criminal process, together with such other compensation as by the board of county commissioners of his county may be deemed reasonable, and all amounts expended by him in procuring and transmitting the said samples, which fees and amounts expended shall be audited and allowed by the said commissioners and paid by his said county as other bills of said sheriff.

**3502. Misdemeanor to refuse to sell samples or withhold information.**

SEC. 17. It shall be a misdemeanor for any person to refuse to sell to any sheriff or other agent of the Nevada agricultural experiment station, any sample of food, liquor or drug upon tender of the market price, or to conceal any such food, liquor, or drug from such officer, or to withhold from him information where such food, liquor, or drug is kept or stored. Any such person so refusing to sell, or concealing such food, liquor or drug, or withholding such information from said officer shall be deemed guilty of a misde-

meanor and shall upon conviction thereof be punished by a fine not exceeding five hundred dollars or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

### 3503. Analyses may be contested.

SEC. 18. When it shall appear from any such examination or analysis made by the chemist of the Nevada agricultural experiment station that such sample of food, liquor, or drug is adulterated, mislabeled, or misbranded within the meaning of this act, the director of said experiment station shall furnish a notice of the fact, together with a copy of the certificate of the findings, to the party or parties from whom the sample was obtained or who executed the guaranty as provided in this act, and a date and place shall be fixed by the director of the said experiment station at which said party or parties may be heard before the board of control of the Nevada agricultural experiment station or before two members thereof and the secretary. Parties interested therein may appear in person or by attorney and may propound interrogatives and submit oral or written evidence to show any fault or error in the findings of the chemist. If the examination or analysis be found correct, or if the party or parties fail to appear at such hearing after notice duly served, as provided herein, the director of the Nevada agricultural experiment station shall forthwith transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled, or misbranded food, liquor, or drug was found. No publication, as in this act provided, shall be made until after said hearing is concluded.

### 3504. Director of experiment station to report to district attorney.

SEC. 19. It shall be the duty of the director of the Nevada agricultural experiment station, whenever he has satisfactory evidence of the violation of any of the provisions of this act, respecting the adulteration, mislabeling, or misbranding of foods, liquors or drugs, to report such facts to the district attorney of the county where the law is violated.

### 3505. Duty of district attorney.

SEC. 20. It shall be the duty of the district attorney to prosecute all violation of the provisions of this act occurring within his county and which shall be reported to him under the provisions of this act.

### 3506. Experiment station to keep record of foods, drugs or liquors adulterated, mislabeled or misbranded.

SEC. 21. The Nevada agricultural experiment station shall keep a record of adulterated, mislabeled, or misbranded foods, liquors, or drugs, in which record shall be included a list of cases examined by the said experiment station in which violations were found and a list of the articles found adulterated, mislabeled, or misbranded and the names of the manufacturers, producers, jobbers, and sellers. Said record or any parts thereof may, in the discretion of the director, be included in the report which the said director is already authorized by law to make to the governor. The said director may, in his discretion, publish any part of said record in the bulletins and reports of said station.

### 3507. State pure food agent, how appointed—No compensation.

SEC. 22. The governor of the state, with the Nevada agricultural experiment station, shall cooperate with the government of the United States for carrying out the purposes of this act, and the said experiment station may appoint, in writing, any inspector or employee of the United States department of agriculture as state pure food agent in carrying out the provisions

of this act, when in their judgment it may be proper or necessary, who shall have and may exercise the powers of state agents. But no inspectors and employees of the United States department of agriculture shall be paid for their services by the State of Nevada, or any county in this state.

**3508. Violation of act misdemeanor—Penalty—Food seized and destroyed.**

**SEC. 23.** Any person, firm, company, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Food found to be adulterated, mislabeled, or misbranded within the meaning of this act, may, by order of any court or judge, be seized and destroyed.

**3509. When wholesaler guarantees purity, retailer not punishable—If found adulterated, mislabeled or misbranded, duty of district attorney.**

**SEC. 24.** No dealer shall be prosecuted under the provisions of this act, when he can establish a guaranty signed by the wholesaler, jobber, or other party residing in the United States from whom he purchased such article to the effect that the same is not adulterated, mislabeled or misbranded within the meaning of this act, designating it. Said guaranty to afford protection must contain the name and address of the party or parties making the sale of such articles purchased; or a general guaranty may be filed with the secretary of the United States department of agriculture by the manufacturer, wholesaler, jobber, or other party in the United States, and be given a serial number, which number, together with the statement "Guaranteed under the Food and Drugs Act, June 30, 1906," shall appear on each and every package of goods sold under such guaranty. In case the manufacturer, wholesaler, jobber, or other party making such guaranty to said dealer resides without this state, and it appears from the examination and analysis made by the Nevada agricultural experiment station that such article or articles were adulterated, mislabeled, or misbranded, within the meaning of this act or the national pure food act, approved June 30, 1906, the district attorney must forthwith notify the attorney-general of the United States of such violation.

**3510. Employer responsible for act of employee.**

**SEC. 25.** When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

[Sec. 26, carrying appropriation, and sec. 27, as to time of taking effect, omitted.]

## RAILROADS

To provide for incorporation of railroad companies and management of affairs thereof, sections 3511-3570.

Concerning petitions of taxpayers in aid of construction of railroads, section 3571.

To provide for proper care of live stock by transportation companies, sections 3572, 3573.

Authorizing sale by any railroad of its property and franchises to any other railroad corporation, section 3574.

To prevent discrimination in rates and fares, sections 3575-3584.

Regulating transportation of live stock, sections 3585-3587.

To promote public safety by requiring adequate train crews, sections 3588-3591.

Act supplemental to last preceding act, sections 3592-3596.

Regulating number of hours of telegraph operators engaged in handling or dispatching of trains, sections 3597-3599.

Requiring railroads to give public notice of live stock killed or injured, sections 3600, 3601.

Counties, cities and towns may aid, Const. 347.

*An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto.*

Approved March 22, 1865, 427

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3561. Conductor may eject passengers.
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3563. Maximum rate for freights and fares—Proviso.
3564. Penalty for intoxication.
3565. Injuries to works of company—Penalty—Unlawful to excavate under without consent.
3566. Time granted for operation—Charter, when void.
3567. False notice or report—Liability for—Disqualification for company office.
3568. Payment of dividends when insolvent—Liability—Existing companies may take advantage of this act—Acceptance to be filed in office of secretary of state.
3569. Kind of rail to be used in construction—Not to apply to street railroads.
3570. Street railroads may operate under act.

### 3511. Formation of railroad corporations—Conditions.

SECTION 1. Any number of persons, not less than ten, either in this state or the United States, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, and maintaining such railroad, by complying with the following requirements: Whenever stock to the amount of at least one thousand dollars for each and every mile of the proposed railroad shall have been so subscribed, and ten per cent in cash of the amount so required to be subscribed, shall be actually, and in good faith, paid to a treasurer, to be named and appointed by said subscribers from among their number, then the said subscribers, either in person or by written proxy, after having received at least five days notice from said treasurer of a meeting of said subscribers for that purpose, may adopt articles of association, and may elect from among the subscribers to said articles, not less than five nor more than thirteen directors.

General Corporation Law, see secs. 1105-1215.

May insure outside state, see sec. 1304.

Assessment of, see secs. 3814-3817.

See penal provisions in crimes and punishments act, secs. 6737-6750, 6753, 6755, 6777.

Disposition of unclaimed freight, etc., secs. 537-542.

### 3512. What articles shall set forth—What articles may be signed by proxy—Affidavit of amount of stock—Denomination of shares.

SEC. 2. The said articles of association shall set forth the name of the incorporation, the number of years the same is to continue in existence, which shall not exceed fifty years, the amount of the capital stock of the company, which shall be divided into shares of not exceeding one hundred dollars each, and not less than ten dollars each, as may be fixed in the articles of association, and which shall be the actual contemplated cost of constructing the road, together with the cost of the right of way, motive power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers; the names and number of the directors to manage the affairs of the company, who shall hold their offices until others are elected, as shall be provided by the by-laws of the company; the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length, as near as may be; each subscriber to such articles of association shall personally subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company; *provided*, that in case a person desirous of becoming a subscriber, but compelled to be absent from the state at the time of subscribing to such articles of association, he having duly paid the ten per cent required by law upon his subscription, may sign the same by written proxy,

or power of attorney, to that effect; and there shall be indorsed or attached to said articles so subscribed, an affidavit made by three directors therein named, setting forth in substance, that said amount of stock has been subscribed, and that ten per cent in cash thereon has actually and in good faith been paid in as aforesaid, and that the subscribers to said articles are all known by one or the other of the said three directors to be subscribers thereto, and to be the persons so represented. Any corporation heretofore formed under the act of which this is amendatory, desiring to divide the capital stock of the company into shares of a less denomination than one hundred dollars, according to the provisions of this section, may do so by a majority vote of the directors of the company, at any regular or called meeting of the board, and may issue the stock of such company in accordance therewith, after having filed in the office of the secretary of state a certificate setting forth the amount or denomination in which they propose to divide such shares, verified by the affidavit of three of such directors. In case the shares of stock of such corporation shall have already been issued, or any portion thereof, of the denomination of one hundred dollars, the holders of the same may at their option surrender their certificates of stock, and receive in lieu thereof the equivalent of the same in certificates of shares of the smaller denominations, so fixed and established by the board of directors. *As amended, Stats. 1871, 52.*

**3513. To file articles in office of secretary of state—Powers and rights of corporations—Certified copies to be evidence.**

SEC. 3. Articles of association formed in pursuance of the provisions of the foregoing section shall be filed in the office of the secretary of state, and thereupon the persons who have, or may, subscribe the same, and all persons who may, from time to time, become stockholders in such company, shall be a body politic and corporate, by the name stated in such articles of association, and shall be capable in law to make all contracts, acquire real and personal property, purchase, hold, convey, any and all real and personal property whatever, necessary for the construction, completion, and maintenance of such railroad, and for the erection of all necessary buildings and yards, or places and appurtenances, for the use of the same, and be capable of suing and being sued, and have a common or corporate seal and make and alter the same at pleasure, and generally to possess all the powers and privileges, for the purpose of carrying on the business of the corporation, that private individuals and natural persons now enjoy. A copy of any articles of association, filed in pursuance of this act, and certified to be a copy by the secretary of state, or his deputy, shall in all courts and places be presumptive evidence of the incorporation of such company, and of the facts stated therein; and such a copy, so certified, shall be kept in the office of the secretary of the corporation, subject to examination during office hours by any person.

**3514. Duty of directors—Election of officers—Subscriptions to stock.**

SEC. 4. The directors named in the articles of association shall meet and organize as a board immediately after their election, or within five days after having received notice of such election given by the treasurer, named and designated in the first section of this act; and at the first meeting of the board, after each annual election of directors, they shall elect from among their number a president and a treasurer; they shall also elect a secretary; who, and their successors in office, shall be officers of the company, and shall hold their respective offices until their successors have been duly elected and qualified. The secretary and treasurer, before they enter upon the discharge of their duties, shall each give a bond, with sufficient surety, for the faithful performance of their respective duties to be approved by the board of directors. The temporary treasurer, required by the first section of this act, shall

pay over all moneys received by him as such treasurer to the treasurer elected by the board of directors, and every succeeding board, when deemed necessary, shall open books of subscription to the capital stock of the company, at such times, and in such places, upon such terms, and authorize such persons to receive and superintend the taking of such subscriptions, as they may direct, due notice of which shall be given; but no subscription of stock, except the original subscription, shall be binding on the company, or parties so subscribing, until the same shall have been accepted and approved by a resolution of the board. In case a greater amount of acceptable stock shall be subscribed than the whole capital required by such company, the board of directors shall distribute such capital stock so subscribed as equally as possible among the subscribers; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any one subscriber than by him subscribed for.

### 3515. Meeting of stockholders—Election of directors—Qualifications of—Term of office.

SEC. 5. There shall be, after the first election of directors, as prescribed by the first section of this act, annual meetings of the stockholders held in one of the counties in which or through which such road is proposed to be or may be constructed, for the election of directors, to serve for the ensuing year, notice of which, appointing a time and place, shall be given for the first annual election and every subsequent election thereafter, as prescribed by the by-laws of the company, or by a resolution of the board of directors, which notice shall be published not less than twenty days previous thereto in a newspaper published in each county through or into which such road shall pass or be intended to run (if there be stockholders residing therein), in which a newspaper shall be published; and if no newspaper is published therein, then by six written or printed notices put up in the most public places in said county. Directors shall be elected from time to time as a majority of the whole stock shall determine, or as the by-laws shall designate, as may be determined in the formation of articles of association, in pursuance of the provisions of the first and second sections of this act; shall be chosen at such meetings of stockholders by ballot and by a majority of the votes of the stockholders being present in person or by written proxy; and every such stockholder being so present, either in person or by proxy, at any election for directors, shall be entitled to give one vote for every share of stock which he may have owned for ten days next preceding such election; but no stockholder shall vote at any such election upon any stock, except such as he shall have owned for ten days. No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he may be chosen. The directors shall hold their office for one year, and until others are elected in their places. At least one director shall, at the time of his election, be a resident of this state. *As amended, Stats. 1905, 195.*

Cited, State ex rel. Rankin v. Leete, 16 Nev. 246, 247.

### 3516. Called meetings of stockholders—When and how stock may be reduced—Proviso.

SEC. 6. Meetings of the stockholders may be called at any time during the interval between the annual meetings by the directors, or by any number of stockholders owning not less than one-fourth of the stock, by giving fifteen days' public notice of the time and place of the meetings, in the manner provided in the next preceding section, for the annual meetings; and when any such meeting is called by the stockholders, the particular object of such meeting shall be stated in such notice, and no other business shall be transacted at such meeting when so called by the stockholders as aforesaid,

except such as shall be so stated in such notice; and if, at any such meeting thus called, a majority in value of the stockholders are not represented in person or by written proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business; and if, within said three days, stockholders having at least a majority in interest of the stock do not attend and participate in such meeting, then the meeting shall be dissolved. In case the capital stock shall be ascertained to be greater or less than is necessary for completing, operating and maintaining the road, then the capital stock may be reduced or increased by a vote of the holders of a majority of the capital stock to the amount thus required; or the holders of a majority of the capital stock may, by a vote at any annual or called meeting of the stockholders, provide[d] for the return to or distribution among the stockholders, in such manner and according to such plan as they may direct, of any surplus capital or funds that may accrue to the corporation by payments on subscriptions to the capital stock, grants, donations or otherwise, over and above the amount necessary to construct, complete, maintain, and equip the road; *provided*, that no such division or distribution shall be made until the road shall be built and equipped between the extreme points named in the articles of association. *As amended, Stats. 1871, 53.*

### 3517. Legislature may change fare and freight on narrow-gage railroads.

(SEC. 3.) The legislature shall from time to time, when it may deem proper, change the rates of fare and freight of all narrow-gage railroads constructed under the provisions of this act. *Added by Stats. 1871, 53.*

See railroad commission act, secs. 4549-4585.

### 3518. Removal of officers—Notice to be given.

SEC. 7. At all general meetings of the stockholders, two-thirds in value of the stockholders of the company, being present in person or by proxy, may remove any president or any director of such company, and elect others in their stead; *provided*, notice of such intended removal shall have been given as required in the last two preceding sections.

### 3519. Delay of election of directors—Vice-president—Compensation—Vacancies.

SEC. 8. In case it shall happen at any time that any election of directors shall not be made on the day designated by the by-laws of the company when it ought to have been made, the company, for that reason, shall not be dissolved, if within ninety days thereafter they shall hold an election for directors in such manner as shall be provided by the by-laws of the company. There shall also be a vice-president of the company, should the directors deem it necessary, to be chosen from the board, and, also, such subordinate officers as the company, by its by-laws, may designate, who need not, necessarily, be stockholders. The said officers shall be chosen at such times and for such terms, and the directors may fix the compensation of each, and they shall give such security for the faithful performance of the duties of their respective offices as the directors shall require, or as may be established by the by-laws of the company; and any such officer may be removed from office by the board of directors, and the vacancy filled by said board for the remainder of the term of office; and the directors of such company shall also have power to fill all vacancies in their own body, and of all officers of the company, occasioned by death, resignation, or any other cause whatever.

### 3520. Powers of directors—By-laws—Proviso.

SEC. 9. The directors of any railroad company heretofore incorporated or which may be incorporated hereafter, from and after its incorporation or

organization, in pursuance of the provisions of this act, or of any law now in force in this state, shall, for and on behalf of such company, manage the affairs thereof, make and execute contracts, of whatever nature or kind, fully and completely to carry out the objects and purposes of such corporation, in such way and manner as they may think proper, and exercise generally the corporate powers of such company; and such directors shall also have full power to make such by-laws as they may think proper, and alter the same from time to time, for the transfer of the stock, and the management of the property and business of the company, of every description whatsoever, within the objects and purposes of such company, and for prescribing the duties of officers, artificers, and employees of said company, and for the appointment of all officers, and all else that by them may be deemed needful and proper, within the scope and power of said company; *provided*, that such by-laws shall not be inconsistent or in conflict with the laws of this state, or with the articles of association; *provided*, that such by-laws shall be approved by a majority of the stockholders, and shall not be inconsistent or in conflict with the laws of this state, or with the articles of association.

A corporation cannot be bound even by the act of its board of directors, unless done in the pursuance of some object embraced by its charter, or of some power conferred upon it by law. *Ricord v. C. P. R. R. Co.*, 15 Nev. 168.

A corporation can exercise no power not granted to it by the legislature. The powers of management granted in this state are delegated to the board of directors and are embraced in above section. That power, which is fairly implied, is as much granted

as those which are expressed. The charter of a corporation is the measure of its powers, and the enumeration of powers in the charter is an exclusion of all other powers. *George v. N. C. R. Co.*, 22 Nev. 228 (38 P. 441).

Every person who enters into a contract with a corporation is bound, at his peril, to take notice of the legal limits of the capacity of such corporation to contract. *Idem*.

If an act of a corporation is in excess of its chartered purposes, such act is outside of the powers delegated to its agent. *Idem*.

### 3521. Record of corporation debts—Duties of secretary—Contracts in writing.

SEC. 10. The directors shall also cause to be kept a book, to be called "Record of Corporation Debts," in which the secretary shall record all written contracts of the directors, and a succinct statement of the debts of the company, the amount thereof, and with whom made, which book shall at all times be open to the inspection of any stockholder or party in interest. When any contract or debt shall be paid or discharged, the secretary shall make a memorandum thereof in the margin, or in some convenient place in the record, where the same is recorded. No contract shall be binding upon the company unless made in writing.

### 3522. Record of proceedings—Further duties of secretary—Book of stockholders—Transfer book.

SEC. 11. The secretary of the corporation, who may be elected by the directors named in the articles of association, and every succeeding secretary elected during the continuance of said corporation, shall keep, in a book provided for that purpose, a correct record of the proceedings at each meeting of the company, as well as the board of directors, such record showing the name of each director present at the opening of each meeting of the board, and at what stage of the proceedings any director, previously absent, may appear, and also at what stage of the proceedings any director may obtain leave of absence. The records shall also show the name of each director voting against any proposition, whenever any director may require the same to be placed upon the record. Prior to the adjournment of each meeting of the company, or of the board of directors, the record of the proceedings of such meeting shall be read and approved; and he shall also keep such other books as may be deemed necessary, or prescribed by the directors, in which all the business transactions of the company shall be plainly and accurately

kept; he shall keep a book to be labeled "Book of Stockholders," which shall contain the names of all persons alphabetically arranged, who are, or shall have been, stockholders of said company, and showing their places of residence, if known, the number of shares of stock held by them respectively, the time when they respectively became the owners of such shares, the amount of cash actually paid to the company by them respectively for their stock, as also the time when they may have ceased to be stockholders; which book during the office hours of said secretary shall be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office of said secretary. There shall also be kept by the secretary a transfer book, in which all transfers of stock shall be duly entered, and no transfer of stock of such company shall be valid for any purpose whatever, except as between the parties thereto, until it shall have been entered therein by an entry showing to and by whom transferred, the numbers and designation of the shares, and the date of, and duly attested by said secretary, and said book shall be presumptive evidence of the facts therein stated.

### 3523. Stock—Personal estate of stockholders—How transferred—Calls.

SEC. 12. The stock of such company shall be deemed personal estate, and shall be transferable in the manner provided by the preceding section, and upon the book of the company, upon proper assignment and delivery to the assignee of the certificate of stock; but no share shall be transferable until all previous calls or installments thereon shall have been fully paid in. *As amended, Stats. 1869, 89.*

### 3524. Payment of subscription—Notice, form of—Sale of shares.

SEC. 13. It shall be lawful for the directors of such company to call in and demand from the stockholders the sums by them subscribed, in equal installments of not more than ten per cent per month, unless otherwise stipulated in the articles of subscription, at such times as they deem proper. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks, in a newspaper published at the place designated as the principal place of business of the corporation, or, if none is published there, in some newspaper nearest such place, which notice shall be substantially in the following form: "Notice is hereby given, that an assessment of ----- dollars per share on the stock of ----- company, is due and payable at the office of the company in ----- (and at such other places as the directors may designate, naming them), within thirty days from date. All shareholders are requested to make payment on or before that time, or such assessment will be promptly collected by law. -----, secretary." If after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, the same or so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company; *provided*, that no sale shall be made except at public auction, to the highest bidder; and at such sale the person who will agree to pay the assessment so due, together with the expenses of advertisement and the other expenses of sale, for the smallest number of shares or parts of shares, shall be deemed to be the highest bidder. All stockholders shall be liable to such sale for installments due or required to be paid by such directors as prescribed by this act.

### 3525. Certificate of stock—How issued.

SEC. 14. Certificates of stock shall be issued, signed by the president and secretary, in such manner as may be prescribed by the by-laws of the company. *As amended, Stats. 1869, 89.*

**3526. May borrow money—Sinking fund.**

SEC. 15. Such companies shall have power to borrow from time to time on the credit of the corporation, and under such restrictions as two-thirds in interest of the stockholders may impose, such sum or sums of money not exceeding in all the amount of its capital stock, as may be necessary for the construction and equipment of their road, at a rate of interest not to exceed fifteen per centum per annum, and to execute bonds or promissory notes therefor, in sums not less than one thousand dollars in any one note or bond, and to secure said notes or bonds, may mortgage their corporated property and franchise, and pledge the income of the company; and the directors of such company shall also provide, in such manner as to them may seem best, a sinking fund, to be especially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond so issued for money borrowed, or in payment of any debt, or contract, for the construction or equipment of such road as aforesaid, the right to convert the principal due or owing thereon into stock of such company, at any time within six years from the date of such bond, under such regulations as the company may adopt. *As amended, Stats. 1866, 250; 1869, 89.*

**3527. Capital stock paid in—Certificates of—Filed with secretary of state.**

SEC. 16. The president and secretary and a majority of the directors, within thirty days after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate, stating the amount of capital so fixed and paid in, which certificate shall be signed by the president and secretary and a majority of the directors, and they shall, within the said thirty days, file the same in the office of the secretary of state.

**3528. General powers and rights of railroad company.**

SEC. 17. Every railroad corporation shall have power:

First—To cause such examination and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad, and for such purposes, by their officers, agents, and employees, to enter upon the lands or waters of any persons, but subject to responsibility for all damages which they shall do thereto.

Second—To receive, hold, take, and convey, by deed or otherwise, the same as a natural person might or could do, such voluntary grants and donations of real estate, and other property of every description, as shall be made to it to aid and encourage the construction, maintenance and accommodation of such railroad.

Third—To purchase, and by voluntary grants and donations receive and take, and by its officers, engineers, surveyors and agents, enter upon and take possession of, and hold and use, in any manner they may deem proper, all such lands and real estate, and other property, as the directors may deem necessary and proper for the construction and maintenance of such railroad, and for the stations, depots, and other accommodations and purposes, deemed necessary to accomplish the object for which the corporation is created.

Fourth—To lay out its road or roads, not exceeding ten rods wide, and to construct and maintain the same, with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same, and for the purposes of making embankments, excavations, ditches, drains, culverts, or otherwise, and procuring timber, stone, and gravel, or other materials, may take as much more land, whenever they may think proper, as may be necessary for the purposes aforesaid, in the manner hereinafter provided, for the proper construction and security of the road.

Fifth—To construct their road across, along, or upon any stream of water, water course, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch, or flume, which the route of its road shall

intersect, cross, or run along, in such manner as to afford security for life and property; but the corporation shall restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected, to its former state, as near as may be, or in a sufficient manner not to have unnecessarily impaired its usefulness or injured its franchises.

Sixth—To cross, intersect, join, and unite its railroad with any other railroad, either before or after constructed, at any point upon its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings and switches, and other conveniences, in furtherance of the objects of its connections; and every company whose railroad is, or shall be hereafter, intersected by any new railroad in forming such intersections and connection, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections and connections, the same shall be ascertained and determined by commissioners, to be appointed as is provided hereinafter in respect to the taking of lands, but this section is not to affect the rights and franchises heretofore granted.

Seventh—To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, or take them in the manner provided by this act; may change the line of its road, in whole or in part, whenever a majority of the directors shall determine, as is provided hereinafter, but no such change shall vary the general route of such road, as contemplated in the articles of association of such company.

Eighth—To receive by purchase, donation, or otherwise, any lands, or other property, of any description, and to hold and convey the same in any manner the directors may think proper, the same as natural persons might or could do, that may be necessary for the construction and maintenance of its road, or for the erection of depots, turnouts, workshops, warehouses, or for any other purposes necessary for the conveniences of such companies, in order to transact the business usual for such railroad companies.

Ninth—To take, transport, carry, and convey persons and property on their railroad, by the force and power of steam, of animals, or any mechanical power, or by any combinations of them, and receive tolls or compensation therefor.

Tenth—To erect and maintain all necessary and convenient buildings, stations, depots, and fixtures, and machinery for the accommodation and use of their passengers, freight, and business, and to obtain and hold the lands and other property necessary therefor.

Eleventh—To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor, within the limits prescribed by law.

Twelfth—To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations, fully and completely for the management of its business transactions usual and proper for railroad companies.

A grant to a railroad company to cross a river with its railway and transport passengers thereon in the ordinary course of its business, is not an infringement of a previous grant of the exclusive right of a toll bridge over such river. *Lake v. V. & T. R. R. Co.*, 7 Nev. 294.

The crossing of a river by a railroad track on piers or what is known as a "railroad bridge," is neither a bridge, ferry, nor any public means of crossing by any ordinary method of travel, such as is contemplated in

ordinary legislation concerning toll roads and bridges. *Idem.*

A complaint charging a railroad company with negligence in failing to keep in repair a private way over its railroad track, constructed for its own use and benefit, and used by other persons by the mere license of the railroad company, does not state facts sufficient to constitute a cause of action. *Ferguson v. V. & T. R. R. Co.*, 13 Nev. 184, 192.

In actions of this character to enable a

plaintiff to maintain his action, he must allege and prove some act of misfeasance on the part of the railroad company. *Idem.*

The railroad company could only be held responsible for the injuries plaintiff received upon the theory that the street where the accident occurred was a public highway prior to the construction of the railroad. In such

event it would be the duty of the railroad to keep it in repair. *Idem.*

The power of railroad companies under clause ten above, does not protect it in such use of a steam whistle in its shops as to frighten horses and thereby injure others. *Powell v. N. C. O. R. R.*, 28 Nev. 40, 64 (78 P. 978), affirmed, same case, 28 Nev. 305 (82 P. 96).

### 3529. May change line of road.

SEC. 18. If at any time after the location of the line of such railroad, in whole or in part, and the filing of the map thereof, as provided by this act, it shall appear to the directors of such company that the same may be improved, such directors may, from time to time, alter or change the line in any manner they may think proper, and cause a new map to be filed in the office where the map showing the first location is filed, and may thereupon take possession of the land embraced in such new location, that may be required for the construction and maintenance of such road on such new line, either by agreement with the owner or owners of such lands, or by such proceedings as are authorized under the provisions of this act, and use and enjoy the same in place of the line for which the new is substituted; but nothing in this act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section 17, subdivision 7, of this act.

### 3530. Crossing railroads or highways—May take and use lands and materials.

SEC. 19. Whenever the track of such railroad shall cross a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient, and in cases where an embankment or cutting shall make a change in the line of such railroad or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands and materials, if needed for the construction of such road or highway, on such new line, as may be deemed requisite by said directors; unless the lands and materials so taken shall be purchased, or voluntarily given for the purpose aforesaid, compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be, and duly made by such corporation to the owners and persons interested in such lands; and the same, when so taken and compensation made, to become part of such intersecting road or highway, in such manner and by such terms as the adjacent parts of such highways may be held for highway purposes.

### 3531. Right of way granted—Width, depots—Conveyance of land by cities—Abandonment of way, land reverts—Plat transmitted to surveyor-general, controller, and recorder—Foreign corporations to file articles with recorder.

SEC. 20. The right of way is hereby given and granted to all railroad companies that are now organized, or may be organized under the provisions of this act, or under the laws of any other state or territory, or under any act of Congress, to locate, construct, and maintain their roads, or any part or parcel thereof, over and through any of the swamp or overflowed lands belonging to this state, or any other public lands which are now or may be the property of the state, at the time of constructing said railroad; and the said railroad companies are hereby authorized to survey and mark through the said lands of the state, to be held by them for the track of their respective railroads, one hundred feet in width, for the whole length the said roads may be located over the lands of the state; and in cases

where deep excavations, or heavy embankments, or other cuttings or structures whatever, or ditches, drains, canals, culverts, or other structures to protect the roadbed, and to facilitate the use and enjoyment of the same, is or may be required for the grade or other uses of said roads, then at such places a greater width may be taken by such company, and which is hereby given, not exceeding two hundred feet wide; and the right is hereby further given and granted to said companies, to locate, occupy, and hold all necessary sites and grounds for watering places, depots, or other buildings, for the convenient use of the same, along the line of said road or roads, so far as the places convenient for the same may fall upon the lands belonging to the state, except within the limits of any incorporated city or town, or within three miles where the same shall be taken, on paying to the state the value of the same; *and, provided*, no one depot, watering place, machine or workshop, or other buildings for the convenient use of such roads, shall cover over two square acres each, and that said sites or places on the lands of this state shall not be nearer to each other than five miles along the line of said roads. The right is hereby further given and granted to said companies to take from any of the lands belonging to this state all such materials of earth, wood, stone, or other materials whatever, as may be necessary or convenient, from time to time, for the first construction or equipment of said road or roads, or any part thereof; *provided*, that the grants herein made, as well as the use of the land of this state as for the materials for the construction and equipment of said road or roads, shall cease and determine as respects such particular road, which shall not have been begun and completed within the times limited in section 39 of this act; *and provided further*, that if any road, at any time after its location, shall be discontinued or abandoned by said company or companies, or the location of any part thereof be so changed as not to cover the lands of the state thus previously occupied, then the lands so abandoned or left shall revert to this state; *and provided further*, that when the location of the route of either of said railroads, or sites or places for depots, watering places, machine or workshops, or other buildings for the convenient use of the same, shall be selected, the secretary of said company shall transmit to the surveyor-general, and to the controller of the state, and to the recorder of the county in which the lands so selected are situated, to each of said officers, a correct plot of the location of said railroad, or sites or places, before such selection shall become operative. And when any such company shall, for its purposes aforesaid, require any of the lands belonging to any of the counties, cities, or towns in this state, the county, city, and town officers, respectively, having charge of such lands, may grant and convey such land to such company, for a compensation which shall be agreed upon between them, or may donate and convey the same without any compensation; and if they shall not agree upon the sale and price, the same may be taken by the company as is provided in other cases of taking lands by the provisions of this act; *provided, however*, that before any corporation incorporated or organized otherwise than under the laws of this state, shall be entitled to any of the rights granted by this act, it shall file in the office of the county recorder of each county in which the said railroad, or any part, extension or branch thereof shall be situate, a copy of its certificate or articles of incorporation, or of the act or law by which it was created, with the certified list of its officers, in the manner and form required of [by] section one of an act of the legislature of the State of Nevada entitled "An act to amend an act entitled 'An act to require foreign corporations to furnish evidence of their incorporation and corporate name,' approved March 3, 1869," approved January 30, 1877. [Sec. 1346.] *As amended, Stats. 1905, 250.*

Penalty for permitting animal to go on enclosed right of way, sec. 6753.

The limitation of two acres does not apply to lands of individuals. In regard to such lands, a larger quantity, if necessary, may be condemned. *V. & T. R. R. Co. v. Elliott*, 5 Nev. 358, 363.

Possessory rights cannot be destroyed by a railroad company without compensation. *V. & T. R. R. Co. v. Lynch*, 13 Nev. 92, 94, 102.

### 3532. Cities may make grants—Not to apply to street railroads.

SEC. 21. Any county, city, or town in this state, shall have, and are hereby fully empowered, by and through a two-thirds vote of the board of commissioners, the common council, or any other officers having a supervisory or other control of such county, city, or town, respectively, to give, grant, or donate, to any railroad company now organized, or that may be hereafter organized under the laws of this state, the use of any of the streets or highways which may be absolutely necessary in order to enable any such company to reach an accessible point for a depot in any such county, city and county, city or town, or to pass through the same on as direct a route as possible; and accommodate the traveling and commercial interests thereof; *provided, however*, the provisions of this section shall not apply to any street railroad now constructed, or hereafter to be constructed, in any of the incorporated cities of this state; nor shall any railroad company, who may avail themselves of the provisions of this section, ever use their road for street railroad purposes or for the purpose of carrying passengers for a consideration from one point to another in the same city; nor shall any city or town donate any public square, or any land set apart, to the use of any one company.

### 3533. Surveys—General rights and powers—Lands acquired—Reversion.

SEC. 22. Any railroad company, organized under the provisions of this act, or any railroad company organized under any law of this state, which shall accept the provisions of this act, as herein provided, is authorized to enter upon any land for the purpose of surveying the line of its proposed railroad, the company being responsible for any damage occasioned by such; and such company is also authorized to acquire, purchase, and hold any real estate, or any right, title, or interest therein, which may be necessary or proper for the purpose of the construction or maintenance of the track or tracks, water stations, depots, machine or workshops, turntables, or any other building or structure necessary for such railroad; but such company shall not hold such real estate, or any right, title or interest therein, required or used solely or mainly for the construction or maintenance of the track or tracks of said railroad, beyond the time of the legal existence of said company, nor after the location of said track or tracks has been changed therefrom, nor after said company shall have failed, or ceased, to the use of the same for the maintenance of such track for the space of five years continuously; but in each of such cases, the said real estate, and all the right, title, and interest therein, shall revert to the person or persons, and his or their assigns, from whom the same was acquired by said company.

### 3534. Guardians, executors or administrators may convey real estate to company—Judge to approve.

SEC. 23. If it shall become necessary, for any of the purposes aforesaid, for such company to acquire any real estate, or any right, title, or interest therein, which is the property of an infant, idiot, or insane person, the guardian, executor, or administrator (as the case may be), may sell and convey the same to said company, but neither such sale or conveyance shall be valid for any purpose, until the same shall have been approved by the judge of the proper court; and said judge is hereby authorized to examine such deeds and conveyances, and if he shall deem the same just and proper, he shall approve the same, and thereupon such conveyances shall have the same force and effect, for the purposes in this section mentioned, as if the same had been

executed by persons competent to convey lands in their own names. *As amended, Stats. 1869, 90.*

### 3535. Special proceedings to acquire real estate.

SEC. 24. Such company may acquire any real estate, or any right, title, interest, estate, or claim therein or thereto, necessary for the purposes of said company, as hereinbefore provided, by means of the special proceedings prescribed in this act. The said special proceedings shall be substantially as follows: The said company shall file in the clerk's office of the district court, in the county in which said real estate is situated, a petition verified according to law, stating therein the name of the company, the time when it was incorporated, that it still continues in legal existence, the principal termini of the proposed road, the description by metes and bounds, or by some accurate designation of the tract or tracts of lands which said company desire to appropriate for the purposes in the foregoing section mentioned; that said tract or tracts of land are necessary for said purposes; that the line of said railroad has been surveyed, and a map thereof made (a copy of which shall be filed with the said petition); that said line has been adopted as the route of said railroad, and the names of the persons in possession of said tract or tracts of land, and of those claiming any right, title, or interest therein, as far as the same can be ascertained by reasonable diligence. *As amended, Stats. 1869, 90.*

For condemnation of property, see chapter 66, civil practice act, secs. 5606-5629.

The question as to the quantity of land which the company may take on the ground of its being necessary for depots and other buildings must be determined by the evidence produced and depends upon many facts and circumstances for which there is no exact standard. *V. & T. R. R. Co. v. Elliott, 5 Nev. 359, 363.*

### 3536. Idem—Rights of defendants.

SEC. 25. The persons in occupation of said tract or tracts of land, and those having any right, title, or interest therein, whether named in the petition or not, shall be defendants thereto, and may appear and show cause against the same, and may appear and be heard before the commissioners herein provided for, and in proceedings subsequent thereto, in the same manner as if they had appeared and answered said petition.

### 3537. Idem—Hearing of petition.

SEC. 26. The said court, or the judge thereof, either in term or vacation, shall, by order, appoint the time for the hearing said petition, and such hearing may be had, and all orders in said proceedings may be made by the said court, or the judge thereof, either in term time or vacation.

### 3538. Idem—To notify owners—Publication of notice.

SEC. 27. The said company shall cause all the occupants and owners of said tract or tracts of land, so far as the same can be ascertained by reasonable diligence, who reside in said county, to be personally notified of the pendency of the said petition at least ten days before the hearing thereof, and if any of said occupants or owners are unknown, or do not reside in said county, and have not been personally notified of the pendency of said petition, said company shall cause a notice stating the filing of said petition, the object thereof, the tracts of land sought to be appropriated, and the time and the place of the hearing of said petition, to be published for four successive weeks previous to the time of hearing said petition, in a newspaper published in said county, or, if none is published in said county, then in a newspaper published nearest to said county.

### 3539. Idem—To appoint commissioners—Vacancy.

SEC. 28. The defendants to said petition may appear and show cause against said petition, on or before the time for the hearing thereof, or such other time as the hearing may be continued to, and upon satisfactory proof being made

that the defendants have been duly notified of the pendency of said petition, as herein prescribed, and upon the hearing of the allegations and proofs of the said parties, if the said court, or judge, shall be satisfied that the said lands, or any part thereof, are necessary or proper for any of the purposes mentioned in said petition, then such court, or judge, shall appoint three competent and disinterested persons as commissioners, one of whom shall be selected from among the persons, if any, named for that purpose by said company, and one shall be selected from among the persons, if any, named on the part of any of the defendants, to ascertain and assess the compensation to be paid to any person or persons having or holding any right, title, or interest in or to each of said tracts of land, for and in consideration of the appropriation of such land to the use of said company. If any vacancy occur among said commissioners, by reason of any one or more of them refusing or neglecting to act, or by any other means, one or more commissioners may be appointed by said court, or judge, to fill such vacancy, upon notice being given of such vacancy, as said court, or judge, may direct.

On objection that the appointment of commissioners to fix compensation for land taken for railroad purposes was a matter pertaining to the executive and could not be exercised by the judicial department (ante, sec. 258), it was held that as the constitution does not point out the manner in

which private property shall be taken (ante, sec. 237), the legislature has the power to prescribe any method which will produce a just and fair result, and that there is no more reason why the commissioners should not be appointed by the executive than by the judiciary. *V. & T. R. R. Co. v. Elliott*, 5 Nev. 359.

### 3540. *Idem*—Meeting of commissioners.

SEC. 29. The said court or judge shall appoint the time and place for the first meeting of said commissioners, and the time for filing of their report, and may give such further time as may be necessary for that purpose, if they shall not then have completed their duties. The said commissioners, or a majority of them, shall meet at the time and place as ordered, and, before entering on their duties, shall be duly sworn to honestly, faithfully and impartially perform the duties imposed upon them; and any one of them may issue subpoenas for witnesses for either of said parties, and may administer oaths; and said commissioners may adjourn from place to place and from time to time, as may be necessary for the proper discharge of their duties.

### 3541. *Idem*—Compensation—To file report—Adverse claims.

SEC. 30. The said commissioners shall proceed to view the several tracts of land as ordered by said court, or judge, and shall hear the allegations and proofs of said parties, and shall ascertain and assess the compensation for the land sought to be appropriated, to be paid by said company to the person or persons having or holding any right, title, or interest in or to each of the several tracts of land; and in ascertaining and assessing such compensation, they shall take in consideration and make allowance for any benefit or advantages that in their opinion will accrue to such person or persons by reason of the construction of the railroad as proposed by said company; and if the said railroad company shall, in their petition filed in said special proceedings, offer or agree to make good and sufficient fences on the line of their said railroad, or any portion thereof, or to make good and sufficient cattle guards where fences may cross said line of railroad, at such places and such times as the same may be necessary, no sum or price for such fences shall be included in the compensation or damages to be awarded by said commissioners; but such railroad company shall not be required to construct fences on the line of their railroad where the same passes through uninclosed tracts of lands, nor until inclosures shall be made abutting upon the property of said company; and such commissioners shall, on or before the time or times as ordered by said court, or judge, file in said clerk's office their report, signed by them, setting forth their

proceedings in the premises, and they may include all of said tracts in one report, or they may make several reports, including one or more of said tracts of land, if the court, or judge, shall so order, or if they shall deem it proper. In case there are adverse or conflicting claims to the compensation assessed for any tract of land, or any right, title, or interest therein, thus sought to be appropriated, the parties thus asserting such claims shall present the same, by petition, to the court, or judge, after the report of the commissioners shall have been filed, and the said court, or judge, shall proceed to hear and determine the same; and in such case, said company may pay the amount of such compensation to the clerk of said court, to abide the order of the court, or judge, in said proceeding, and said company shall not be liable for any of the costs caused by the adjudication of such conflicting claims.

The valuation of lands taken for railroad purposes by commissioners will not be disturbed, if there is any substantial testimony to support it. *V. & T. R. R. Co. v. Elliott*, 5 Nev. 359.

In awarding compensation to be paid for land, its full actual value should be given; in ascertaining such value everything generally, which actually enhances the present worth, should be considered, but not the fact that it is necessary or indispensable for the railroad to have it. *Idem*.

The fact that the railroad has been constructed according to the surveys and maps originally filed, does not prevent it from condemning other land which may be necessary and proper for its purposes; and a petition for condemnation under such circumstances is not demurrable for setting up such construction. *V. & T. R. R. Co. v. Lovejoy*, 8 Nev. 100, 105.

A report of commissioners, appointed to assess the value of lands to be taken for railroad purposes which fails to show that they or a majority of them met at the time and place ordered and before entering on their duties when duly sworn, is not sufficient; and it is error to confirm such report. *Idem*.

It seems that when land is condemned for a railroad after its original construction, the owner is entitled to the actual market value at the time of taking, without deduction for any appreciation in value caused by the previous location and construction of the road. *Idem*.

### 3542. *Idem*—New trial—Report set aside.

SEC. 31. The said company, or any of said defendants, if dissatisfied with the report may, within twenty days after the time for the filing of said report, and after ten days' notice to the parties interested, move to set aside the report, and to have a new trial as to any tract of land, upon good cause shown therefor; and the said court or judge shall set aside the report as to such tract of land, and may recommit the matter to the same or to other commissioners, who shall be ordered to proceed in like manner as those first appointed; but such matters shall not be more than twice recommitted to commissioners.

This section does not mean that the report should be set aside as a matter of course, because of dissatisfaction, but only for good cause shown. *V. & T. R. R. Co. v. Elliott*, 5 Nev. 358, 364, 365.

The "good cause" mentioned in this sec-

tion means something clear and indubitable, pointing error in law or fact, intentional or unintentional on the part of the commissioners. *V. & T. R. R. Co. v. Henry*, 8 Nev. 166, 176.

Although this section does not allow for damages to the residue of premises from which a portion only is taken, yet such damages are a proper element of estimate in arriving at the "just compensation." *V. & T. R. R. Co. v. Henry*, 8 Nev. 165, 171.

This section does not contemplate the giving of the mere "market value" of the land taken; and if it did it would in that regard be unconstitutional. *Idem*.

The valuation which a person puts upon his property before an assessor for taxation purposes, though it may perhaps be admissible by way of contradiction of the owner's testimony to the contrary, has no weight and is in fact incompetent as independent evidence in determining the value of such property on proceedings for condemning it for railroad purposes. *Idem*.

Testimony as to special injury to business is irrelevant. *Idem*.

The compensation to be paid the owner of land taken for railroad purposes is most readily and fairly ascertained by determining the value of the whole land without the railway and of the portion remaining after the railroad is built—the difference being the true compensation to which the party is entitled. *Idem*.

Commissioners are not on questions of fact confined and limited as a jury; though they hear and weigh the allegations and testimony offered, they themselves view the premises and are supposed to exercise their own judgment to some extent, irrespective of the evidence adduced. *Idem*.

**3543. Idem—Confirmation of reports.**

SEC. 32. Upon the expiration of twenty days after the filing of said report or reports, or at such further time as may be appointed therefor, if the motion and notice shall not have been made and given, as aforesaid, and if the proceedings of said commissioners appear to have been correctly and properly done, the said court, or judge, shall confirm each of said reports, and certify the same thereon.

**3544. Idem—Record of reports—Procedure—Costs.**

SEC. 33. Each of said reports, and the certificates thereon, upon the compensation therein named being paid, shall be recorded in the recorder's office of said county by said company. The said court, or judge, may make all such orders as may be necessary or proper in the special proceedings provided for in this act, and shall cause the pleadings and proceedings to be amended whenever justice shall require it to be done, and shall direct the manner of the service of all orders and notices not herein specially provided for. Costs in such special proceedings shall be taxed by the clerk at the rates prescribed in the fee bill for said county in civil actions, and shall be paid by said company, except in case where a defendant shall move for a new trial, and the compensation assessed by the commissioners shall not be increased more than ten per cent upon the previous assessment, in which case such defendant shall pay the cost.

**3545. Idem—Defective titles — Proceedings instituted — Payment into court.**

SEC. 34. If the title attempted to be acquired by virtue of the provisions of this act, shall be found to be defective from any cause, such company may again institute proceedings to acquire the same, as in this act prescribed; and at any stage of such new proceedings, or of any proceedings under this act, the court, or judge in chambers, may rule or order in their behalf made, authorize such company, if already in possession, to continue in the use and possession, and if not in possession, to take possession of, and use such premises during the pendency of, and until the final conclusion of such proceedings, and may stay all actions and proceedings against such company on account thereof; *provided*, such company shall pay a sufficient sum in court, or give security, to be approved by such court, or judge, to pay the compensation in that behalf when ascertained.

**3546. Idem—Passage of title.**

SEC. 35. Upon the report of the commissioners being filed for record, as above provided for, and upon the payment or tender of the compensation and costs, as prescribed in this act, the real estate, or the right, title, or interest therein, described in such report, shall become the property of said company for the purpose of its incorporation, and shall be deemed to be acquired for, and appropriated to, public use.

**3547. Idem—Payment or tender.**

SEC. 36. Such company shall, within thirty days after the final confirmation of the report as aforesaid, pay or tender the sum of money ascertained and assessed by said commissioners as and for the compensation of each tract of land described in said report, of which the compensation was ordered by said court or judge, to be ascertained and assessed as aforesaid; and said payment or tender may be made to the person or persons owning said tract of land, or having or holding any right, title, or interest therein, according to the amount or extent of the right, title, or interest, owned or held therein by such person or persons, or said payment may be made to the said clerk for said persons, and the same shall be deemed and taken as a payment to such person or persons, and shall be as effectual for all purposes whatsoever as if

the said sum of money had been personally paid to each and all of the persons entitled thereto.

**3548. Idem—Court to order payment to party entitled.**

SEC. 37. The said court or judge shall, at the time of the payment of the said sum of money to the said clerk, or at such other time or times as may be ordered, direct and order the same to be paid over to the person or persons who shall, upon satisfactory proof, appear to be entitled thereto.

**3549. Idem—Definition of "person."**

SEC. 38. In all the proceedings in relation to the sale or appropriation of real estate, and ascertaining and receiving the compensation therefor, for railroad purposes, as prescribed in this act, the term "person" shall be deemed to include municipal or other incorporations.

**3550. Idem—Duties of clerk of court.**

SEC. 39. The minutes of the proceedings had before such judge shall be entered by said clerk in the same manner, and with the same force and effect, as if the proceedings were had before said court in term time.

**3551. Companies may consolidate—Notice—To maintain fence—Not liable in certain cases—Company may recover damages.**

SEC. 40. It shall be lawful for two or more railroad companies to amalgamate and consolidate their capital stock, debts, property, assets and franchises, in such manner as may be agreed upon by the board of directors of such companies so desiring to amalgamate and consolidate their interests; but no such amalgamation or consolidation shall take place without the written consent of three-fourths of the value of all stockholders in interest of each company; and no such amalgamation or consolidation shall in any way relieve such companies, or stockholders thereof, from any and all just liabilities; and in case of such amalgamation or consolidation, due notice of the same shall be given by advertising for one month in at least one newspaper in each county, if there shall be one published therein, into or through which such roads shall run, and also for the same length of time in one paper published in Virginia City and one at the capital of the state; and when the consolidation and amalgamation is completed a copy of the new articles of association shall be filed in the office of the secretary of state. It shall be the duty of the railroad company to make and maintain a good and sufficient fence on either or both sides of their property; and in case any company do not make and maintain such fence, if their engine or cars shall kill, maim, or destroy any cattle, or other domestic animals, when they stray upon their line of road, where it passes through or alongside of the property of the owners thereof, they shall pay to the owner or owners of such cattle, or other domestic animal, a fair market price for the same, unless the owner or owners of the animal or animals so killed, maimed or destroyed, shall be negligent or at fault. In any case, where the railroad company have heretofore, or may hereafter, pay to the owner or owners of the land, through which, or alongside of which, their road is or may be located, an agreed price for making and maintaining such fence, or whenever the cost of such fence has been or may be included in the amount of damages allowed and paid for the right of way for such railroad, such company shall be entirely relieved and exonerated from all claims and awards of damages arising out of the killing or maiming any animals, as aforesaid, in favor of all persons, or their successors or assigns, who shall thus fail to construct and maintain such fence. And the owner or owners of such animals shall become responsible to the railroad company for any damage or loss which may accrue to such company from such animals being upon their railroad track, by reason of the

nonconstruction of such fence by said owner, unless it can be proven that such loss or damage accrued by reason of the negligence of such company, its officers, agents, or employees.

The liability of railroad companies for injuries to domestic animals is founded only upon negligence or omission of duty on the part of the company. *Walsh v. V. & T. R. R. Co.*, 8 Nev. 110, 111, 117.

If, in the prosecution of a lawful act, an accident, which is purely an accident, arises, no action can be maintained from an injury resulting therefrom. *Idem.*

A railroad company has the right to the possession of the land taken for the purpose of its road, and that possession is the right to its exclusive enjoyment, and to exclude all persons and beasts therefrom at any and all times. *Idem.*

In an action against railroad company for killing a domestic animal, which has strayed upon its track from land not belonging to its owner, it is incumbent on the plaintiff to show negligence on the part of the company. *Idem.*

The mere killing of a domestic animal by a railroad train is not evidence of negligence on the part of the company. *Idem.*

That portion of the above section in regard to fences in connection with the further pro-

vision that railroads shall be liable for the killing of domestic animals "when they stray upon their line of road where it passes through or alongside of the property of the owners thereof," simply requires companies to fence their road where it may run through or alongside of the land of private individuals; that is, on either or both sides, as occasion may demand; and even then the fencing is only for the protection of adjoining owners, and no other person can complain of the want of it. *Idem.*

This section does not require railroad companies to fence their road where it passes through public land. *Idem.*

If cattle stray upon the railroad directly from the land of their owner and by reason of the failure of the company to fence its road at that point, and are killed, the company will be liable under this section on the simple showing of the facts of such killing and neglect to fence, without any further showing of negligence; but it is otherwise when they stray from public land or from land not belonging to their owner. *Idem.*

### 3552. Bell to be rung—Crossings—Penalty.

SEC. 41. A bell of at least twenty pounds weight shall be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad shall cross any street, road or highway, under a penalty of one hundred 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 the state; and said corporation shall also be liable for all damage which shall be sustained by any person by reason of such neglect.

Penalties payable to school fund, sec. 355.

See sec. 6584.

A railroad company, when moving its locomotives or trains upon the public streets of a city, is bound to use due care and give some signal of their approach. *Solen v. V. & T. R. R. Co.*, 13 Nev. 106, 122.

A person walking along a track on a public street in a city has a right to presume,

and act on the belief, that the railroad company will not move its locomotives or cars along such track without giving the usual signal. *Idem.*

Case of conflicting evidence in regard to ringing of bell or blowing of whistle. *Bunting v. C. P. R. R. Co.*, 16 Nev. 277.

### 3553. Checks on baggage—Refusal—Penalty—Failure to deliver baggage—Damages—Evidence.

SEC. 42. A check shall be affixed to every package or parcel of baggage, when taken for transportation, by the agent or employee of such railroad company, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check be refused on demand, the railroad company shall pay to such passenger the sum of twenty dollars, to be recovered in an action for debt, and, further, no fare or toll shall be collected or received from such passenger; and if such passenger shall have paid his or her said fare, the same shall be returned by the conductor in charge of the train; and if, on producing said check, his or her baggage shall not be delivered to him or to her by the agent or employee of said railroad company, he or she may, himself or herself, be a witness in any suit brought by him or her to recover the value thereof, to prove the contents and value of said baggage.

Liability for injury to baggage, sec. 6755.

**3554. Map to be filed with secretary of state.**

SEC. 43. Every railroad company in this state shall, within a reasonable time after their road shall be finally located, cause to be made a map and profile thereof, and of the land taken and obtained for the use thereof, and the boundaries of the several counties through which said road may run, and file the same in the office of the secretary of state; and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which said parts of said road shall be, there to remain as of record forever. The said maps and profiles shall be certified by the chief engineer, the acting president, and secretary of such company, and copies of the same, so certified and filed as aforesaid, shall be kept in the office of the secretary of the company, subject to examination by all parties interested.

**3555. Annual reports—To be verified—What to contain.**

SEC. 44. Every railroad company operating its line or lines of railroad wholly or in part in this state shall make an annual report to the secretary of the State of Nevada, or to such other officer as may be provided by law, of the operations of such railroad company during the year ending on the thirtieth day of June in each last preceding year, which report shall be verified by the oath of the president, vice-president, or managing officer having charge of the operations and business of such railroad company, and also by the oath of the auditor or other person having charge of the accounts of such railroad company, and shall file such report in the office of the secretary of state aforesaid, on or before the first day of October in each year, and shall state in each report:

First—The capital stock of such company, and the actual cash capital paid in on such stock by the members of such company.

Second—The amount of cash expended for the purchase of lands for the construction of the road of such company, the cost of the construction of such road, and the cost of buildings, engines and cars, respectively, used by such company in this state.

Third—The amount and the nature of indebtedness of such company and the amount due to such company.

Fourth—The amount received by such company for the transportation of all passengers, and all freight, property, mails and express matter over the road or roads of such company, together with all amounts received by such company from all other sources in connection with such road.

Fifth—The amount of freight of all kinds transported over the road or roads of such company, specifying the quantity of such freight in tons.

Sixth—The amount paid by such company for the repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such road.

Seventh—The number and amount of dividends declared by such company and when such dividends were paid.

Eighth—The number of engine houses and shops, together with the number of engines and cars, and the character of the same.

Ninth—The net profits of such company during such year.

Tenth—It shall be the duty of the secretary of state of the State of Nevada to prescribe the form of such report, making said form conform as nearly as practicable with the form prescribed in similar cases by the interstate commerce commission, and on or before the thirtieth day of June in each year, it shall be the duty of said secretary of state, or the duty of the officer by whom such report may be from time to time required, to furnish to every such railroad company, in duplicate, blanks of the form required and prescribed by him for the making of such reports, which blanks and a demand for the return thereof, properly filled out, shall be forwarded to such railroad company

by sending same to the resident agent within the state, by United States registered mail, and such officer shall serve such forms or blanks and demand the return thereof in such manner (keeping a record in his office of the date of forwarding the same), and shall require a receipt to be furnished to him by every such railroad company, showing the date at which such blank forms and demand were received by such railroad company; *provided*, if such railroad has no resident agent, said form shall be deposited with the secretary of state, and such deposit shall be deemed a service.

Eleventh—If any such railroad company shall neglect or fail to comply with the requirements of this act and he shall fail to make, execute and return the reports hereby required of it by such demand of the secretary of state or other officer charged by law with the duty of requiring such reports for more than thirty days after the first day of October in each year, said railroad company shall be liable for, and shall forfeit and pay to the State of Nevada for such neglect, a penalty of twenty thousand dollars. And it shall be the duty of the attorney-general of the state to commence an action in the name of the State of Nevada for the recovery of such penalty, and the court shall render judgment therefor against such company and such action shall not be dismissed or compromised except upon the full payment of the sum of such penalty, together with all costs of such action, and execution shall issue against the property of such company until such judgment shall be fully satisfied.

Duty of railroads to make annual report to railroad commission, sec. 4568.

See sec. 3567.

### 3556. *Idem*—Failure of secretary of state to furnish forms—Penalty.

(SEC. 2.) If the secretary of state or such other officer whose duty it may be to furnish such forms shall fail or neglect to furnish and serve the same as herein provided, he shall be liable to the State of Nevada on his official bond in each case to the amount of the penalty herein prescribed to be imposed on such railroad for failure to file the herein prescribed report.

### 3557. Not to conflict with railroad commission act.

(SEC. 3.) Said section 44 as heretofore existing, and all acts and parts of acts in conflict with this act are hereby repealed; *provided*, that nothing contained herein shall be construed as repealing or in any way conflicting with or impairing any of the provisions of an act entitled "An act to regulate railroads, telegraph and telephone companies and other common carriers in this state, creating a railroad commission, constituting the governor, lieutenant-governor, and the attorney-general a railroad board for the appointment and removal of the railroad commissioners, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure an adequate railway service and fixing maximum freight charges." In case of any conflict with said act, then all the provisions of this act in conflict with said act shall be null and void. *As amended, Stats. 1879, 54; 1889, 117; 1907, 199.*

Railroad commission act, secs. 4549-4585.

### 3558. Regulation of time and accommodations.

SEC. 45. Every such company shall start and run their cars for the transportation of persons and property, at such regular times as they shall fix by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or to be offered, for transportation at the place of starting and 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 such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

**3559. Idem—Damages for violation.**

SEC. 46. In cases of refusal by such company, or their agents, so to take and transport any passengers or property, or to deliver the same at the regular appointed places, such company shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

[Sec. 47 repealed, Stats. 1891, 26.]

**3560. Idem—Company not liable, when—Negligence of passenger.**

SEC. 48. In case any passenger on any railroad shall be injured on the platform of a car, or any baggage, wood, gravel, or freight cars, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside of its passenger cars then in the train, or in violation of verbal instructions given by any officer of the train, such company shall not be liable for the injury; *provided*, said company, at the time, furnished room inside of its passenger cars sufficient for the accommodation of its passengers.

**3561. Conductor may eject passengers.**

SEC. 49. If any passenger shall refuse to prepay his fare, or toll, upon demand, it shall be lawful for the conductor of the train, and the employees of the company, to put him out of the cars at any stopping place the conductor may elect.

**3562. Conductor and other officers to wear badge—Authority.**

SEC. 50. Every conductor, baggage master, engineer, brakeman, or other employee of any railroad company employed in a passenger train, or at stations for passengers, shall wear upon his hat, or cap, or in some conspicuous place on the breast of his coat, a badge which shall indicate his office or station, and the initial letters of the name of the company by which he is employed. No conductor, or collector, without such badge, shall demand, or be entitled to receive, from any passenger, any fare, toll, or ticket, or exercise any of the powers of his office, or station, and no one of said officers or employees, without such badge, shall have any authority to meddle or interfere with any passenger or property.

Penalties for violations of duty, see secs. 6583-6585.

**3563. Maximum rate for freight and fares—Proviso.**

SEC. 51. It shall be unlawful for any such railroad company to charge more than ten cents per mile for each passenger, and twenty cents per mile for each ton of freight transported on its road; and for every transgression of such limitation the company shall be liable to the party suffering thereby treble the entire amount of fare or freight so charged to such party; *provided*, that in no case shall the company be required to receive less than thirty-five cents for any one lot of freight for any distance.

See sec. 6737.

**3564. Penalty for intoxication.**

SEC. 52. If any person, while in charge of a locomotive engine running upon any railroad for such company, or while acting as a conductor of a car, or train of cars, on any such railroad, be intoxicated, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not exceeding six months.

See sec. 6583.

**3565. Injuries to works of company—Penalty—Unlawful to excavate under without consent.**

SEC. 53. If any person or persons shall wilfully do, or cause to be done,

any act or acts whatever, whereby any building, construction, or work of any kind of any such company, or any engine, machine, or structure, or any matter or thing appertaining to the same, or track of said road, or any property or thing belonging to or appertaining to such railroad, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, such person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to said company treble the amount of damages sustained by means of such offense, besides a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, in the discretion of the court; and if, by reason of any unlawful act, any accident should happen to life or limb of any person riding or being in the cars of such railroad, then such person or persons shall be guilty of felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for any term not less than three nor more than ten years. It shall be unlawful for any person or persons engaged in mining or other pursuits, to tunnel, drift, or in any manner excavate under or upon any land belonging to any railroad company, without the consent of such company; and any person so offending shall be liable to the fine and imprisonment hereinbefore mentioned, whether injury results to any person by reason thereof or not.

See secs. 6586, 6748, 6749.

### 3566. Time granted for operation—Charter, when void.

SEC. 54. If such railroad company shall not, within four years after the filing of its original articles of association, begin the construction of its road and expend thereon at least five per cent of the amount of its capital stock, and finish the road and put it in full operation within six years, its act of incorporation shall be void. *As amended, Stats. 1893, 87.*

### 3567. False notice or report—Liability for—Disqualification for company office.

SEC. 55. If any certificate or report made, or public notice given, by the officers of such company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof, and shall likewise be guilty of a misdemeanor, and shall be fined in any sum not exceeding one thousand dollars, in any court having jurisdiction, and disqualified from holding any office of trust or profit in such company.

See secs. 4575, 4576.

### 3568. Payment of dividends when insolvent—Liability—Existing companies may take advantage of this act—Acceptance to be filed in office of secretary of state.

SEC. 56. If the directors of such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would make it insolvent, they shall be jointly and severally responsible for all the debts of the company then existing, and for all that shall thereafter be contracted, so long as they shall respectively remain in office; *provided*, that if any of the directors shall be absent at the time of making the dividends, or shall object thereto, and shall, within thirty days thereafter, or after their return, if absent, file a certificate of their absence, or objections, with the secretary of the company, and with the clerk of the county or district court of the county in which the principal office of said company is located, they shall be exempt from all liability. All the existing railroad companies in this state may acquire and may be possessed of all the powers, rights, and benefits conferred by this act, fully and completely, by filing a written acceptance thereof in the office of the secretary of state, signed by

all the directors of said company, and attested by the president and secretary thereof, with the seal of such company affixed thereto; and the acceptance of any part of this act shall be deemed and taken to be an acceptance of the whole act, and a surrender of the act or acts under which the company may be organized. Thereupon such company shall possess all of such powers, rights and benefits so accepted, and be subject to all of the obligations and restrictions herein specified, as fully and completely as they would have had and been if organized under this act.

**3569. Kind of rail to be used in construction—Not to apply to street railroads.**

SEC. 57. All railroads built by companies incorporated under the provisions of this act shall be constructed with the best quality of iron rail known as T rail and H rail, or other patterns of equal utility; *provided*, the provisions of this section shall neither apply to tracks laid down in streets of incorporated cities or towns, nor other railroads operated by animal power.

**3570. Street railroads may operate under act.**

SEC. 58. Corporations may be formed under this act for the purpose of constructing, running, operating, and maintaining a street railroad, or railroads, being wholly within the limits of a city, and county, and town under a franchise or franchises heretofore given to any such company or companies.

*An Act concerning petitions of taxpayers in aid of the construction of railroads in the several counties of this state.*

Approved March 3, 1881, 120

**3571. Railroad property, in cases of petition, excluded from computation.**

SECTION 1. In any and all counties in this state wherein county aid is proposed to be extended to encourage the construction of a railroad, and the issuance of the bonds of such county, for such purpose, is dependent upon a petition of persons representing a majority of the taxable property in such county, the amount of property therein owned by any railroad company shall be excluded from computation in ascertaining the total amount of taxable property, in such county, and in further ascertaining what shall constitute a majority of the taxable property therein.

*An Act to provide for the proper care of live stock by transportation companies.*

Approved March 7, 1885, 73

**3572. Duties of railroad companies in transporting live stock—Time of confinement.**

SECTION 1. No company operating any railroad in this state shall, in carrying and transporting any cattle, sheep or hogs, in carload lots, confine the same in cars for a longer period than thirty-six consecutive hours without unloading for rest, water and feeding, for a period of at least ten consecutive hours. In estimating such time of confinement the period in which the animals have been confined without such rest on connecting roads shall be computed.

See secs. 3585-3587,

Federal act affecting interstate shipments limits time to twenty-eight hours. (34 Stat. L. 607).

**3573. May charge expense of feeding stock to owners in certain cases.**

SEC. 2. In case the owner or person in charge of such animals refuse or neglect to pay for the feed and care of the animals so rested, the railroad company may charge the expense thereof to the owner or consignee, and retain a lien upon the animals until the same is paid.

*An Act authorizing the sale by any railroad corporation owning any railroad in this state, of its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any act of Congress; also authorizing the corporation purchasing the same to operate such railroad, to build and operate extensions or branches thereof, and for that purpose to exercise the power of eminent domain.*

Approved March 1, 1899, 32

**3574. May sell property and franchise—Foreign corporations—Power of eminent domain—To file copy of articles in each county.**

**SECTION 1.** Any railroad corporation owning any railroad in this state may sell, convey and transfer its property and franchises, or any part thereof to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any act of Congress; and any such other railroad corporation receiving such conveyance may hold and operate such railroad franchise and property within this state, build and operate extensions or branches thereof, and for that purpose exercise the power of eminent domain, and do any other business in connection therewith, as fully and effectually to all intents and purposes as if such corporation were organized under the laws of this state. And any railroad corporation organized under the laws of any other state or territory, or under any act of Congress, may construct, own and operate a line of railroad and extensions and branches thereof in this state, and for that purpose may exercise the power of eminent domain, and do any other business in connection therewith, as fully and effectually, to all intents and purposes, as if such corporation were organized under the laws of this state; *provided, nevertheless*, that before any corporation, incorporated or organized otherwise than under the laws of this state, shall acquire or construct any railroad in this state, by virtue of this law, it shall file in the office of the county recorder of each county in which the said railroad so to be constructed or acquired, or any part, extension or branch thereof shall be situated, a copy of its certificate or articles of incorporation, or of the act or law by which it was created, with a certified list of its officers, in the manner and form required by section 1 of an act of the legislature of the State of Nevada entitled "An act to amend an act entitled 'An act to require foreign corporations to furnish evidence of their incorporation and corporate name,' approved March 3, 1869," approved January 30, 1877. [Sec. 1346.] *As amended, Stats. 1901, 51.*

*An Act to prevent discrimination in fares and freights by railroad companies whose railroads run through the State of Nevada, or by railroad companies, the terminus or termini of whose railroads are within the State of Nevada.*

Approved February 12, 1879, 28

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| 3575. Discrimination—Transportation facilities furnished—Continuous carriage. | 3580. Provisions of this act to apply to all property—All railroads to fix their own rates.            |
| 3576. Unlawful to allow rebates, drawbacks, or other advantage.               | 3581. Penalties for violation—Amount of damages, how recovered—Penalty—Actions for—Witnesses—Immunity. |
| 3577. Unlawful to make combinations to prevent continuous carriage.           | 3582. Acts of unlawful omission and commission.  |
| 3578. Short and long haul.  | 3583. Certain property may be transported free or at reduced rates.                                    |
| 3579. To adopt schedule—What shall state—Schedules, where posted.             | 3584. Meaning of "person or persons."  |

**3575. What constitutes discrimination—Transportation facilities furnished—Continuous carriage.**

**SECTION 1.** It shall be unlawful for any person or persons engaged alone

or associated with others in the transportation of property by railroad, whose railroads are wholly or in part in the State of Nevada, from any boundary of said state, to any point in said state, or from any point in said state to any boundary of said state, or from one point in said state to any other point in said state, directly or indirectly, to charge to or receive from any person or persons any greater or less rate or amount of freight, compensation, or reward than is charged to or received from any other person or persons for like and contemporaneous service in the carrying, receiving, delivering, storing, or handling of the same; and all persons engaged as aforesaid, shall furnish, without discrimination, the same facilities for the carriage, receiving, delivery, storage, and handling of all property of like character, carried by him or them, and shall perform with equal expedition the same kind of services connected with the contemporaneous transportation thereof as aforesaid. No break, stoppage, or interruption, nor any contract, agreement, or understanding shall be made to prevent the carriage of any property from being, and being treated, as one continuous carriage in the meaning of this act, from the boundary line of the State of Nevada, to the place of destination if within said state, or from the place of shipment if within said state, to the boundary of said state, or from the place of shipment to the place of destination if said place of shipment and destination be within said state, unless such stoppage, interruption, contract, arrangement, or understanding was made in good faith for some practical and necessary purpose, without any intent to avoid or interrupt such continuous carriage, or to evade any of the provisions of this act.

See railroad commission act, secs. 4570-4572.

### **3576. Unlawful to allow rebates, drawbacks, or other advantage.**

SEC. 2. It shall be unlawful for any person or persons engaged in the transportation of property as aforesaid, directly or indirectly, to allow any rebate, drawback, or any other advantage in any form, upon shipments made or services rendered as aforesaid by him or them.

See secs. 4572, 6737.

### **3577. Unlawful to make combinations to prevent continuous carriage.**

SEC. 3. It shall be unlawful for any person or persons engaged in the carriage, receiving, storage, or handling of the property, as mentioned in section 1 of this act, to enter into any combination, contract, or agreement by changes of schedule, carriage in different cars, breaking carloads into less than carloads, or by any other means, with intent to prevent the carriage of such property from being continuous from the boundary line of the State of Nevada to the place of destination, if such place of destination be within said state, or from the place of shipment if such place of shipment be within said state, to the boundary of said state, or from the place of shipment to the place of destination, if said places of shipment and destination be within said state, whether carried on one or several railroads; and it shall be unlawful for any person or persons, carrying property as aforesaid, to enter into any contract, agreement, or combination for the pooling of freights, or to pool the freights of different and competing railroads, by dividing between them the aggregate or net proceeds of the earnings of such railroads or any portion of them.

### **3578. Short and long haul.**

SEC. 4. It shall be unlawful for any person or persons engaged in the transportation of property, as provided in section 1 of this act, to charge or receive any greater compensation per carload, or part thereof, of similar property, for carrying, receiving, storing, forwarding, or handling the same

for a shorter than for a longer distance in one continuous carriage. *As amended, Stats. 1879, 111.*

See sec. 4555.

**3579.** To adopt schedule—What shall state—Schedules, where posted.

**SEC. 5.** All persons engaged in carrying property, as provided in section 1 of this act, shall adopt and keep posted up schedules, which shall plainly state: First—The different kinds and classes of property to be carried. Second—The different places between which such property shall be carried. Third—The rates of freight and prices of carriage between such places, and for all services connected with the receiving, delivery, loading, unloading, storing, or handling the same. Such schedules may be changed from time to time as hereinafter provided. Copies of such schedules shall be printed in plain, large type, at least the size of ordinary pica, and shall be kept plainly posted for public inspection, in at least two places in every depot where freights are received or delivered, and no such schedule shall be changed in any particular, except by the substitution of another schedule containing the specifications above required, which substitute schedule shall plainly state the time when it shall go into effect, and copies of which, printed as aforesaid, shall be posted as above provided at least five days before the same shall go into effect, and shall remain in full force until another schedule shall, as aforesaid, be substituted. And it shall be unlawful for any person or persons engaged in carrying property on railroads, as aforesaid, after thirty days after the passage of this act, to charge or receive more or less compensation for the carriage, receiving, delivery, loading, unloading, handling, or storing of any of the property contemplated by section 1 of this act, than shall be specified in such schedule as may at the time be in force.

See sec. 4552.

**3580.** Provisions of this act to apply to all property—All railroads to fix their own rates.

**SEC. 6.** Each and all the provisions of this act shall apply to all property, and the receiving, delivery, loading, unloading, handling, storing, or carriage of the same, on one actually or substantially continuous carriage, as provided for in section 1 of this act, and the compensation therefor, whether such property be carried wholly on one railroad or partly on several railroads, and whether such services are performed, or compensation paid, or received, by or to one person alone or in connection with another or other persons; *provided*, that each and every railroad company, as aforesaid, shall fix its own rate or rates in its schedule; and such rate or rates, in such schedule so fixed, shall not govern or affect the rate or rates of any other railroad company; *and, provided further*, that such rate or rates, in such schedule so fixed, shall not exceed the rate or rates now allowed to be charged by law.

Power of railroad commission to fix rates, see sec. 4555.

**3581.** Penalties for violation—Amount of damages, how recovered—Penalty—Actions for—Procedure—Witnesses—Immunity.

**SEC. 7.** Each and every act, matter, or thing in this act declared to be unlawful, is hereby prohibited, and in case any person or persons, as defined in this act, engaged as aforesaid, shall do, suffer or permit to be done, any act, matter, or thing, in this act prohibited or forbidden, or shall omit to do any act, matter, or thing, in this act required to be done, or shall be guilty of any violation of the provisions of this act, such person or persons shall forfeit and pay to the person or persons who may sustain damages thereby,

a sum equal to three times the amount of damages so sustained, to be recovered by the person or persons so damaged, by suit in any district court of the State of Nevada where the person or persons causing such damage can be found, or may have an agent, office or place of business; and the person or persons so offending shall for each offense forfeit and pay a penalty of not less than two thousand dollars, to be recovered by the State of Nevada, by action in any district court in the State of Nevada aforesaid, one-half of such penalty or penalties, when collected, to be paid to the informer. Any action to be brought as aforesaid, to recover any such penalty or damages, may be considered, and if so brought, shall be regarded as a subject of equity jurisdiction and discovery, and affirmative relief may be sought and obtained therein. In any such action, so brought as a case of equitable cognizance, preliminary or final injunctions may, without allegation or proof of damage to any plaintiff or complainant, be granted upon proper application, restraining, forbidding and prohibiting the commission or continuance of any acts, matters, or things, within the terms or purview of this act prohibited or forbidden. In any action aforesaid, and upon any application for any injunction above provided for, any director, officer, receiver or trustee of any corporation or company aforesaid, or any receiver, trustee or person aforesaid, or any of them alone, or with any agent of any such corporation or company, receiver, trustee or person aforesaid, or any other person or persons, party or parties, may and shall be compelled to attend, appear and testify and give evidence; and no claim that such testimony or evidence might, or might tend to, criminate the person testifying or giving evidence, shall be of any avail; but such evidence or testimony shall not be used as against such person on the trial of any indictment against him. The attendance and appearance of any of the persons who, as aforesaid, may be compelled to appear and testify, and the giving of the testimony or evidence by the same respectively, and the production of books and papers thereby may and shall be compelled, the same as in the case of any other witnesses; and in case any such deposition or evidence, or the production of any books or papers, may be desired or required for the purpose of applying for or sustaining any injunction aforesaid, the same, and the production of books and papers, may and shall be had, taken and compelled by or before any clerk of the district court in any of the judicial districts in the State of Nevada, or in any manner provided for or to be provided for, as to the taking of other depositions or evidence, or the attendance of witnesses, or the production of other books or papers in or by the statutes of Nevada. In actions to be brought as aforesaid, damages sustained in the period of a month or part of a month, may be regarded as and counted or declared upon or complained of generally, and as one separate cause of action; and so, whether such damages be sustained in one month or in different months; and such separate causes of action may be joined in the same action. No action aforesaid shall be sustained unless brought within one year after the cause of action shall accrue.

All penalties payable into school fund, sec. 355.  
See railroad commission act, secs. 4570-4579.

### 3582. Acts of unlawful omission and commission—Who liable—Penalty.

SEC. 8. Any director or officer of any corporation or company acting or engaged as aforesaid, or any receiver or trustee, lessee or person acting or engaged as aforesaid, or any agent of any such corporation or company, receiver, trustee, or person aforesaid, or of any of them alone, or with any other corporation, company, person, or party, who shall directly or indirectly do, or cause, or willingly suffer or permit to be done, any act, matter or thing in this act prohibited or forbidden, or directly or indirectly aid or abet therein, or

shall directly or indirectly omit or fail to do any act, matter or thing in this act required to be done, or cause or willingly suffer or permit any act, matter or thing, so directed or required to be done, not to be so done, or shall directly or indirectly aid or abet any such omission or failure, or shall directly or indirectly be guilty of any infraction of this act, or directly or indirectly aid or abet therein, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two thousand dollars.

See sec. 4576.

### 3583. Certain property may be transported free or at reduced rates.

SEC. 9. Nothing in this act shall apply to the carriage, storage, receiving, handling or forwarding of the property of the United States at lower rates of freight and charges than to the general public, or to the transportation of articles free or at reduced rates for charitable purposes, or to or from public fairs or expositions for exhibition, or to the transportation of material or supplies for the construction of other railroads within the state, or from a point within the state to a point beyond its boundaries.

See sec. 4556.

### 3584. Meaning of "person or persons."

SEC. 10. The words "person or persons" as used in this act, except where otherwise provided, shall be construed and held to mean person or persons, company or companies, corporation or corporations, officer or officers, receiver or receivers, trustee or trustees, lessee or lessees, agent or agents, or other person or persons acting or engaged in any of the matters and things mentioned in this act.

### *An Act regulating the transportation of live stock between points situated in this state.*

Approved March 16, 1903, 177

### 3585. Unlawful to confine stock longer than 36 hours.

SECTION 1. No railroad company engaged in the transportation of cattle, sheep, swine, or other animals between points situated within this state, shall confine the same in cars or other vehicles of any description, for a longer period than thirty-six consecutive hours, without unloading the same for rest, water and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes, it being the intent of this section to prohibit their continuous confinement beyond the period of thirty-six hours except upon contingencies hereinbefore stated.

See sec. 3572.

Federal act affecting interstate shipments limits time to twenty-eight hours (43 Stat. L. 607).

### 3586. Animals to be watered and fed—Lien for expense.

SEC. 2. Animals so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company transporting the same, at the expense of the owner or person in custody thereof; and such company shall, in such case, have a lien upon such animals for food, care and custody furnished, and shall not be liable for any detention of such animals.

### 3587. Penalty for violation of act.

SEC. 3. Any company, owner or custodian of such animals who knowingly and willingly fails to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county

jail for a period of not less than sixty days, nor more than six months, or by both such fine and imprisonment.

*An Act to promote the public safety by requiring common carrier railroads to provide adequate train crews and defining such crews, and prescribing a penalty for the violation of the provisions thereof.*

Approved March 8, 1909, 79

**3588. Full crew defined.**

SECTION 1. It shall be unlawful for any person, firm, company or corporation, engaged in the business of common carrier, operating freight and passenger trains or either of them, within or through the State of Nevada, to run or operate, or permit or cause to be run or operated, within or through this state, along or over its road or tracks other than along or over the roads or tracks within yard limits, any freight or passenger train of more than fifty freight, passenger or other cars, exclusive of caboose and engine, with less than a full train crew consisting of not less than six persons, to wit: One conductor, one engineer, one fireman, two brakemen, and one flagman.

**3589. Flagman—Experience.**

SEC. 2. The flagman mentioned in section 1 of this act shall have had at least one year's actual experience in train service.

**3590. Not to repeal or affect railroad commission act.**

SEC. 3. Nothing in this act shall be considered to repeal or affect in whole or in part that certain act entitled "An act to regulate railroads, telegraph and telephone companies and other common carriers in this state, creating a railroad commission, constituting the governor, the lieutenant-governor, and the attorney-general a railroad board for the appointment and removal of the railroad commissioners, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure an adequate railway service, and fixing maximum freight charges," approved March 5, 1907.

See secs. 4549-4585.

**3591. Violation of act misdemeanor.**

SEC. 4. Any person, firm, company, or corporation, engaged in the business of common carrier, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

See sec. 6737.

*An Act to promote the public safety by requiring railroad companies to provide adequate train crews, and defining such crews, and prescribing a penalty for the violation of the provisions thereof.*

Approved February 21, 1911, 17

3592. Train crew of four, when.

3593. Train crew of five, when.

3594. Penalty for noncompliance.

3595. Applies to railroads longer than 95 miles.

3596. Exceptions to application of act, supplementary to certain act.

**3592. Train crew of four, when.**

SECTION 1. It shall be unlawful for any railroad company or receiver of any railroad company, doing business in the State of Nevada, to run over its road or part of its road outside the yard limits, any passenger train consisting of two cars or less, exclusive of engine and tenders, with less than a crew consisting of four persons, one engineer, one fireman, one conductor and one brakeman, who will act in the capacity of flagman. *As amended, Stats. 1911, 412.*

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**3593. Train crew of five, when.**

SEC. 2. It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the State of Nevada, to run over its road or part of its road outside of the yard limits, any passenger train consisting of three cars or more, exclusive of engine and tenders, with less than a crew consisting of five persons, one engineer, one fireman, one conductor, one brakeman, and one flagman. *As amended, Stats. 1911, 412.*

**3594. Penalty for noncompliance.**

SEC. 3. Any railroad company or receiver of any railroad company doing business in the State of Nevada, which shall violate any of the provisions of this act shall be liable to the State of Nevada for a penalty of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) for each offense; and such penalty shall be recovered and suit brought in the name of the State of Nevada in a court of proper jurisdiction in any county in or through which such line of railroad may run, by the attorney-general, or under his direction, or by the district attorney in any county through which such lines of railroad may be operated. *As amended, Stats. 1911, 412.*

**3595. Applies to railroads longer than 95 miles.**

SEC. 4. The provisions of this act shall not apply to or include any railroad company, or receiver or manager thereof, or any line of railroad in this state less than ninety-five miles in length. *As amended, Stats. 1911, 413.*

**3596. Exceptions to application of act—Supplementary to certain act.**

SEC. 5. The provisions of this act shall not apply to or include any railroad company, or receiver or manager thereof, or any line of railroad in this state less than twenty miles in length; neither shall they apply to the operations of light engines and tenders when running as such, outside the yard limits. SEC. 6. This act shall not be deemed to be in conflict with, or to repeal, but supplementary to "An act to promote the public safety by requiring common carrier railroads to provide adequate train crews and defining such crews, and prescribing a penalty for the violation of the provisions thereof," approved March 8, 1909.

See secs. 3588-3591.

*An Act regulating the number of hours of labor of telegraph operators, and all other persons engaged in the handling of trains or the dispatching of trains.*

Approved March 29, 1907, 411

**3597. Limited to eight hours duty—Block system defined.**

SECTION 1. That it shall be unlawful for any person, corporation or association operating a railroad within this state to permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed "block system" (defined as follows): Reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph and telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines connecting said tracks or switches, or train dispatchers in its service whose duties substantially as hereinbefore set forth, pertain to the movements of cars, engines or trains on its railroad by the use of telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders as interpreted in this section, to be on duty for more than eight hours in any twenty-four consecutive hours.

**3598. Idem—Penalty.**

SEC. 2. That any person, corporation or association that shall violate sec-

tion 1 of this act, shall pay a fine of one hundred dollars for each violation of this act.

### 3599. Penalty—How recoverable.

SEC. 3. That the fine mentioned in section 2 of this act shall be recovered by an action of debt in the name of the State of Nevada for the use of the state, who shall sue for it against such person, corporation or association violating this act, said suit to be instituted in any court in this state having appropriate jurisdiction.

[Sec. 4 providing that one-half the fine should be paid to the informer is omitted as unconstitutional (see sec. 355).]

*An Act requiring railways to give public notice of live stock killed or injured by their locomotives or cars, providing a penalty for failing or neglecting to do so.*

Approved March 24, 1911, 358

### 3600. Railroads must give notice of live stock killed.

SECTION 1. Every person, association or corporation operating a railway within this state that shall injure or kill any live stock of any description by the running of any engine or engines, car or cars, over or against any such live stock, shall within three days thereafter, post at the first railway station in each direction from the place of such injury or killing, a notice in writing in some conspicuous place on the outside of such stations, and file a duplicate with the county clerk of the county in which the stock is injured or killed, which notice shall contain the number and kind of animals so injured or killed, and a full description of each, with the time and place, as near as may be, of such injury or killing, and shall be dated and signed by some officer or agent of such person, association or corporation operating such railway.

### 3601. Penalties for noncompliance.

SEC. 2. Every person, association or corporation that shall fail, neglect or refuse to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars (\$100).

## REAL ESTATE

To authorize aliens and nonresident persons to take, hold, enjoy and acquire real estate, sections 3602, 3603.

To provide for erection and maintenance of partition fences, sections 3604-3608.

*An Act to authorize and empower aliens and nonresident persons and incorporations to take, hold, enjoy, and acquire real estate in the State of Nevada.*

Approved February 27, 1879, 51

### 3602. Persons who may hold and own property—Chinese excepted.

SECTION 1. Any nonresident alien, person, or corporation, except subjects of the Chinese empire, may take, hold, and enjoy any real property, or any interest in lands, tenements, or hereditaments within the State of Nevada,

as fully, freely, and upon the same terms and conditions as any resident citizen, person, or domestic corporation.

See Const. sec. 245.

[Sec. 2 is superseded by sec. 5629.]

### 3603. Act, how construed—Limitations.

SEC. 3. Nothing herein contained shall be so construed as to confer any other or further rights under the statutes of limitation than those at present existing.

An alien will be protected in the possession of the public lands, the same as a citizen, against mere naked trespassers who do

not connect themselves with the government title. *Courtney v. Turner*, 12 Nev. 345.

### *An Act to provide for the erection and maintenance of partition fences.*

Approved March 6, 1875, 146

3604. Partition fences—At joint expense.

3607. Oath of fence viewers.

3605. Fence viewers to be appointed—Report of.

3608. Partition fences defined—Improved lands defined.

3606. Fees of justice and viewers.

### 3604. Partition fences at joint expense.

SECTION 1. Partition fences, between improved lands in this state, may be erected and repaired at the joint expense of the occupants, as hereinafter provided. If any person makes a fence, a partition fence, by joining to or using it as such, he must pay to the person erecting it his proportion of the expense, taking into consideration the condition of such fence at the time it is so joined to or used.

No action can be sustained for injuries done to real estate, or to crops growing thereon, by horses and cattle that are allowed

to run at large, unless the land is enclosed with a lawful fence. *Chase v. Chase*, 15 Nev. 259, 262.

### 3605. Fence viewers to be appointed; report of.

SEC. 2. If the parties cannot agree, on application, by either, to a justice of the election precinct in which such fence is, such justice must issue his order to three (3) disinterested freeholders of such precinct, not related to either of the parties, to examine such fence and to ascertain the amount to be paid to owner erecting the same; and such freeholders, on a day to be by them appointed, within ten days after the issuance of the order, of which both parties must have notice, must examine such fence, and report to the justice who issued the order the proportionate amount to be paid to the person erecting the fence; and if such amount is not paid within thirty (30) days after such report, the justice, on request of the person erecting such fence, must issue execution for such amount, with costs, as provided in the following section, to be collected and returned as other executions. If the fence viewers report that the party making the application is not entitled to any amount to be paid him, then the cost of the application shall be taxed against him, and execution shall be issued therefor.

### 3606. Fees of justice and viewers.

SEC. 3. The justice is entitled to one dollar for issuing the order, and the fence viewers to two dollars and fifty cents each, one-half of which is to be paid by each party; and not being paid within thirty days after the report, execution must issue therefor, with costs for issuing and serving such execution.

**3607. Oath of fence viewers.**

SEC. 4. The fence viewers, before proceeding to act, must take an oath, which may be administered by one to the other, to discharge their duties fairly and impartially.

**3608. Partition fences defined—Improved lands defined.**

SEC. 5. Partition fences, within the meaning of this act, are fences erected on the line between lands owned or occupied by different persons; and improved lands, within the meaning of this act, are lands cultivated in grain or vegetables, or set in grass, clover, or alfafa, from which hay is cut, and town lots.

**RESIDENCE**

Defining what shall constitute legal residence, section 3609.

Prescribing what shall constitute actual residence, sections 3610-3616.

*An Act defining what shall constitute legal residence in the State of Nevada.*

Approved March 22, 1911. 318

**3609. Legal residence defined—Proviso.**

SECTION 1. The legal residence of a person with reference to his or her right of suffrage, eligibility to office, right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where he or she shall have been actually, physically and corporeally present within the state or county, as the case may be, during all of the period for which residence is claimed by him or her; *provided, however,* should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be considered in determining the fact of such residence.

Residence of elector defined in the constitution, art. 2, sec. 1, sec. 250, ante.  
See secs. 3610-3616.

*An Act prescribing what shall constitute actual residence within the meaning of article two of the constitution of the State of Nevada.*

Approved March 4, 1889. 61

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| 3611. Residence, when not deemed gained or lost.              | 3614. Presumption of abandonment.                              |
| 3612. Removal from one county or precinct to another, effect. | 3615. Residence of family how affected—Place of residence.     |
|   | 3616. Residence how lost—Intent.                               |

**3610. Residence—Permanent habitation—Intent.**

SECTION 1. The legal residence of a person, with reference to his right of suffrage and eligibility to office, is that place where his habitation is fixed and permanent, and to which, whenever he is absent, he has the intention of returning.

See sec. 3609.

**3611. Residence, when not deemed gained or lost.**

SEC. 2. No person shall be deemed to have gained or lost such a residence

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by reason of his presence or absence while employed in the military, naval or civil service of the United States, or of the State of Nevada; nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student at any seminary, or other institution of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison or jail.

See sec. 251.

### 3612. Removal from one county or precinct to another—Effect.

SEC. 3. A person removing from one county, within this state, to another, or from one precinct to another of the same county, within thirty days prior to any election, shall not be deemed to have lost his residence in the county or precinct removed from; *provided*, he was an elector in such county or precinct on the thirtieth day prior to such election.

### 3613. Removal from state with intent to remain—Residence lost.

SEC. 4. If a person remove to another state, territory or foreign country, with the intention of establishing his domicile there, and making it his home, he shall lose his residence in this state.

### 3614. Presumption of abandonment.

SEC. 5. If a person having a fixed and permanent home in this state, break up such home and remove to another state, territory or foreign country, the intent to abandon his residence in this state shall be presumed, and the burden shall be upon him to prove the contrary; and the same rule shall obtain when a person, in like circumstances, and in like manner, shall remove from one county or precinct to another within the state.

### 3615. Residence of family, how affects place of residence.

SEC. 6. If a man have a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the state, and he be permanently located within the same, with no intention of removing therefrom, he shall be deemed a resident.

### 3616. Residence, how lost—Intent.

SEC. 7. If a person remove to another state, territory or foreign country, with the intention of remaining there for an indefinite time, and as a place of present residence, he shall lose his residence in this state, notwithstanding that he may entertain the intention of returning at some uncertain future period; and an occasional return, either for business purposes or pleasure, to the place of his former abode, in this state, shall not be sufficient to preserve his residence therein.

Residence of pauper defined, sec. 2927.

## REVENUE

- To fix the state tax levy, section 3617.
- To provide revenue for the support of the government, sections 3618-3766.
- Act supplementary to above, section 3767.
- Act supplemental to above, sections 3768-3774.
- Act supplemental to above, sections 3775, 3776.
- Act supplemental to above, sections 3777-3785.
- Act supplementary to above, sections 3786, 3790.
- Act supplemental to above, sections 3791-3792.
- Defining certain duties of county assessors and other officers, section 3793-3796.
- To provide for more uniform valuation and assessment of property, sections 3797-3813.
- To provide revenue for the support of the government, sections 3814-3817.
- In relation to levying and assessing taxes, section 3818.
- Regulating assessment and taxation of banks and shares of stock therein, sections 3819-3825.

### COUNTY REVENUE

- Relating to county government and reduction of rate of taxation, sections 3826-3836.
- To fix the rate of county taxation, section 3837.
- Requiring a minimum valuation to be placed upon lands, sections 3838-3840.
- Providing for disposition of poll-tax collections, section 3841.
- To exempt from taxation Young Men's Christian Association buildings, section 3842.
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- Defining and classifying transient stock and providing for assessment, collection, and distribution of taxes on same, sections 3845-3861.
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### LICENSES

- Empowering certain officers to revoke and discontinue business licenses, sections 3867-3871.
- Licensing sale of cigarettes and cigarette paper, sections 3872-3876.
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### CONSTITUTIONAL PROVISIONS

- Special legislation concerning, forbidden, section 278.
- Annual tax, sufficient to pay expenses of the state, to be levied, section 349.
- Annual tax to pay debts if necessary, section 350.
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- Property liable to, sections 339, 352.
- Property which may be exempted from, sections 339, 352.
- Special tax for support of common schools and state university levied, section 358.
- Restriction on, section 408.

*An Act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto.*

Approved March 23, 1891, 135

[Section 1 fixing state tax levy is superseded by sec. 3617.]

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*An Act to fix the state tax levy, and to distribute the same in the proper funds.*

Approved March 18, 1911, 106

### 3617. Ad valorem state tax of 60 cents—How apportioned.

SECTION 1. For the fiscal year commencing January first, nineteen hundred and eleven, and annually thereafter, an ad valorem tax of sixty cents on each one hundred dollars of taxable property is hereby levied and directed to be collected for state purposes, upon all taxable property in

the state, including net proceeds of mines and mining claims, except such property as is by law exempted from taxation:

General fund, thirty-nine and six-tenths cents; state interest and sinking fund, three cents; territorial interest fund, three cents; general school fund, six cents; contingent university fund, five cents; contingent university fund, 1905, No. one, one-tenth of one cent; contingent university fund, 1905, No. two, three-tenths of one cent; state prison interest and sinking fund, three cents.

The statute of 1885, § 5, sec. 21, is not repealed by this act, this act being simply a reenactment of the revenue law of 1865, except that it omits its provisions for liability of the state for part of certain county officers' salaries, and is not intended as a repeal of said act of 1885. *State ex rel. Westerfield v. Tyrrell*, 22 Nev. 421, 425 (41 P. 145).

Cited, *State ex rel. Holley v. Boerlin*, 30 Nev. 473, 474 (98 P. 402).

Referring to a previous act: This section levies a state tax of \$1.25 and authorizes a county tax not exceeding \$1.50. This is clearly in accordance with the constitution. *State v. Eastabrook*, 3 Nev. 173, 179, 180.

Different revenue acts should, as far as possible, be construed as one act, but the later one must control, if there be any conflict or inconsistency. *V. & T. R. R. Co. v. Ormsby Co.*, 5 Nev. 341.

Cited, *State ex rel. Williams v. Fogus*, 19 Nev. 248 (9 P. 123).

[Section 1 of original act superseded by sec. 3617.]

### 3618. County tax fixed, how.

SEC. 2. The board of county commissioners of each county shall, on or before the first Monday of March, of each year, fix the rate of county taxes for such year, designating the number of cents on each hundred dollars of property levied for each fund; and shall levy the state and county taxes upon the taxable property of the county.

See secs. 3762, 3818.

The amount of taxes for county purposes must be fixed and levied by the board of county commissioners; and without their action no county tax can be collected.

The levy of state taxes by the board of

county commissioners, though provided for in the revenue law, is an idle ceremony, for the reason that the levy is made by the legislature. *State v. Manhattan S. M. Co.*, 4 Nev. 318.

### 3619. All levies a lien on real property.

SEC. 3. Every tax levied, under the provisions or authority of this act, is hereby made a lien against the property assessed, and a lien shall attach upon the real property for the tax levied upon the personal property, of the owner of such real estate, which lien shall attach upon the day on which the taxes are levied in each year, on all property then in this state, and on all other property whenever it reaches the state, and shall not be satisfied or removed until all the taxes are paid, or the property has absolutely vested in the purchaser under a sale for taxes.

Cited, *State v. Eastabrook*, 3 Nev. 176; *State v. C. P. R. R. Co.*, 9 Nev. 90; *State v. Y. J. S. M. Co.*, 14 Nev. 230; *State v. C. & C. R. R. Co.*, 29 Nev. 487, 500, 503 (91 P. 932).

### 3620. Special tax for cities, towns, schools, a lien.

SEC. 4. All special taxes levied for city, town, school, road or other purposes throughout the different counties of this state, shall be a lien on the property so assessed, and shall be assessed and collected by the same officers, at the same time, and in the same manner as the state and county taxes are now or may hereafter be assessed and collected.

### 3621. Property exempt—Exceptions.

SEC. 5. All property of every kind and nature whatsoever, within this state, shall be subject to taxation except:

First—All lands and other property owned by the state, or by the United States, or by any county, municipal corporation, town or village in this state, and all public schoolhouses, with lots appurtenant thereto, owned by any legally created school district within the state; *provided*, that when any of

the property mentioned in this subdivision is used for any other than public purposes, and a rent or valuable consideration is received for its use, the same shall be taxed.

Second—Unpatented mines and mining claims; *provided*, that nothing in this section shall be so construed as to exempt from taxation possessory claims to the public lands of the United States, or of this state, or the proceeds of the mines; *and provided, further*, that nothing herein shall be so construed as to interfere with the primary title to the lands belonging to the United States.

Third—Churches, chapels and other buildings used for religious worship, with their furniture and equipments, and the lots of ground on which they stand, used therewith and necessary thereto; *provided*, that when any such property is used exclusively for any other than church purposes, and a rent or other valuable consideration is received for its use, the same shall be taxed.

Fourth—The funds, furniture, paraphernalia and regalia owned by any lodge of the Order of Free and Accepted Masons, or of the Independent Order of Odd Fellows, or of any other similar charitable organization, or by any benevolent or charitable society, so long as the same shall be used for the legitimate purposes of such lodge or society, or for such charitable or benevolent purposes; *provided*, that such exemption shall in no case exceed the sum of five thousand dollars to any one lodge, society or organization.

Fifth—All cemeteries and graveyards set apart and used for and open to the public for the burial of the dead, when no charge is made for burial therein.

Sixth—The property of widows and orphan children, not to exceed the amount of one thousand dollars to any one family; *provided*, that no such exemption shall be allowed to any but actual bona fide residents of this state, and shall be allowed in but one county in this state to the same family, and the party or parties claiming such exemption, or some one in their behalf, shall make an affidavit before the county assessor of such residence, and that such exemption has been claimed in no other county in this state for that year. *As amended, Stats. 1909, 125.*

See Constitution, art. 10, taxation, sec. 352.

Subdivision 3 above was also amended 1909, 18, but enacting clause omitted.

Y. M. C. A. buildings exempt, sec. 3842.

Hospitals and asylums exempt in certain cases, sec. 1396.

Property of cemetery association, exemption, sec. 1407.

Possessory rights to mining claims are property and as such taxable. *H. & N. G. & S. M. Co. v. Storey Co.*, 1 Nev. 104; *People v. Taylor*, 1 Nev. 109.

All tangible property within this state is subject to one and only one annual tax. Each acre of land and each piece of coined money is liable to this tax. *State v. Earl*, 1 Nev. 394.

But property which was taxed in the hands of A, on the first day of May, could not subsequently, that year, be taxed in the hands of another. *Idem.*

A tax on money at interest secured by mortgage on land, is neither a tax on the pieces of money loaned, the land on which the mortgage security is given, nor upon the paper on which the promise to pay is written. But it is a tax on the chose in action or right to collect the debt. *Idem.*

Choses in action follow the person of those having the right. When the holder of such right resides out of the state, this state has no jurisdiction over the person

nor over the thing proposed to be taxed, and cannot tax either. *Idem.*

The state can only tax choses in action belonging to its own citizens or residents. *Idem.*

When property is in the state at the time a levy is made thereon for taxes, the owner thereof becomes liable for the tax, although he may have removed the property before the value thereof is assessed. *State v. Eastabrook*, 3 Nev. 173, 179, 180.

Possessory rights to public lands are subject to taxation. *Wright v. Cradlebaugh*, 3 Nev. 352.

The notes, bills, bonds, of the national banks are the commodity in which those banks deal in the ordinary course of their business. State taxes upon them are state taxes upon the business of the banks, and such taxes the state cannot impose. *State v. Bank of Nevada*, 4 Nev. 348.

Property in transitu through a county not properly in it for taxation purposes. Where wood cut in California and belonging to a

citizen of that state was thrown into the Carson river and simply passed through Douglas County to find a market in Ormsby County, for which it was destined: Held, that in so passing through Douglas County it was not properly in it for purposes of taxation. *Conley v. Chedic*, 7 Nev. 336; *State v. C. P. R. R. Co.*, 10 Nev. 63.

Cited, *State v. Cal. M. Co.*, 13 Nev. 221.

A debt secured by mortgage is subject to taxation, although the mortgagee is indebted to an amount equal or exceeding the amount of his mortgage. *Drexler v. Tyrrell*, 15 Nev. 114; *State v. Carson Savings Bank*, 17 Nev. 146.

The taxing of money at interest secured by mortgage, when the property mortgaged is taxed, is not double taxation and is not in violation of the constitution. *State v. Carson City Savings Bank*, 17 Nev. 150, 151, 155 (30 P. 703).

The constitution declares that all money shall be taxed, except mines and other property for certain enumerated purposes. The legislature cannot exempt any taxable property not enumerated. *Idem*.

Cited, *Barnes v. Woodbury*, 17 Nev. 391 (30 P. 1068).

To constitute goods properly in a particular county, so as to make it legally assessable therein within the meaning of the revenue laws, it must be in such a situation as to make it a part of the wealth of that county; it must belong in it and be incorporated with the other property of the county. *Idem*. *Robinson v. Longley*, 18 Nev. 71.

By act of July 26, 1866, Congress delegated to the states and territories the right to tax the lands granted to railroad companies, though the latter had not paid the cost of surveying and selecting such lands. *State v. C. P. R. R. Co.*, 20 Nev. 372, 378, 379 (22 P. 237).

Unsurveyed public lands acquired under acts of Congress of July 1, 1862, and July 2, 1864, are exempted from taxation by this state. *State v. C. P. R. R. Co.*, 21 Nev. 94 (25 P. 442).

A description of unsurveyed lands as certain odd-numbered sections "as their designation will appear when the surveys of the government are extended over them," is insufficient for their identification for taxation and is not such a description as is required by revenue laws. This principle applies equally when it is only the possessory claim to land that is assessed. *Idem*.

The law permits and the taxpayer has the right to pay the tax on subdivisions of his property without paying taxes on his entire property. *Idem*.

In an action to recover delinquent taxes and penalties an answer denying a possessory claim to the lands and stating facts showing that the rights claimed are untaxable, presents a good defense, although it does not deny all claim, title or interest in the property assessed. *Idem*.

It is the duty of the tax receiver to receive the full taxes on the least subdivi-

sions entered on the assessment roll, when properly tendered, and to give his receipt therefor. *Idem*.

Since the act of Congress of July 10, 1886, the surveyed but unpatented lands within the grant to the C. P. R. R. are no longer exempt from taxation by reason of the government lien thereon for the costs of surveying, etc. The conditions contained in that act to the effect that the lien shall continue, and that the United States may become the preferred purchaser at any tax sale of such land control such sales, and there is no necessity for a legislative acceptance by the states of the conditions of the act. *State v. C. P. R. R.*, 21 Nev. 247 (30 P. 686, 162 U. S. 512).

Congress having full control over the public domain, may make it subject to state taxation upon such conditions as are deemed proper, and then if so taxed, it must be one subject to those conditions. *Idem*.

The said act is a grant to the states of the right to tax lands in which the United States has such an interest as renders them exempt, and being beneficial, its acceptance by the grantee will be presumed. *Idem*.

The title or interest of the United States in public lands will not be affected where only the possessory claim to the land is assessed. Such assessment will only reach the taxpayer's interest in the land. *Idem*.

The possessory claim to public land which may be taxed as something separate or distinct from the title in fee is an actual possession, and not a constructive possession or a mere claim to the land. Mortgaging and leasing public land do not constitute actual possession thereof. *Idem*.

Where upon payment of taxes the statute requires the tax receiver to give a receipt, a tender of taxes is not rendered invalid because such receipt is demanded. *Idem*.

Former cases to the effect that surveyed lands within the Pacific railroad grants are subject to taxation, and that unsurveyed lands are not, followed. *State v. C. P. R. R. Co.*, 21 Nev. 260 (30 P. 689).

Ordinarily a single cause of action cannot be split up, and several actions brought upon it. This is a rule of the common law, which, however, may be changed by statute. In tax cases this change was made when the legislature provided that only certain defenses can be made to such actions, among which this defense is not included. *Idem*.

The right of taxation, inherent in every form of government, is vested in the legislature, and is unlimited in that body except as restrained by constitutional provisions. The legislature may fix the amount, the time and the manner of imposing taxes, and may regulate the processes by which they are to be collected. *Idem*.

See citation from this case under sec. 237, p. 66, ante.

The legislature has the power to provide that a former recovery shall not constitute a defense to an action to recover taxes. *Idem*.

In an issue as to appellant's liability to assessment for taxes on personal property in Nevada, which liability he seeks to avoid by a claim that he is a resident of another state, evidence that he escaped taxation in the latter state by declaring that his property was situated in Nevada is admissible as rebutting the presumption that he paid taxes on his personal property at the place

of his claimed residence. *Bowman v. Boyd*, 21 Nev. 281 (30 P. 823).

National banks are only subject to taxation upon the shares of stock owned by the shareholders therein, and upon their real estate. Mortgages held by such banks are not subject to taxation. *First Natl. Bank v. Kreig*, 21 Nev. 404 (32 P. 641).

Cited, *State v. C. & C. R. R. Co.*, 29 Nev. 487, 500 (91 P. 932).

### 3622. "Real estate," "personal property" and "full cash value" defined.

SEC. 6. The term "real estate," when used in this act, shall be deemed and taken to mean and include, and it is hereby declared to mean and include all houses, buildings, fences, ditches, structures, erections, railroads, toll roads and bridges, or other improvements, built or erected upon any land, whether such land be private property, or property of the state or of the United States or of any municipal or other corporation, or of any county, city or town in this state, the ownership of, or claim to, or possession of, or right of possession to any lands within the state, and the claim by or the possession of any person, firm or corporation, association or company to any land, and the same shall be listed under the head of "Real Estate."

The term "personal property," whenever used in this act, shall be deemed and taken to mean, and it is hereby declared to mean and include all household and kitchen furniture, all law, medical and miscellaneous libraries, all goods, wares and merchandise, all chattels of every kind and description, all money on hand or on deposit in bank or banks, or with individuals, all moneys at interest, secured by mortgage or otherwise, gold dust, gold and silver bars, bullion, solvent debts, other than those mentioned in this section, when the amount exceeds the same character of indebtedness of the party assessed, stocks of goods on hand, horses, mules, oxen, calves, beef cattle, hogs, sheep, goats, jacks and jennies, and cattle of every description, wagons, carriages, buggies, omnibuses, stages, stage coaches, sulkies, carts, drays and all other vehicles, whether for use, pleasure or hire; also, all locomotives, cars, rolling stock and other personal property used in operating any railroad within the state; all machines and machinery, all works and improvements, all steamers, vessels and watercraft of every kind and name navigating or used upon the waters of any river or lake within this state, or having a general depot or terminus within this state; all capital loaned, invested or employed in trade, commerce or business whatsoever; the capital stock of all corporations (except the capital stock of corporations organized for mining purposes), companies, associations, ferries, or individuals doing business or having an office within this state; the money, property, and effects of every kind, except real estate, of all banks, banking institutions or firms, bankers, money lenders and brokers, and all property of whatever kind or nature not included in the term "real estate," as said term is defined in this act; *provided*, that gold and silver-bearing ores, quartz or minerals, from which gold or silver is extracted, when in the hands of the producers thereof, shall not mean, nor be taken to mean, nor be listed and assessed, under the term "personal property," as used in this section of this act, but are specially excepted therefrom, and shall be listed, assessed and taxed, as provided by law.

The term "full cash value" means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.

See *State v. Carson City Savings Bank*, under sec. 4 of this act.  
Cited, *State v. Earl*, 1 Nev. 394, 397.

The products of mines are personal property, and as such subject to taxation for municipal purposes. *Virginia v. Chollar-Potosi G. & S. M. Co.*, 2 Nev. 86, 91.

Cited, *Wright v. Cradlebaugh*, 3 Nev. 341, 355; *State v. C. P. R. R. Co.*, 10 Nev. 63; *State v. Cal. M. Co.*, 13 Nev. 221.

Upon a review of the testimony it was held sufficient to show that the mortgage, sought by plaintiff to be foreclosed, was, at the request of the mortgagee, executed to a citizen of California for the sole purpose of preventing an assessment and evading the payment of taxes in this state upon the money at interest secured thereby. (*Hawley, J. dissenting.*) *Drexler v. Tyrrell*, 15 Nev. 114.

The mortgage in question, having been so executed at the instance and request of the mortgagee, was illegal and void. *Idem*.

The fact that the mortgagee afterwards paid the full amount of taxes upon the money at interest secured by the mortgage, is immaterial. The mortgage contract was void when executed, and proof that the state suffered no injury would not change the result. *Idem*.

A debt secured by a mortgage is subject to taxation, although the mortgagee is indebted to an amount equaling or exceeding the amount of his mortgage. *Idem*.

If a contract is illegal it will not be enforced by the courts in favor of the party at whose instance and for whose benefit it was entered into. Courts are as incapable of enforcing such contracts as if the act were prohibited in terms and a penalty imposed in case of violation. *Idem*.

It is the policy of the revenue laws that all property within the state, except such as is in terms exempted, shall be taxed; and any mortgage or contract entered into for the sole purpose of placing property, otherwise taxable, beyond the operation of the revenue law, is opposed to that policy, and therefore illegal. *Idem*.

Under this act as amended, mandamus lies to compel commissioners to consider a petition to reduce a tax levy, but not to control exercise of their discretion in making a levy within the limitations prescribed by statute, where some tax must be levied. *State ex rel. Holley v. Boernn*, 30 Nev. 473, 474, 487, 491 (98 P. 402).

### 3623. Commissioners to furnish books—Property assessed full cash value.

SEC. 7. The board of county commissioners of each county shall, prior to the first Monday of March of each year, cause to be prepared, suitable and well-bound books for the use of the assessor, in which the county assessor shall enter his tax-list and assessment roll, as hereinafter provided; and in which list and assessment roll shall be assessed and included all taxes levied by authority of law for county purposes. Said book shall contain suitable printed heads, and be ruled to conform with the form of the assessment roll, as provided by this act. All property must be assessed at its full cash value.

### 3624. Assessment by assessor—Penalties for neglect or refusal to make statement—Unknown owners, how rated.

SEC. 8. Between the date of the levy of taxes and the first Monday of September in each year, the county assessor, except when otherwise required by special enactment, shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations, associations, companies, or firms, owning the same; and he shall then determine the true cash value of all such property, and he shall then list and assess the same to the person, firm, corporation, association, or company, owing [owning] it. For the purpose of enabling the assessor to make such assessments, he shall demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation, association, or company, including all banking institutions, associations, or firms within his county, a statement under oath or affirmation of all the real estate or personal property within the county, owned or claimed by such persons, firm, corporation, association, or company. If any person, officer, or agent shall neglect, or refuse, on demand of the assessor or his deputy to give, under oath or affirmation, the statement required by this section, or shall give a false name, or shall refuse to give his or her name, or shall refuse to swear or affirm, he or she shall be guilty of a misdemeanor, and shall be arrested upon complaint of the assessor, or his deputy, and upon conviction before a justice of the peace of the county, he or she shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by

imprisonment in the county jail for a term not less than ten days nor more than three months, or by both such fine and imprisonment, at the discretion of the court. If the owners of any property not listed by another person shall be absent or unknown, or fail to make the statement under oath or affirmation, as herein provided, within five days after demand is made therefor, the assessor shall make an estimate of the value of such property and assess the same accordingly. If the name of such absent owner is known to the assessor the property shall be assessed in his or her name; if unknown to the assessor the property shall be assessed to unknown owners. It is hereby made the duty of the assessor, at the end of each month to report to the district or prosecuting attorney of the county the names of all persons neglecting or refusing to give the statement as required by this section of this act, and it is hereby made the duty of such district or prosecuting attorney to prosecute all persons so offending. *As amended, Stats. 1893, 44.*

See state board of county assessors, secs. 3797-3812; assessment of banks, secs. 3819-3825. Patented land, secs. 3838-3840.

Live stock, sec. 3843; transient stock, secs. 3845-3861.

Mortgaged property, how assessed, secs. 3786, 3790.

Railroads, sec. 3814.

Express companies, secs. 3791, 3792.

The statute does not require a separate assessment or valuation of lands and improvements where both belong to the same owner; nor does it require the value per acre to be given. Where the land is described by its common designation or name, it is not necessary also to give the metes and bounds. *State v. C. P. R. R. Co.*, 10 Nev. 48.

The rule of strict compliance with every form of law required in cases where property is sold for taxes without a judgment, is not applicable in suits for delinquent taxes in the courts where jurisdiction has once been acquired. *Idem.*

The cash value of a railroad is measured by the amount of cash required to procure it, provided its utility is commensurate with its cost, and the amount of cash required to procure a railroad is the necessary cost of its construction. *Idem.*

The provisions for a delinquent list are merely directory; the omission to comply with them does not avail the defendant in a tax suit. *Idem.*

The attorney-general is authorized to bring a suit for the collection of taxes due the state. *Idem.*

Neither the board of county commissioners nor the district attorney have any authority to make any compromise or composition with delinquent taxpayers or to release them from the payment of their taxes. *Idem.*

The provisions of this section are intended for the benefit of the state and not for that of the taxpayer; the assessor is not obliged to demand a sworn statement before making his assessment, and is not bound by it if delivered to him. *Idem.*

Where property is visible and open to inspection the assessor should exercise his own judgment in the valuation, and not be governed by the opinion of the taxpayer. *Idem.*

No court of equity will allow an injunction to issue to restrain the collection of a tax, except when actually necessary to protect

the rights of citizens who have no plain, speedy and adequate remedy at law. *Wells, Fargo & Co. v. Dayton*, 11 Nev. 161, 166.

Before the injunction will be granted, it must appear that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury, or if the property is real estate, throw a cloud upon the title of complainant, or there must be some allegation of fraud. *Idem.*

Cited, *State v. Meyers*, 23 Nev. 274, 276 (49 P. 512); *Humboldt Co. v. Lander Co.*, 24 Nev. 462, 473 (56 P. 228); *State v. Ernst*, 26 Nev. 125 (65 P. 7); *State v. C. & C. R. R. Co.*, 29 Nev. 487, 499 (91 P. 932).

Mandamus will not lie to compel the assessor to make the assessment on petitioner's property in compliance with his demand on a particular day, though the petitioner alleged that the assessor had refused and could continue to refuse to make any assessment, the writ never being awarded in anticipation of a supposed omission of duty. *Hardin v. Guthrie*, 26 Nev. 246 (66 P. 744).

Mandamus will not lie to compel an assessor, after once making a valuation of property for the purpose of taxation, to make a revaluation, though the court finds the valuation fixed to be excessive. *Idem.*

Sworn statement should be received by assessor without dictation as to what value should be inserted, but, if he thinks it too low, it is his duty to raise it. *State v. Wright*, 4 Nev. 251; *State v. W. U. Tel. Co.*, 4 Nev. 338.

As the law requires an honest and just estimate of the value to be placed upon property for the purposes of taxation, an excessive valuation made by an assessor contrary to his official judgment and with intent to injure, is a fraud against which the law will afford relief. *State v. C. P. R. R. Co.*, 7 Nev. 99.

Failure to furnish statement—Exorbitant valuation. The fact that a taxpayer fails to make a statement as required by

law, does not authorize the assessor to impose a valuation which he knows to be exorbitant and unjust. *Idem*.

In the absence of any statute upon the subject, the assessor, in specifying the value of assessable property, must be guided by those general principles which everywhere determine the valuation of property independent of any statutory rules. *State v. C. P. R. R.*, 10 Nev. 47.

See *State v. C. P. R. R. Co.*, 21 Nev. 75.

Separate and distinct parcels of land must be valued and assessed separately, or the assessment will be void. *Peers v. Reed*, 23 Nev. 404 (48 P. 897).

See *Wright v. Cradlebaugh*, 3 Nev. 341.

The situs of cattle for the purpose of taxation is not controlled by the mere residence of the owner. *Barnes v. Woodbury*, 17 Nev. 383 (30 P. 1068).

Home ranch. Held, that the situs of cattle, for the purpose of taxation, was at the home ranch, where they belonged. *Idem*.

Where cattle are bred, born, branded and raised in a certain county, their habitat is in such county, and they are assessable there, notwithstanding some of them occasionally wander into other counties, or are driven temporarily into other counties, and also notwithstanding the home ranch of their owner is situated in another county, and

they are managed and controlled from such home ranch. *State v. Shaw*, 21 Nev. 222 (29 P. 321).

It is the duty of the assessor to assess all property at its true cash value, but if he errs in this respect the taxpayer's proper remedy is that designated by law, and he cannot avoid payment of his taxes on the ground that his property was valued at a higher rate than that of other persons similarly situated. *State v. Sadler*, 21 Nev. 13 (23 P. 799).

In assessing property not taxable the assessor acts ministerially and not judicially, and is personally liable. *Ford v. McGregor*, 20 Nev. 446 (23 P. 508).

If an owner is dissatisfied with the valuation placed upon property, by the assessor, his remedy is by an application for reduction to the board of equalization. *State v. Wright*, 4 Nev. 251.

When obligation of taxpayer becomes fixed. When an assessment for taxes is made, and the board of equalization has acted thereon, an obligation immediately arises to pay the state the amount of taxes fixed; and it is idle to inquire into irregularities in the conduct of officers after the liability of the taxpayer is thus determined. *State v. W. U. Tel. Co.*, 4 Nev. 338.

### 3625. Assessor liable for taxes, when—Duties of auditor—Duties of district attorney—Neglect of assessor, how excused—Double taxes levied, when.

SEC. 9. The assessor and his sureties shall be, and they are hereby made liable for the taxes on all taxable property within the county, which is not assessed through the assessor's wilful or inexcusable neglect; and proof of the nonassessment of any taxable property within the county, shall be prima facie evidence of such neglect. It shall be the duty of the county auditor and county treasurer to inform the district attorney of the county of the nature and value of all property not assessed, naming the owner or owners thereof, whenever they, or either of them, shall know or have good reason to believe any property within the county has not been assessed according to law.

It shall be the duty of the district attorney of the several counties of this state, on the first Monday of January of each year, to report in writing to the board of county commissioners of his county, a list of all taxable property, real and personal in the county, unassessed, at which time the assessor of such county may appear, and by testimony under oath or other sworn proof, explain to the board the reason of such nonassessment. If, after hearing such proofs, the said board shall be satisfied that such nonassessment was excusable in the assessor, it shall cause an order to that effect to be entered upon the minutes, and if the said board shall be satisfied that any nonassessment was not excusable, then said board shall cause an order to that effect to be entered on its minutes, when it shall be the duty of the district attorney of such county to demand of the assessor thereof all the state and county taxes due and payable upon such property for the preceding year, and if the same shall not be paid by such assessor within ten days from such demand, then said district attorney shall forthwith commence an action in a court of competent jurisdiction against such assessor and his sureties, for the collection, in one suit, of all sums payable by such assessor as aforesaid; *provided, however*, if it can be proven that any nonassess-

ment was caused by the refusal of the owner, agent or claimant of such property, or of the person or persons having it in possession or under his control or charge, to give a list of it to the assessor, the assessor shall not be liable; but the person or persons whose refusal to give the assessor such list (and whose duty it was under the law to give such list) caused the omission, shall pay double the amount of the taxes that would have been imposed upon the property had it been assessed.

Cited, *Barnes v. Woodbury*, 17 Nev. 391 (30 P. 1068); *State v. Shaw*, 21 Nev. 226 (29 P. 321).

The mere allegation of the insolvency of

the assessor is not sufficient to authorize the court to grant an injunction to restrain the collection of a tax. *Wells Fargo & Co. v. Dayton*, 11 Nev. 161, 167.

### 3626. Lists under oath shall describe property.

SEC. 10. At the same time and in the same manner as other lists of property, herein required, are given, each and every person shall deliver, under oath or affirmation, to the assessor, a similar list of all real estate, with the improvements thereon, and all personal property which he, and the firm of which he is a member, and the corporation of which he is president, cashier, treasurer, secretary, trustee or managing agent, owns, claims or has the charge, possession or control of, in any other county of the state, which he does not, of his own personal knowledge, know has been assessed in such other county for that year, which list shall particularly describe each tract of land and each city or town lot contained therein (so that the same may be found or known by such description), and all vessels, steamers and other water craft, and shall also specify each and all deposits, if any, and persons with whom such deposit or deposits are made, and the places in which the same may be found, unless he shall have included all such money, gold dust, gold and silver bars and bullion in the list of property in his county, which it shall be lawful to do; and shall also specify the kind and nature of all other personal property in such county belonging to or under the charge, control or in the possession of him or them.

Cited, *Barnes v. Woodbury*, 17 Nev. 391 (30 P. 1068); *State v. Shaw*, 21 Nev. 226 (29 P. 321).

### 3627. Property in other counties—Assessor to report.

SEC. 11. Every assessor, as soon as he shall have received a list of any property in another county, under the foregoing section, shall make out from the list delivered to him a list for each county in which any such taxable property may be, and shall transmit the same, by mail or express, to the assessor of the proper county, who shall assess the same as other taxable property therein, if it has not been before assessed for the same year.

Cited, *Barnes v. Woodbury*, 17 Nev. 392 (30 P. 1068).

The placing of the monuments by the surveyor-general required by the act of 1887, 97, does not change the boundary from the line originally established by the counties jointly since said act does not authorize the establishment of new county lines or the changing of county lines already established. *Humboldt Co. v. Lander Co.*, 24 Nev. 461 (56 P. 228).

The fact that for six years after the placing of the monument the county within whose limits the original boundary located the tract did not assess it, and acquiesced in its assessment by the other county, did not estop it from claiming the original line as the correct boundary, where it continued to assess all other property within the disputed tract. *Idem*.

### 3628. Property assessed in several counties.

SEC. 12. When real property is assessed by the county assessors of two counties on territory claimed by both, the owner of the real estate assessed is hereby authorized to pay said taxes in either county that he may select, and in case of suit being brought for the nonpayment of said taxes in the county in which said suit may be brought, the production of a tax receipt for the current year on said property, signed by the proper officer, although in an adjoining county claiming jurisdiction, of a date prior to the commence-

ment of said action, shall entitle said taxpayer to a dismissal of said suit, free of cost.

Where two counties assessed the same real property, each claiming it to be within its limits, and the taxes were paid to the wrong county, they may be recovered from such

county by the county within whose limits the property is situate. *Humboldt Co. v. Lander Co.*, 24 Nev. 462 (56 P. 228).

### 3629. Property of partnership and incorporations—Estates of deceased persons, how assessed.

SEC. 13. The owner or holder of any stock, in any firm, incorporated company or association, the entire capital of which is invested in property which is assessed, or the capital of which is assessed, shall not be assessed individually for his stock in such company or association, nor shall any person having an interest in any partnership or firm be individually assessed for the partnership or firm property, if such property is assessed to the partnership or firm. The property of every firm, incorporated company or association shall be taxed in the county where the property is situated; *provided*, that whenever any portion of the property of any such company shall be assessed and taxed in the county wherein the same is located, then, upon presentation at the principal office of such company, of the certificate or receipt of the collector of said county, that such taxes have been paid in another county, the same shall be deducted at the principal office from the aggregate amount of taxes imposed upon, or paid by said company, for the same property, in the county wherein the principal office of said company is situated.

The undivided property of deceased and insane persons may be listed to the heirs, guardians, executors or administrators, as the case may be, and a payment of taxes made by either, shall bind all the parties in interest for their equal proportions. It is hereby made the duty of every district judge, from time to time, to direct each and every administrator, executor and guardian (which direction may be especially given in each case or by general order) to pay, out of the funds of the estate, all taxes that have attached or accrued against such estate after the passage of this act; and no order or decree, for the distribution of any property of any decedent among the heirs or devisees, shall be made until the taxes which have been attached to or accrued against the estate shall have been paid.

### 3630. Falsely listing property, perjury.

SEC. 14. If any person shall wilfully make or give, under oath or affirmation, a false list of his, her or their taxable property, under his or her control, 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.

Cited, *Drexler v. Tyrrell*, 15 Nev. 135; *State v. Meyers*, 23 Nev. 274, 276 (49 P. 512).

### 3631. Mortgaged personal property.

SEC. 15. When personal property is mortgaged or pledged it shall, for the purpose of taxation, be deemed the property of the person who has the possession thereof.

The law requires each city lot to be assessed separately and a joint assessment of one lot and a fraction is void. *Wright v. Cradlebaugh*, 3 Nev. 341, 342, 343, 347-356.

Two contiguous lots owned by the same individual may be jointly assessed and only one valuation fixed for the two lots. *Idem*.

Where an assessment is made of the value of a town lot, it implies the total value and not the mere value of a possessory claim. *Idem*.

An assessment of the gross value of gov-

ernment land makes it absolutely void. The second column in the assessor's table should distinctly state when only the possessory claim is assessed. *Idem*.

Cited, *Bolan v. Bolan*, 4 Nev. 151.

There is no particular form required for the certificate of the assessment roll nor does it have to be sworn to. *State v. W. U. T. Co.*, 4 Nev. 338.

An assessment for taxes is not vitiated by the fact that the assessor omitted to demand a sworn statement. *Idem*.

When an assessment is made and the board of equalization has acted thereon, an obligation immediately arises to pay the amount of the taxes fixed. *Idem*.

In a suit for delinquent taxes it is sufficient on the part of the state to show a regular assessment, without being required to prove a delinquency. The only defenses that can be made to resist a judgment are affirmative, in their character and must be specially pleaded and affirmatively made out by the defendant. *Idem*.

A taxpayer is not in default until he has had an opportunity to pay his taxes; if there is no person authorized to receive the taxes until the delinquent list goes into the hands of the district attorney, the taxpayer on receiving notice of that fact ought to be allowed to pay the tax without any penalty being imposed. *Idem*.

The strict compliance with all the provisions of the statute required to be shown in cases where property is sold for taxes without a judgment is not applicable to cases of suits for delinquent taxes in the district courts where jurisdiction has once been acquired. *Idem*.

Cited, *State v. C. P. R. R. Co.*, 10 Nev. 59, 64; *State ex rel. Hobart v. Ryland*, 14 Nev. 48, 49; *Barnes v. Woodbury*, 17 Nev. 392 (30 P. 1068).

A slight error in the name of the taxpayer made by the assessor, when the property is

correctly described and the owner is not misled by the name, will not avoid the owner's liability for the taxes, provided he can be identified by competent testimony. *State v. D. V. L. & L. Co.*, 21 Nev. 90 (25 P. 448).

It is the duty of a taxpayer to call the attention of the assessor to any error or mistake appearing upon the face of the statement, which he observes, and if he fails to do so, he will not be permitted to take advantage of his own wrong. *Idem*.

If a taxpayer or his agent fails or refuses to swear to the statement made by the assessor of his taxable property or give the assessor his list of taxable property under oath the board of equalization is prohibited from reducing the assessor's valuation and the taxpayer cannot question such valuation. *Idem*.

Cited, *State v. C. P. R. R. Co.*, 21 Nev. 101 (25 P. 442); same, 21 Nev. 257 (30 P. 636), affirmed, 162 U. S. 512.

Under this section it is not necessary that a complaint should be made to give the board of equalization jurisdiction of the subject. *State v. Meyers*, 23 Nev. 274 (46 P. 512).

Cited, *State v. Meyers*, 23 Nev. 274, 276 (49 P. 512); *State v. Ernst*, 26 Nev. 113 (65 P. 7); *State v. N. C. R. R. Co.*, 26 Nev. 357, 365 (68 P. 294).

**3632. Assessors to prepare list—Cost of printing.**

SEC. 16. It shall be the duty of the assessor in each of the respective counties of the state on or before the second Monday in September in each year to prepare a printed list of all the taxpayers in the county and the total valuation of property on which they severally pay taxes. A copy of said list shall be by the said assessor delivered in person or mailed to each and every taxpayer in the county; *provided*, that the cost of printing the aforesaid list shall not exceed twenty cents for each name for as many copies as there are names on the list. The several boards of county commissioners in the state are authorized and empowered to allow the bill contracted by the assessor under this section, and the several county auditors are authorized to draw their warrants in payment for the same. *As amended, Stats. 1893, 45.*

**3633. Assessment roll—Property described and listed.**

SEC. 17. It shall be the duty of the assessor to prepare a tax-list, or assessment roll, indexed or alphabetically arranged, in the book or books furnished by the board of county commissioners for that purpose, in which book or books shall be listed all the real estate, improvements on real estate, including improvements on public lands and other personal property within the limits of the county, and in said book or books there shall be set down in separate columns:

First—The names of the taxable inhabitants, firms, incorporated companies, or associations, in alphabetical order, if known; if unknown, the property shall be assessed to unknown owners, and if any person shall refuse to make a statement of his property under oath, as required by this act, that fact shall be noted under his name.

Second—All real estate, including the ownership or claims to, or possession of, or right of possession to any land and improvements, taxable to each inhabitant, firm, incorporated company, or association, described by metes and bounds, or by common designation or name, if situated within the limits

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of any city or incorporated town, described by lots or fraction of lots; if without said limits, giving the number of acres, as near as can be conveniently ascertained, and the location and township where situated; all improvements on public lands, describing as nearly as possible the location of said improvements; *provided*, that when two or more parties claim, by description, the same land, it shall be assessed to each party making such claim or giving such description, according to the estimated value of the claims of each.

Third—The cash value of real estate, including the possessory claim to lands and the improvements thereon.

Fourth—The cash value of all improvements on real estate, including possessory claims, where the same is assessed to a person other than the owner of said real estate.

Fifth—The cash value of all personal property except improvements on real estate or on public lands, taxable to each and exclusive of money and solvent debts.

Sixth—Amount of money and solvent debts.

Seventh—The total value of all property taxable to each. And no further description of personal property than that required by the foregoing provisions of this section shall be needed or requisite to render the assessment binding and effective. The form of the assessment roll shall be substantially as follows:

When tax paid .....	Real estate.	Number of acres .....
Taxpayer's name .....	Section .....	
Description of property .....	Number of lot .....	
	Number of block .....	

	DOLLARS	CTS.
Value of real estate or possessory claim and improvements,	-----	-----
Value of improvements on real estate or possessory claims assessed to persons other than the owners of said real estate or possessory claims, . . . . .	-----	-----
Value of personal property, . . . . .	-----	-----
Amount of money and solvent debts, . . . . .	-----	-----
Total value, . . . . .	-----	-----
State proportion, . . . . .	-----	-----
County proportion, . . . . .	-----	-----
Special tax (naming it), . . . . .	-----	-----
Poll tax, . . . . .	-----	-----
Total tax, . . . . .	-----	-----
To whom paid .....		

*As amended, Stats. 1893, 45.*

Cited, *State v. Ernst*, 26 Nev. 113 (65 P. 7).

**3634. Assessor to prepare map.**

SEC. 18. The assessor shall also, when directed by the board of county commissioners, in a book, make a map or plan of the various blocks within any incorporated city or town, and shall mark thereon the various subdivisions, as they are assessed; and in such subdivision he shall mark the names of persons to whom it is assessed.

**3635. Completion of assessment roll—Oath of assessor.**

SEC. 19. On or before the second Monday of September in each year the assessor shall complete his tax-list or assessment roll, and he or his deputy, as the case may be, shall take and subscribe to an affidavit written therein to the effect that he has made diligent inquiry and examination to ascertain all the property within the county subject to taxation, and that he has assessed it on the assessment roll equally and uniformly, according to the best of his judgment, information and belief, at its full cash value; but the

failure to take or subscribe to such affidavit shall not in any manner affect the validity of any assessment contained in said assessment roll. *As amended, Stats. 1893, 46.*

Certificate of assessor to assessment roll. There is no particular form required for the certificate of the assessment roll, nor does it have to be a sworn certificate. *State v. W. U. Tel. Co., 4 Nev. 338.*

The assessor has no authority to alter the assessment roll after it has passed out of his hands, not even to correct a mistake. *State v. Manhattan S. M. Co., 4 Nev. 318.*

Under the provisions of sections 17 and 19, it is the duty of the assessor, on or before the first Monday of September of each year, to complete the assessment roll, which must contain a list of all the property in the county, real and personal, subject to taxation. In the absence of a showing to the contrary, it will be presumed that the assessor obeyed the law, in this respect, and that the property in question

was properly listed upon the assessment roll. *State v. Meyers, 23 Nev. 274.*

The provision of the statute as to the time for completing the assessment roll is merely directory, and any irregularity in that respect is a defense in an action for the taxes only to the extent that the taxpayer has been injured thereby. *State v. Northern Belle M. & M. Co., 15 Nev. 385.*

The time described by this section within which the assessor is to complete his assessment roll, is only for the convenience of other officers; if the assessor is dilatory he may render himself liable on his bond, but his dilatoriness furnishes no matter of which a taxpayer can complain or on account of which he can defeat the tax. *State v. W. U. T. Co., 4 Nev. 338.*

### 3636. Notice of meeting of board of equalization.

SEC. 20. As soon as completed, the assessment roll, together with the map book, and all statements made by taxpayers, shall be delivered to the clerk of the board of county commissioners, who shall immediately give notice thereof, and of the time the board of equalization will meet to equalize assessments, by publication in one newspaper, if any be printed in the county, and if none, then in such manner as the board of county commissioners shall direct; and in the meantime the assessment roll shall remain in the office of said clerk for public inspection.

The notices prescribed to be given of the fact that the assessment roll is in the hands of the clerk of the board of county commissioners and of the time of the meeting of the board as the board of equalization, are only to enable parties to appear and contest the accuracy of the assessment; so

that if a party appear before the board, he cannot complain of the want of notice, or that no notice was given as required by law. *State v. W. U. T. Co., 4 Nev. 338.*

Cited, *State v. Ernst, 26 Nev. 113 (65 P. 7).*

### 3637. Basis of taxation.

SEC. 21. The assessment made by the county assessors, as apportioned by the boards of county commissioners, shall be the only basis of taxation for city, town, school, road, or other districts, in their respective counties. *As amended, Stats. 1893, 47.*

[Sec. 22 repealed, Stats. 1893, 47.] .

Limitation of tax rate for town and city purposes, see secs. 975-983.

### 3638. Board of equalization—Rights of taxpayer when valuation has been added.

SEC. 23. The board of county commissioners of each county shall constitute a board of equalization, of which board the clerk of the board of county commissioners shall be clerk. The board of equalization of each county shall meet on the third Monday in September in each year, and shall continue in session from time to time until the business of equalization presented to them is disposed of; *provided, however*, that they shall not sit after the first Monday of October, except as in this section provided. The board shall have power to determine the valuation of any property assessed, and may change and correct any valuation, either by adding thereto or deducting therefrom, such sum as shall be necessary to make it conform to the actual cash value of the property assessed, whether said valuation was fixed by the owner or assessor; except that in case where the person com-

plaining of the assessment has refused to give the assessor his list under oath, as required by this act, no reduction shall be made by the board in the assessment made by the assessor. If the board find it necessary to add to the assessed valuation of any property on the assessment roll, they shall direct the clerk to give notice to the person so interested, by letter deposited in the postoffice or express, or otherwise, naming the day when they shall act in that case, and allowing a reasonable time to appear. As soon as possible after the adjournment of the board in September its clerks shall make out a list of all persons who have not appeared before the board, the valuation of whose property has been added to on the assessment roll, and shall state the amount so added, and list of all property, the valuation on which has been added to on the assessment roll, with the amounts so added, the owners of which have not appeared before the board; and the board of county commissioners shall cause the same to be published in one newspaper in the county, if there be any, and if not, then by posting one copy of the same in a public place in each election precinct in the county, and any person, to the assessed value of whose property there was an amount added, not appearing before the board of equalization in September, may appear before it in October, and upon making affidavit that he had no knowledge of such increased valuation of his property, he shall be given a hearing and the final judgment of the board, and the clerk of the board shall note all changes made and report the same to the auditor, who shall make the changes required on the original assessment roll. The assessor, either in person or by deputy, shall be present, also any deputy whose testimony may be required by the parties appealing to the board, and they shall have the right to make any statement touching such assessment and to produce evidence relating to questions before the board. The recorder of the county shall be also present and attend on the board with an abstract of all unsatisfied mortgages and liens remaining on record in his office, arranged in alphabetical order, for which service he shall receive no compensation, and the board of equalization shall make use of such abstract and of all other information that they can procure from the recorder in the recorder's office or otherwise in equalizing the assessment roll of the county, and may require the assessor to enter upon such assessment roll any mortgage or lien or other property which has not been assessed, and the assessment and equalization so made shall have the same force and effect as if made by the assessor before the delivery of the assessment roll by him to the clerk of the board of county commissioners. On the second Monday in October the board of county commissioners shall meet as a board of equalization to equalize the assessment roll and hear complaints in the excepted cases mentioned in this section. *As amended, Stats. 1893, 47.*

See sec. 3793.

Equalization, proceeds of mines, sec. 3693.

Property assessed by state board of county assessors cannot be equalized by county board of equalization, sec. 3797.

See sec. 3844, live stock.

The board of equalization has no power to reduce an assessment when the person complaining has refused to give the assessor a statement under oath of his property. *State v. Washoe Co.*, 5 Nev. 317, 318, 321.

*Cited, V. & T. R. R. Co. v. Comrs. of Ormsby Co.*, 5 Nev. 347.

The board of equalization is of special and limited jurisdiction and its record must show affirmatively the necessary jurisdictional facts. *State v. Washoe Co.*, 5 Nev. 317, 319.

Where a railroad company failed to furnish a proper statement of its taxable property within the time prescribed by law,

and in default thereof the assessor placed a valuation thereon which the board of equalization thereafter reduced, it was held that the action of the board was unauthorized and should be annulled. *State ex rel. Thompson v. Washoe Co.*, 7 Nev. 83.

If the board of equalization acts without jurisdiction in raising an assessment, that is a good defense pro tanto in any suit for the tax, and in such case the writ of certiorari ought not to be issued to review the action of the board. *State ex rel. Lake v. Washoe Co.*, 14 Nev. 140, 143.

The law does not require that a written complaint shall be filed in order to authorize

the board of equalization to raise an assessment. *Idem*.

The law requiring a list of persons, the valuation of whose property has been raised by the board of equalization, is merely directory. It is not a defense in a tax suit unless it has actually injured the defendant. *Idem*.

Cited, *State v. C. P. R. R. Co.*, 17 Nev. 271 (30 P. 887).

It is the duty of the assessor to assess all property at its true cash value, but if he errs in this respect the taxpayer's proper remedy is that designated by this section, and he cannot avoid payment of his taxes on the ground that his property was valued at a higher rate than that of other persons similarly situated. *State v. Sadler*, 21 Nev. 13, 16, 17 (23 P. 799).

An allegation that the property was assessed "in an amount greatly in excess of that authorized by law," is not sufficient to raise any issue as to the true cash value of the property, and to raise such issue such value should be alleged. *Idem*.

An allegation that defendant made application to the board of equalization for a reduction of his assessment must include the averment that the sworn statement was furnished to the assessor or that no demand for it was made, in order to constitute a defense to an action for the taxes. *Idem*.

The dollar mark placed at the head of columns of figures is sufficient and need not be repeated before each item. *Idem*.

The acts required of officers "between the assessment and commencement of suit" are merely directory, and their omission will not release the taxpayer from his obligation to the state. *Idem*.

Cited, *State v. D. V. L. S. & L. Co.*, 21 Nev. 93 (25 P. 448).

A board of equalization is of special and limited jurisdiction, having only such powers as are specially conferred upon it. The statute confers upon it the power to determine all complaints concerning the assessment of property, but after the determination of such complaints its action is final and it has no power to reconsider and change its action. *State v. C. P. R. R. Co.*, 21 Nev. 172 (26 P. 225).

In the absence of fraud, the statute makes the action of a board of equalization in equalizing the valuation of property final, and an allegation of fraud upon the part of the assessor in fixing values, when it is not claimed that the board of equalization acted fraudulently in confirming the assessor's valuation, is no ground for disturbing the valuation. *Idem*.

Boards of equalization can only exercise such powers as are expressly granted, and when the law prescribes the mode which they must pursue in the exercise of those powers, it excludes all other modes of procedure. *State v. C. P. R. R.*, 21 Nev. 270 (30 P. 693).

Boards of equalization are not required to remain in continuous session during the time fixed for hearing complaints against

the assessor's valuation, unless there is business before them to transact. *Idem*.

When a board of equalization meets on the day fixed by law and, there being no business before it, adjourns to a day subsequent to the last day fixed by law for hearing complaints, its powers cease for the remainder of the year, except to examine the particular cases designated by the statute. *Idem*.

Under this section, the board has power and jurisdiction to equalize all property without qualification or condition. *State v. Meyers*, 23 Nev. 274 (46 P. 512).

An agreed statement that the assessor made a uniform and equal valuation of the kind, character and species of merchandise to which defendant's belonged does not show that the valuation of defendant's property, as made by the assessor, was uniform with other kinds of personal property on the assessment roll, or that it was not equalized by the board at its true cash value, and is therefore insufficient to show that the raised valuation made by the board was unjust. *Idem*.

It is not necessary that a complaint be made to give the board jurisdiction of the subject. *Idem*.

The board of equalization has no authority to make an original assessment, or to assess property to a person who is not shown to be the owner of it. *State v. Ernst*, 26 Nev. 113 (65 P. 7).

This section providing for the publication of notice of the increased valuation of taxable property by board of equalization is merely directory. *State v. C. & C. R. R. Co.*, 29 Nev. 487 (81 P. 932).

Under the rule that a finding supported by evidence will not be disturbed, the trial court's findings in a tax suit that the property taxed was defendant's and that proper notices were given a railroad company of an increased valuation of its property is conclusive. *Idem*.

A complaint made by any person to the board of equalization, orally or in writing, that an assessment is too high or too low, and asking that it be reduced or raised, is sufficient to authorize the board to act. *State v. Northern Belle M. Co.*, 12 Nev. 89, 93.

If the complaint is of undervaluation, the board must give reasonable notice to the party assessed when it will act upon the complaint. *Idem*.

The board of county commissioners have no power to compromise and settle suits instituted by the state for the collection of delinquent taxes. *State v. C. P. R. R. Co.*, 9 Nev. 79.

Boards of county commissioners are inferior tribunals of special and limited jurisdiction, and their action must affirmatively appear to be in conformity with some provision of law giving them power or it will be without authority. *Idem*.

The only authority giving county commissioners power to reduce or in any manner change taxes as assessed is vested in

them as boards of equalization; and when acting in that capacity they must comply literally with the plain provisions of the statute. *Idem*.

When taxes are levied they become a lien, and when the board of equalization has acted an obligation immediately arises on the part of the party taxed to pay the state the amount due; and thereafter county commissioners can neither release the property from the lien nor discharge the party from his obligation. *Idem*.

County commissioners have no power to discriminate as to the character of the property which should be subject to taxation. That is a question for the legislature, subject to the provisions of the constitution. *State v. Gracey*, 11 Nev. 223.

When a railroad company claims that its taxes, as assessed by the county assessor,

### 3639. Quorum.

**SEC. 24.** A quorum of the board of county commissioners shall be sufficient to constitute the board of equalization, and a majority of the members present shall determine the action of the board.

[Sec. 25 repealed, Stats. 1893, 48.]

### 3640. Clerk to enter changes.

**SEC. 26.** During the session, or within five days after the adjournment of the board of equalization, its clerk shall enter upon the assessment roll all the changes and corrections made by the board, and shall immediately deliver said corrected roll, with his certificate attached, to the county auditor. *As amended, Stats. 1893, 48.*

Where a county board of equalization illegally reduced the assessments for revenue purposes on the proceeds of mines, and the county auditor extended on the assessment roll the assessment so reduced, it was held that he and his sureties were not liable as for a breach of official duty. *State v. Fish*, 4 Nev. 216.

A suit against a county auditor on his official bond is not the way to remedy wrongful acts of a county board of equalization in illegally reducing assessments for taxes. *Idem*.

The county board of equalization being authorized to equalize taxes, if they make

### 3641. Auditor to add up tax roll.

**SEC. 27.** The county auditor, as soon as the assessment roll is delivered to him by the clerk of the board of equalization, shall proceed to add up the valuations and to enter the total valuation of each kind of property and the total valuation of all property on the assessment roll, and he shall, on or before the fourth Monday in October [first Monday in November, see sec. 3795] of each year, deliver the same to the ex officio tax receiver, with his certificate attached, together with the maps or plat book. *As amended, Stats. 1893, 48.*

See, also, sec. 3794.

[Secs. 28 and 29 repealed, Stats. 1893, 48.]

Neither an assessor nor a district attorney can alter an assessment roll after the same has been turned over to the collector of taxes; if they do so they act not as agent of the state, but as mere strangers. *State v. Manhattan S. M. Co.*, 4 Nev. 318.

have been reduced, it must affirmatively show the jurisdictional facts that a complaint was made by it to the board of equalization of the assessor's valuation of the property. *State v. C. P. R. Co.*, 17 Nev. 259.

Record must show facts. Record must show complaint was made. Oral testimony of members of board inadmissible. *Idem*.

No equalization of taxes necessary where no injustice complained of. *State v. Manhattan S. M. Co.*, 4 Nev. 318.

Subsequent tax assessment—Powers of board regarding—Jurisdiction—Time for equalizing, etc. *State v. Ormsby Co.*, 6 Nev. 95; *V. & T. R. R. Co. v. Ormsby Co.*, 5 Nev. 341.

Auditor's duties and liabilities as to assessments for taxes. *State v. Fish*, 4 Nev. 216.

an order reducing the assessments, however illegal it may be, the county auditor must be governed by their action until it is set aside by a court of competent jurisdiction. *Idem*.

Cited, *State ex rel. Piper v. Gracey*, 11 Nev. 235.

Though this section is seemingly in conflict with the statute directing the auditors to place the changes on the rolls, it being the latest expression of the legislative will, it is proper for the clerks to enter the changes. *State v. C. & C. R. R. Co.*, 29 Nev. 488, 505 (91 P. 932).

The law does not require an equalization of any assessment roll unless someone complains of injustice in the assessment; so that a party assessed, who has not complained of an injustice, cannot object that the assessment was never equalized. *Idem*.

**3642. Auditor to charge tax receiver with amount of taxes.**

SEC. 30. On delivering the assessment roll to the ex officio tax receiver, the auditor shall charge him with the full amount of the taxes levied, and he shall forthwith transmit by mail to the state controller a statement showing the assessed valuation of all property in the county and the amount of taxes levied thereon for state and county purposes.

**3643. County treasurers to be tax receivers.**

SEC. 31. The several county treasurers of this state shall be ex officio tax receivers, under the provisions of this act, for their several counties, and they shall receive all taxes on real and personal property and receipt for the same.

Cited, Humboldt Co. v. Lander Co., under sec. 12; Sawyer v. Dooley, 21 Nev. 394 (32 P. 437).

**3644. Notice to taxpayers, how given—Taxes delinquent.**

SEC. 32. Upon receiving the assessment roll from the auditor, the ex officio tax receiver shall proceed to receive the taxes, and shall forthwith give notice by publication in some newspaper published in his county, and if none be so published, then by posting notices in three public and conspicuous places in the county, that taxes will be delinquent on the first Monday in December, and that unless paid prior thereto ten per cent will be added to the amount thereof; and he shall forward by mail a postal card to each taxpayer whose residence is outside of the county-seat, if the postoffice address of such taxpayer is known to him, notifying him or them of the amount due.

Taxes may be paid in two equal installments on or before first Mondays of December and June, secs. 3864-3866.

Cited, State v. V. & T. R. R. Co., 24 Nev. 87 (49 P. 945).

**3645. Duties of tax receiver when tax is paid.**

SEC. 33. Whenever any tax is paid to the ex officio tax receiver he shall mark the word "paid" and the date of payment in the assessment roll opposite the name of the person or description of the property liable for such taxes, and shall give a receipt therefor, specifying the amount of the assessment and the amount of the tax and a description of the property assessed. But no ex officio tax receiver shall receive any taxes for any portion less than the least subdivision entered upon the assessment roll; *provided, always*, that an owner of undivided real estate may pay the proportion of taxes due on his interest therein.

The law permits and the taxpayer has a right to pay the tax on subdivisions of his property without paying the taxes upon his entire property. State v. C. P. R. R. Co., 21 Nev. 94, 100 (25 P. 442).

It is the duty of the tax receiver to receive the full taxes on the least subdivisions entered on the assessment roll, when properly tendered, and to give his receipt

therefor. When a public officer has been clothed by statute with power to do an act which concerns the rights of third persons, the execution of the power may be insisted on, though the phraseology of the statute be permissive merely, and not peremptory. Idem.

Cited, State v. C. P. R. R. Co., 21 Nev. 260 (30 P. 686), affirmed, 162 U. S. 512.

**3646. Taxes delinquent—Delinquent tax list—Notice to be given.**

SEC. 34. On the first Monday in December the ex officio tax receiver, at the close of his official business on that day, shall enter upon the assessment roll a statement that he has made a levy upon all the property therein assessed, the taxes upon which have not been paid, and shall immediately ascertain the total amount of taxes then delinquent, and file in the office of the auditor the list of all persons, and property then owing taxes, verified by oath of himself or deputy, which shall be completed by the second Monday in December and shall be known as the delinquent list; and the auditor shall immediately cause said list to be published in at least one newspaper in his county for not less than one nor more than four weeks, and if no newspaper

be published in the county, then a copy thereof shall be posted by the auditor in at least five conspicuous places within the county; *provided*, that the cost of publication in each case shall be charged to the delinquent taxpayer and shall, in no case, be a charge against the state or county; *and provided, further*, that such publication shall be made at not more than legal rates.

See secs. 3862, 3863.

The provisions of the statute for a delinquent list are merely directory; the omissions to comply with them do not avail the defendant in a tax suit. *State v. C. P. R. Co.*, 10 Nev. 47.

An objection to the introduction of the delinquent tax roll in evidence, on the ground that it is not properly verified by the county treasurer, is immaterial, when the defendant, after his objection is overruled, cured the error, if any existed, by introducing the original assessment roll, which gives the true assessment of his property. There is no necessity of proving a delinquency, as it is the duty of the taxpayer, when his assessment is once properly made, to seek the proper officer and pay his

taxes. *State v. Sadler*, 21 Nev. 13 (23 P. 799).

The dollar mark placed at the head of columns of figures is sufficient and need not be repeated before each item. *Idem*.

The acts required of officers "between the assessment and commencement of suit" are directory merely, and their omission will not release the taxpayer from his obligation to the state. *Idem*.

*State v. Eureka Con. M. Co.*, 8 Nev. 15; *State v. Northern Belle M. Co.*, 15 Nev. 385.

The original list which the tax receiver is required to file in the office of the auditor, is admissible without the certificate of the auditor which is required when a copy is issued. *State v. N. C. R. R. Co.*, 26 Nev. 357 (68 P. 294).

### 3647. Money, how and when apportioned.

SEC. 35. The county treasurer shall, on Monday in each week, apportion all the money that shall have come into his hands, as ex officio tax receiver, during the preceding week into the several funds, as provided by law, and shall make out a statement, under oath, of the same, and transmit said statement to the auditor, to be by him filed in his office.

Cited, *State ex rel. Drake v. Hobart*, 12 Nev. 413.

### 3648. Assessment roll turned over, when and how.

SEC. 36. On the second Monday in December in each year, the ex officio tax receiver shall attend at the office of the county auditor with the assessment roll, and the auditor shall then and there administer to the ex officio tax receiver an oath, which shall be written and subscribed on the assessment roll, to the effect that each person and all property assessed in said roll on which taxes have been paid to him has the word "paid" marked opposite the name of such person, or the description of such property, and the auditor shall then foot up the amount of taxes remaining unpaid, and shall make a final settlement with the ex officio tax receiver of all taxes charged against him on account of said assessment roll.

See sec. 3796.

### 3649. Delinquent list sent to controller.

SEC. 37. Within ten days after such final settlement, the auditor shall transmit, by mail or otherwise, to the state controller a statement, in such form as the controller may require, of all and each particular kind of property delinquent, and the total amount of delinquent taxes.

### 3650. Neglect of treasurer, penalty—Duty of district attorney.

SEC. 38. If any treasurer and ex officio tax receiver shall refuse, for a period of five days, or wilfully neglect to make the settlement with, and statement to the auditor of his county, as in this act required, he and his sureties shall be liable to pay the full amount of taxes charged upon the assessment roll, and the district or prosecuting attorney, of his own volition, or on being instructed to do so by the state controller or the board of county commissioners, shall cause suit to be brought against said treasurer and ex officio tax receiver and his sureties for the full amount due on the auditor's books. And if such suit is commenced, no credit or allowance whatever shall

be made to such refusing or neglecting treasurer and ex officio tax receiver for the taxes outstanding.

Cited, *Thorpe v. Schooling*, 7 Nev. 15.

### 3651. When notice of sale given and what to specify—Redemption—Civil practice act applicable.

SEC. 39. Immediately after the second Monday in December of each year, the county treasurer and ex officio tax receiver shall advertise the property, upon which delinquent taxes are a lien, for sale, in all cases where the delinquent tax, exclusive of poll taxes and penalties, does not exceed the sum of three hundred dollars, such sale to be made at the court-house door of the county, on the third Monday in January next succeeding. Such notice shall be published in a newspaper, if there be one in the county, at least once a week from the date thereof until the time of sale, and if there be no newspaper in the county, such notice shall be posted in at least three public places in each township where delinquent property is situated, such posting to be at least twenty days prior to the day of sale; *provided*, that the cost of such publication shall not exceed two dollars for each or any case of delinquency. Such notice shall specify and give:

First—The name of the owner, if known.

Second—The amount of taxes due from him, together with the penalty and costs.

Third—The description of the property on which such taxes are a lien and which will be sold for the payment thereof.

Fourth—And that ten per cent on such taxes and costs of advertising will be collected in addition to the original tax, or the property sold for all of said sums, specifying the time and place of said sale, and that such sale is subject to redemption within six months after the date of sale by payment of all of said sums with three per cent per month thereon from date of sale until paid; *provided*, that such redemption may be made in accordance with the provisions of the civil practice act of this state in regard to real property sold under execution, except as to percentage of redemption as in this section provided. The bidding at tax sales under the provisions of this section shall be for the smallest quantity of property that will pay the taxes, penalty and costs.

Redemption of property sold under execution, see sec. 5300, et seq.

See sec. 3865.

The power of taxation carries with it the right and power of collecting taxes by summary process. *Gibson v. Mason*, 5 Nev. 283.

The summary process provided by statute for the sale of property for delinquent taxes amounting to less than three hundred dollars does not deprive a person of property without due process of law. *Sawyer v. Dooley*, 21 Nev. 390 (32 P. 437).

Such summary proceedings do not deprive a person owing less than three hundred dollars of the equal protection of the laws; although, where the amount is more than

that sum, there must be a regular action in court for its collection. This is only a reasonable exercise by the legislature of the right to classify the taxpayers. *Idem*.

One taxpayer cannot be allowed to escape payment of his taxes because the collector has improperly failed to collect from another from whom taxes are due. *State v. Eastabrook*, 3 Nev. 173.

A taxpayer is not in default until he has an opportunity to pay the taxes assessed against him. *State v. W. U. Tel. Co.*, 4 Nev. 338.

### 3652. What certificate of sale shall recite—Treasurer may buy.

SEC. 40. After receiving the amount of taxes, penalty and costs, the treasurer shall make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed, if the land is not sooner redeemed; *provided*, that if no one else shall bid upon any piece of land at such sale, the treasurer

shall bid the same in for the benefit of the county and state, and file a certificate thereof with the county recorder; and the same shall be subject to redemption from the treasurer the same as from a private purchaser; and if not redeemed, the title thereto shall vest in the county for the benefit of the county and state, and may be disposed of as provided by law. One of the duplicate certificates of sale issued by the treasurer, in case of a private purchaser, shall be filed in the office of the county recorder.

Sale of property acquired by county, see secs. 3667, 3670, 3767.

Where property is sold for taxes in a summary manner, without any regular proceedings in a court of justice, it is essential that all the requirements of the law should be strictly complied with. *Ward v. Carson River W. Co.*, 13 Nev. 44.

The sale of property acquired by the county, the assessed value whereof is \$100 or more, can be made only by the board of county commissioners at public auction after 30 days' previous published notice. *Lyon Co. v. Ross*, 24 Nev. 102, 109, 110 (36 P. 1).

The title to property bid in by the treasurer for the benefit of the county and state

at a tax sale for delinquent taxes, upon the expiration of the right of redemption, vests absolutely in the county. *Idem.*

The restrictive provisions of the statute, requiring sales of property belonging to a county by the commissioners to be at public auction with previous notice, were inserted for the protection of the general public and were intended to guard against favoritism, fraud and corruption in the sale of public property. *Idem.*

Cited. *State v. V. & T. R. R. Co.*, 24 Nev. 53 (49 P. 945); *State ex rel. N. T. G. & T. Co. v. Grimes*, 29 Nev. 59.

### 3653. Treasurer's deed to recite what—Fee of clerk.

SEC. 41. If the property is not redeemed within the time allowed by law for its redemption, the treasurer, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate of sale, and that no person has redeemed the property during the time allowed for its redemption. The treasurer shall be allowed a fee of three dollars for making such deed, which, together with the cost of acknowledging the same, shall be paid by the purchaser; *provided*, that when the deed is made to the county as the purchaser, the treasurer shall make the deed and the county clerk shall take the acknowledgment without charge.

*Wright v. Cradlebaugh*, 3 Nev. 341; *Bolan v. Bolan*, 4 Nev. 150.

### 3654. Delinquents may pay, when and how—Penalty added.

SEC. 42. At any time after the second Monday of December and before the institution of suit, as in this act provided, where the amount of taxes exceeds three hundred dollars, and before the sale of property where the amount of taxes does not exceed three hundred dollars, any delinquent taxpayer, upon a certificate from the auditor giving a description of the property and the taxes thereon, may pay to the ex officio tax receiver the taxes assessed against said delinquent, with ten per centum addition by way of penalty thereon, taking from the ex officio tax receiver duplicate receipts for the amount paid, one of which shall be filed with the county auditor and the other, in cases where the amount of taxes, exclusive of the penalty for delinquency and exclusive of poll tax, exceeds three hundred dollars, shall be filed with the district or prosecuting attorney of the county.

The penalty for delinquency follows the tax; five-thirteenths of the penalty belongs to the state and eight-thirteenths to the county. *State ex rel. Hobart v. Huffaker*, 11 Nev. 300, 303.

The percentum penalty imposed by this

section does not apply to suits brought for the collection of delinquent taxes on the proceeds of mines. *State v. Cal. M. Co.*, 13 Nev. 203, 217, 220-223.

Cited. in dissenting opinion of Hawley, C. J. *Idem.*

### 3655. District attorney not to begin suit, when.

SEC. 43. After having been served by any person with the duplicate tax receipt of the ex officio tax receiver for the total amount of taxes due from such person or upon a piece of property, with ten per centum additional, the

district or prosecuting attorney shall not commence the suit authorized by this act against such person or property; *provided*, that if any person shall fail to serve said receipt, said person shall pay all costs that may result from his or her negligence.

### 3656. Disposal of penalty.

SEC. 44. The additional ten per centum herein provided for shall be paid into the county treasury for the use of the county.

### 3657. Duties of auditor when tax exceeds three hundred dollars—Notice, how given.

SEC. 45. The auditor shall, within three days after receiving the delinquent list, make out and deliver to the district and prosecuting attorney of his county, a list duly certified to by him of all delinquencies, where the delinquent tax, exclusive of poll taxes and penalties, exceeds the sum of three hundred dollars, charging him therewith, and shall at the same time give notice by publication in some newspaper in the county, if there be any, and if not, then by posting notices in three public places in the county, that the said list has been deposited with the district or prosecuting attorney, and that unless the delinquent taxes therein specified are paid to the treasurer, as ex officio tax receiver, within twenty days from the publication or posting of such notices, action will be commenced by the district or prosecuting attorney for the collection of said taxes and costs. The auditor shall make, or procure and file with the district or prosecuting attorney, an affidavit stating the contents of said notice and the manner and time of such publication or posting as required by this section.

Cited, *Wright v. Cradlebaugh*, 3 Nev. 346.

### 3658. Additional bonds of district attorney—Delinquent list evidence.

SEC. 46. The district or prosecuting attorney, before receiving the delinquent list, as provided in the preceding section, shall enter into such additional bonds as may be required by the board of county commissioners. The said delinquent list, or a copy thereof, certified by the county auditor, and showing unpaid taxes against any person or property, shall be prima facie evidence in any court to prove the assessment, property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

Where, in an action to collect delinquent taxes, the state has put in evidence the delinquent tax list, it need not prove that the board of county commissioners had authority to levy the tax or introduce evidence of such levy, it being incumbent on

the defendant in order to successfully attack the levy to introduce the proceedings of the board making it and specifically point out its illegal features and fatal defects. *State v. N. C. R. R. Co.*, 26 Nev. 358 (68 P. 294).

### 3659. Suit for delinquent taxes may be begun, when—Jurisdiction of court.

SEC. 47. The district or prosecuting attorneys of the several counties of this state are hereby authorized and directed, immediately after the time specified in section 45 of this act, to commence action in the name of the State of Nevada against the person or persons so delinquent, and against the real estate and improvements assessed so delinquent, and against all owners known or unknown, to recover such delinquent taxes in all cases where the delinquency, exclusive of poll tax and penalties, exceeds the sum of three hundred dollars. Such actions may be commenced in the county where the assessment is made, before any court in said county having jurisdiction of the amount thereof, and such jurisdiction shall be determined solely by the amount of delinquent taxes, exclusive of poll taxes and penalties sued for, without regard to the location of the lands or other property as to townships,

cities, or districts, and without regard to the residence of the person or persons, or owner or owners, known or unknown.

See sec. 3864.

Cited, *Bolan v. Bolan*, 4 Nev. 151; *Fitch v. Elko Co.*, 8 Nev. 273; *State v. C. P. R. R. Co.*, 10 Nev. 78.

The collection of taxes solely due to a county is a question of public concern as well as of private interest; the collection of such taxes involve public duties and public rights. *State ex rel. Piper v. Gracey*, 11 Nev. 223.

A private citizen and taxpayer has such a direct and special interest in the collection of county taxes as entitles him to move for and prosecute the writ of mandamus to enforce that duty upon the part of public officers. *Idem.*

County commissioners have no power to discriminate as to the character of the property which should be subject to taxation. *Idem.*

The state is interested in having the delinquent taxes due the respective counties collected, whether any portion thereof belongs to the state or not. *State ex rel. Drake v. Hobart*, 12 Nev. 408.

The duty of bringing suits for the collection of delinquent taxes is specially imposed upon the district attorney. *Idem.*

It is the duty of the state controller to allow the district attorney to inspect and makes copies of, or abstracts, or computations therefrom, of all books, papers, statements and accounts, on file or of record in his office relating to the proceeds of mines. *Idem.*

The attorney-general has the entire control of all tax suits in the supreme court, on the part of the state. Other attorneys may appear by his consent, but not otherwise. If nothing to the contrary is shown, the court will always presume that an attorney appearing for the state in such suits is authorized by the attorney-general to act in the case. *State v. Cal. M. Co.*, 13 Nev. 203.

The revenue laws do not except taxes from the operation of the statute of limitations or extend the time for bringing suits for their collection beyond the period allowed by that statute. *State v. Y. J. S. M. Co.*, 14 Nev. 220.

### 3660. Costs and penalties.

**SEC. 48.** In all suits brought for the collection of delinquent taxes, as provided for in the preceding section, the complaint and summons shall demand, and the judgment shall be entered for twenty-five per centum in addition to the tax of ten per centum thereon and costs; and such tax, penalty and costs shall not be discharged, nor shall the judgment therefor be satisfied except by the payment of the tax, original penalty, costs, and the additional penalty herein prescribed in full.

District attorneys' fees, costs, secs. 1603, 3677.

Neither the board of county commissioners nor the district attorney have any authority to make any compromise or composition with delinquent taxpayers, or to release them from the payment of their

Taxes due the state on the proceeds of mines for the different quarters of each year cannot be united in the same cause of action. Every quarterly or yearly tax constitutes a separate and independent liability. (*Beatty, C. J., dissenting.*) *Idem.*

Taxes are not debts in the sense that they are obligations or liabilities arising out of contracts express or implied. They are the enforced proportional contribution of each citizen and of his estate, levied by the authority of the state for the support of the government. They owe their existence to the action of the legislature, and do not depend for their validity or enforcement upon the individual assent of the taxpayer, but operate in invitum. (*Beatty, C. J., dissenting.*) *Idem.*

In a suit for delinquent taxes and penalties, the attorneys for the state consented to withdraw the claim for penalties from the consideration of the court, and take judgment for the amount of the tax. The judgment was so entered. This was held error. It was the duty of the court to include the amount of the penalties in its judgment. *State v. Cal. M. Co.*, 15 Nev. 234.

Neither the district attorney, nor any of the state officers, are clothed with any authority to give consent to a judgment for delinquent taxes, without including the penalties. *Idem.*

As no consent could be given to the entry of the judgment, an appeal lies, in favor of the state, from the same. *Idem.*

The district attorney has no power to stipulate that, in consideration of a payment of a tax and costs, if a judgment appealed from should be affirmed as to the penalty, or any part thereof, then a stay of execution until a certain day would be granted. *State v. Cal. M. Co.*, 15 Nev. 308.

Cited, *State v. C. P. R. R. Co.*, 21 Nev. 224, 225 (30 P. 689); *State v. Shaw*, 21 Nev. 222; *Humboldt Co. v. Lander Co.*, 24 Nev. 474 (56 P. 228).

*State v. C. P. R. R. Co.*, 10 Nev. 47.

The complaint in this action shows that an action was commenced by the state to recover the delinquent taxes and penalties due on the proceeds of defendant's mine,

and thereafter, while said suit was pending and undetermined, the plaintiff, at the instance and by the consent of the defendant, in open court withdrew from the consideration of the court the question of plaintiff's right to recover the penalties in addition to said tax, without prejudice to plaintiff's right to bring an action for said penalties; that thereafter plaintiff brought this suit to recover said penalties: Held, upon a demurrer to said complaint, that this action might, although a part of the same cause of action, under the special facts alleged, be maintained for the penalties. *State v. Cal. M. Co.*, 13 Nev. 289.

Withdrawal of penalties not a dismissal of the action. Held, that the complaint in this action does not show that the former action was dismissed, and that the demurrer upon the ground that there is another action pending for the same cause of action is well taken. *Idem*.

The rule of strict compliance with every form of law, required in cases where property is sold for taxes without a judgment, is not applicable to suits for delinquent taxes in the courts where jurisdiction has been once acquired. *State v. C. P. R. R. Co.*, 10 Nev. 47.

Division of twenty-five per centum penalty. *Hobart v. Huffaker*, 11 Nev. 300.

The tender of a portion of the money due for taxes, on condition that it be received for the whole, does not relieve a party from payment of the entire penalties upon the full amount. *State v. Carson City Savings Bank*, 17 Nev. 150, 151 (30 P. 703).

The penalties imposed by this section are enforceable, although the assessment was excessive as shown by the verdict of the jury, and although the defense interposed was that the assessment was out of proportion to and above the actual cash value of the property assessed. *State v. V. & T. R. R. Co.*, 24 Nev. 54, 81, 87, 96 (49 P. 945).

If a taxpayer wishes to be relieved of the penalties fixed by law, by a legal tender of the amount of taxes due, when that amount, under the issues and the law, is to be determined by a court or jury, it is incumbent upon such taxpayer to make a sufficient tender. *Idem*.

If a tender, duly made, of a part of the taxes levied on property, is sufficient to pay what should have been legally assessed against the property it will save any penalties and costs attaching; but if not sufficient, it will not prevent penalties and costs attaching upon the entire amount of the taxes. *State v. Alta S. M. Co.*, 24 Nev. 230 (51 P. 982).

Cited, *State v. Cal. M. Co.*, 13 Nev. 221.

**3661. Form of complaint.**

**SEC. 49.** The complaint in said action may be as follows in form: State of Nevada, County of ..... [Title of court.]

The State of Nevada v. A. B. & Co., and the real estate and improvements in [describing them]. The State of Nevada, by C. D., district or prosecuting attorney of the county of ....., complains of A. B., and also the real estate and improvements [describing them with the same particularity as in actions of ejectment, or actions for the recovery of personal property], and for cause of action says that between the first Monday in January and the second Monday in August, A. D. one thousand eight hundred and ....., in the county of ....., in the State of Nevada, E. T., then and there being county assessor of said county, did duly assess and put down on an assessment roll all the real and personal property in said county subject to taxation, and that said assessment roll was afterward submitted to the board of equalization of said county, and was by said board duly equalized as provided by law; that said A. B. was then and there the owner of, and that there was duly assessed to him the above described real estate, improvements upon real estate and certain personal property, and that upon such property there has been duly levied for the fiscal year A. D. eighteen hundred and ....., a state tax of ..... dollars, and a county tax of ..... dollars, amounting in the whole to ..... dollars, all of which is due and unpaid; of which amount ..... dollars was duly assessed and levied against the real estate, and ..... dollars against the improvements aforesaid, and ..... dollars against the personal property. Wherefore, said plaintiff prays judgment against A. B. for the sum of ..... dollars [the whole of said tax], and a separate judgment against said real estate and improvements, for the sum of ..... dollars [the tax due on real estate, improvements and personal property], and the ten per cent damages for nonpayment thereof at the time, as required by law, and the additional penalty of twenty-five per centum, also required by law, and for

such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes and of this action.

C. D., district or prosecuting attorney, County of .....

If the property be assessed to an unknown owner, then any fictitious name may be inserted to represent such owner as defendant.

Cited, *State v. Cal. M. Co.*, 13 Nev. 221.

### 3662. Additional recitals in complaint.

SEC. 50. In all suits brought by the district or prosecuting attorney of his county, or the attorney of incorporated cities and towns, for delinquent taxes, the said district attorney is hereby authorized and empowered to make, in the summons and complaint, additional and more certain description than that contained in the assessment roll of the real property assessed and upon which suit is brought for the taxes due thereon, as he may deem proper, whether the same is an estate in fee, possessory claims, or claim to or right of possession to any lands; and where such additional description is made, evidence may be introduced to prove that the property described in the summons and complaint is the same property as that described in the assessment roll; *provided*, that the complaint and summons shall aver such fact, and the judgment and execution, and all proceedings thereafter, shall follow the description given in the assessment roll, and the additional description given in the summons and complaint.

When the complaint does not contradict the assessment, but merely gives a more particular description, it is proper to admit

testimony to show the property described in the assessment roll and the complaint are identical. *State v. R. D. M. M. Co.*, 1 Nev. 523.

### 3663. Style of process—Procedure—Notice to delinquents, form of—Fees—Summons.

SEC. 51. Upon a complaint in a district court, a summons shall be issued as provided in other civil cases, except that it shall require the defendant and all owners of or claimants to any real estate or improvements described in the summons, known or unknown, to appear and answer the complaint filed in said court on a day certain, which day shall not be less than thirty, nor more than forty days from the date of the summons. The summons so issued shall be served by the sheriff, as follows:

First—As to the personal defendant, by delivering to and leaving with him a copy of the summons if found within the county. If the personal defendant cannot, after diligent search, be found within the county, then service may be made upon such personal defendant by publishing a notice, substantially in the form hereinafter prescribed, in some newspaper published in the county, if there be one, once each week for three successive weeks; and in case no newspaper is published in the county, or in case a newspaper is published in the county, and, from any cause whatever, the proprietor, manager or chief clerk of such newspaper refuse to publish the same (such facts to be shown by affidavit of the officer serving said summons), then the notice hereinafter prescribed may be posted at the courthouse door of the county in which the said suit is commenced, for twenty-one days, and no order of court shall be necessary for such publication or posting, but it shall be the duty of the sheriff to publish or post said notice as herein provided, when the personal defendant cannot be found within the county, and to return the manner of service on the summons.

Second—As to real estate and improvements thereon, or improvements when assessed to a person other than the owner of the real estate, and as to all owners of or claimants to the same, known or unknown, service of the summons may be made by posting a copy of the summons in some public

place on the real estate, or improvements, when assessed separately, for twenty-one days, and also by publishing or posting a notice in the same manner and for the same time as required in cases where the personal defendant cannot be found in the county. The last publication of the notice, and the last day of the twenty-one days, which the copy of the summons is required to be posted, shall expire at least ten days before the return day named in the summons. No other or further service shall be required, and the return of the officer, showing a service of the summons as herein required, shall be conclusive evidence of the due service of the summons upon the defendant named, the real estate and improvements thereon, when assessed separately, and upon all owners of and claimants to the same, known or unknown. If, on the return day named in the summons, the personal defendant fail to appear and answer the complaint, his default may be entered and final judgment entered by the clerk, as in other civil cases, for the amount of taxes with ten per cent, damages, twenty-five per centum additional penalty and costs; and if, upon the return day, no person appear and answer for the real estate and improvements thereof [thereon], or for the improvements when assessed separately, then the default of the said real estate and improvements thereon, or of the improvements, when assessed separately, and of all owners of or claimants to the same, known or unknown, may be entered, and final judgment rendered as in other civil cases. The notice required to be published or posted shall be substantially in the following form, and may include any number of cases in which the return day of the summons shall be the same:

State of Nevada, County of .....; District or prosecuting attorney's office.

Notice of suits commenced—To the following named defendants, and to all owners of, or claimants to the real estate and improvements thereon, or improvements, when assessed separately, hereinafter described, known or unknown. You are hereby notified that suits have been commenced in the [name of court, where held, etc.] by the State of Nevada, plaintiff, against each of the defendants hereinafter named, and each of the following described tracts or parcels of land with the improvements thereon, and improvements when separately assessed, and all owners of, or claimants to the same, known or unknown, to recover the tax and delinquency assessed to said defendant against said property, for the fiscal year commencing ....., and ending ....., and that a summons has been duly issued in each case; and you are further notified that unless you appear and answer the complaint filed in said cause, on or before the ..... day of ....., 18..., judgment will be taken against you, and the real estate and improvements herein described, for the amount of tax and delinquency specified, and cost of suit. Tax and delinquency A. B., describe real estate and improvements as in summons, \$..... C. D., personal property, assessed at \$.....

C. D., district or prosecuting attorney, ..... County.

It shall be the duty of the district or prosecuting attorney to file in the office of the county recorder a copy of each notice published or posted, with the affidavit of the publisher or foreman in the office, setting forth the date of each publication of the notice, the paper in which the same was published; and the officer shall file a copy of the notice posted, with an affidavit of the time and place of posting, which copies so filed as aforesaid, or certified copies thereof, shall be prima facie evidence of all facts therein contained, or contained in the affidavit, in all courts in this state. The publisher shall be entitled to two dollars for each case for publishing said notice, including the making of the affidavit. The recorder shall be entitled to fifty cents for filing each notice of publication, including affidavit; and said sums so allowed shall be taxed and collected as other costs in the case,

from the defendant, and in no case shall they be a charge against or collected from the county or state.

Cited, *State v. W. U. T. Co.*, 4 Nev. 339; *State v. Y. J. S. M. Co.*, 5 Nev. 428.

A complaint made by any person to the board of equalization, orally or in writing, that an assessment is too high or too low and asking that it be reduced or raised is sufficient to authorize the board to act. *State v. Northern Belle M. & M. Co.*, 12 Nev. 89.

If the complaint is of undervaluation the board must give reasonable notice to the party assessed when to act upon a complaint. *Idem.*

Statements made by the assessor in regard to the valuation of property before the board of equalization, in his official capacity and under the sanction of his official oath, is intended by the law to have the force of testimony and such a statement is competent evidence upon which the board

is authorized to act in raising the assessment. *Idem.*

Cited, *State v. Cal. M. Co.*, 13 Nev. 221; *State v. Sadler*, 21 Nev. 18 (23 P. 799).

The provisions of the practice act governing change of place of trial are not applicable to actions to recover delinquent taxes. *State v. Shaw*, 21 Nev. 222 (29 P. 321).

Where cattle are bred, born, branded and raised in a certain county, their habitat is in such county, and they are assessable there, notwithstanding some of them occasionally wander into other counties, or are driven temporarily into other counties, and also notwithstanding the home ranch of their owner is situate in another county and they are managed and controlled from such home ranch. *Idem.*

### 3664. Answer of defendant, what may set up.

SEC. 52. The defendant may answer, which answer shall be verified:

First—That the taxes have been paid before suit.

Second—That the taxes with costs have been paid since suit, or that such property is exempt from taxation under the provisions of section 5 of this act.

Third—Denying all claim, title or interest in the property, assessed at the time of the assessment.

Fourth—That the land is situate in and has been duly assessed in another county, and the taxes thereon paid.

Fifth—Fraud in the assessment, or in failing to comply with the provisions of this act; or that the assessment is out of proportion to and above the actual cash value of the property assessed; *provided, however*, that in such last mentioned case, where the defense is based upon the ground that the assessment is above the value of the property, the defense shall only be effectual as to the proportion of the tax based upon such excess of valuation, but in no such case shall an entire assessment be declared void. *As amended, Stats. 1895, 39.*

Cash value defined, sec. 3622.

Where property is claimed for taxation by two different counties, its regular assessment by one of the counties, and the payment of the taxes to that county prior to the commencement of the action for delinquent taxes in the other county, is a complete defense to the latter action. *State v. C. P. R. Co.*, 21 Nev. 172 (26 P. 225).

The defendant in a suit brought for the collection of delinquent taxes has a right to interpose a demurrer to the complaint upon any of the grounds set forth as a cause of demurrer in the civil practice act. *State v. Yellow Jacket S. M. Co.*, 14 Nev. 220.

An allegation that property was assessed "in an amount greatly in excess of that authorized by law" is not sufficient to raise any issue as to the true cash value of the property, and to raise such issue such value should be alleged. *State v. Sadler*, 21 Nev. 13 (23 P. 799).

The statute expressly provides that "where the person complaining of the assessment has refused to give the assessor his list

under oath, as required under this act, no reduction shall be made by the board of equalization in the assessment made by the assessor." Held, that an allegation that defendant made application to the board of equalization for a reduction of his assessment must include the averment that the sworn statement was furnished to the assessor, or that no demand for it was made, in order to constitute a defense to an action for the taxes. *Idem.*

In an action to recover delinquent taxes and penalties an answer denying a possessory claim to the lands and stating facts showing that the rights claimed are untaxable, presents a good defense, although it does not deny all claim, title or interest in the property assessed. *State v. C. P. R. R.*, 21 Nev. 94 (25 P. 442).

Cited, *Wright v. Cradlebaugh*, 3 Nev. 349; *State v. W. U. T. Co.*, 4 Nev. 342, 346.

Where, in answer to a tax suit, the defense was fraud in the assessment, and it was alleged that in a certain statement

furnished to the assessor (but which was informal) the property was "set down as of the value of \$6000 per mile, which was a fair valuation thereof, and so known and believed by the assessor," it was held that this amounted to an allegation that \$6000 per mile was a just and fair value, and consequently that an assessment of \$15,000 per mile was excessive. *State v. C. P. R. R. Co.*, 7 Nev. 99.

As the law requires an honest and just estimate of value to be placed upon property for purposes of taxation, an excessive valuation made by an assessor contrary to his official judgment and with intent to injure, is a fraud against which the law will afford relief. *Idem.*

The fact that a taxpayer fails to make a statement as required by law, does not authorize the assessor to impose a valuation he knows to be exorbitant and unjust. *Idem.*

In a suit to recover taxes under an assessment made in the absence of a legal statement, defendant set up an answer that the assessment was made by the assessor fraudulently and contrary to his official judgment at a sum nearly three times greater than the fair value of the property; it was held that such answer stated good matter of defense and was not demurrable. *State v. C. P. R. R. Co.*, 7 Nev. 99, 101.

In a suit to recover a certain amount of delinquent taxes, where defendant pleaded that he had paid plaintiff a certain less sum and that plaintiff had accepted and received the same in full satisfaction and discharge, it was held that the pleading did not amount to an answer that the taxes had been paid or constitute a defense to the action. *State v. C. P. R. R. Co.*, 9 Nev. 79.

Where a corporation owing a certain amount of taxes for three years entered into a compromise with the board of county commissioners, whereby it paid a certain less amount and received a receipt purporting to be in full for all taxes, it was held that such receipt was not evidence of payment in full for the tax of any one year. *Idem.*

The board of county commissioners have no power to compromise and settle suits instituted by the state for the collection of delinquent taxes. *Idem.*

Cited, *State v. C. P. R. R. Co.*, 9 Nev. 87, 90; *State v. C. P. R. R. Co.*, 10 Nev. 61; *State ex rel. Lake v. Washoe Co.*, 14 Nev. 142, 143; *State v. Cal. M. Co.*, 15 Nev. 241; *Barnes v. Woodbury*, 17 Nev. 392 (30 P. 1068).

The right of the state to collect taxes upon the lands embraced in the grants to a railroad company cannot be defeated by the delay of the corporation in applying for patents, nor by the neglect or delay of the secretary of the interior to take proper steps to determine the character of the land—whether mineral or nonmineral. The identification of the land and its character, if raised by the pleadings could be determined

by the state court upon the trial. *State v. C. P. R. R. Co.*, 20 Nev. 373, 383 (22 P. 237).

In an action to recover delinquent taxes on unpatented lands an averment in the answer "denying all ownership except such as the defendant may have, obtain, or secure, as yet unknown and uncertain on account of the nonaction of the government" is evasive and uncertain, raises no issue, and is not such an averment as the defendant is permitted to make under the provisions of this section. *Idem.*

It is a good answer for a defendant when assessed for a possessory claim to land to deny such claim, and plead that whatever claim it has is exempted from taxation. *State v. C. P. R. R. Co.*, 21 Nev. 248 (30 P. 686). Affirmed, 162 U. S. 512.

Cited, *State v. Sadler*, 21 Nev. 19 (23 P. 799); *State v. C. P. R. R. Co.*, 21 Nev. 102 (25 P. 442); *State v. C. P. R. R. Co.*, 21 Nev. 178 (26 P. 1109); *State v. C. P. R. R. Co.*, 21 Nev. 248, 256, 257, 263 (30 P. 686), affirmed, 162 U. S. 512; *State v. C. P. R. R. Co.*, 21 Nev. 263 (30 P. 689); *State v. V. & T. R. R. Co.*, 23 Nev. 432, 436, 437 (49 P. 38); *State v. V. & T. R. R. Co.*, 24 Nev. 80 (49 P. 945); *Humboldt Co. v. Lander Co.*, 24 Nev. 474 (56 P. 228); *State v. V. & T. R. R. Co.*, 24 Nev. 54 (49 P. 945); *State v. V. & T. R. R. Co.*, 24 Nev. 90 (50 P. 607); *State v. V. & T. R. R. Co.*, 23 Nev. 283, 292 (35 L. R. A. 759, 46 P. 723).

Prior to the amendment of this section (Stats. 1895, 35) the defense by a defendant, sued for delinquent taxes, "that the assessment is out of proportion to and above the actual cash value of the property assessed," could not have been made. *State v. V. & T. R. R. Co.*, 23 Nev. 283 (46 P. 723, 35 L. R. A. 759).

The actual cost of a railroad is prima facie its value; but if it appears that the actual cost was in excess of the necessary cost, the necessary cost is its proper standard. If it further appears that the net income of the road does not amount to current rates of interest on its necessary cost, and is not likely to do so, or if the business of the road is likely to be destroyed or impaired by competition or other cause, or if the utility of the road is not equal to its cost, then its value is less than its cost, and must be determined by reference to its utility alone. (*State v. C. P. R. R. Co.*, 10 Nev. 47, affirmed.) *Idem.*

If, in a suit to recover disputed taxes, defendant desires to raise an issue of excessive valuation he should prepare his answer under this section. *State v. C. & C. R. R. Co.*, 29 Nev. 487 (91 P. 932).

A defense that the property belonged to another when the county board of equalization increased the valuation is not available where defendant failed to allege that at the time of assessment the property was not its property. *Idem.*

Cited, *State v. C. & C. R. R. Co.*, 29 Nev. 487, 501, 504 (91 P. 932).

**3665. Character of judgment and how entered—Taxes for personal property a lien on real property—Answer—Costs and penalties as liquidated damages.**

**SEC. 53.** In case judgment is rendered for the defendant, it shall be general, without costs, and may be entered in favor of some one or more of them, and against others, as in other civil cases; but when defendants have no claim or title to the property at the time of assessment, judgment, may, notwithstanding, be entered against the property by continuing the suit, and summoning the owner, known or unknown, as provided in section 51 of this act. In case judgment is rendered for plaintiff, it may be entered against such defendant, or defendants, as are found liable for the tax, and for such portions as he or they may be found liable for. Judgment may be entered against the real estate, improvements, and personal property, for the taxes and costs severally due thereon; and when it appears on the assessment roll, and is not disproved at the trial, that the real estate, improvements, and personal property belong [belonged] to the same person or persons at the time assessments were made, then the whole tax of such person or persons for that year may be recovered out of any of such real estate, improvements, or personal property, or out of any other property of the defendant or defendants, at the time of levy under execution; *provided*, that upon such real estate and improvements assessed, lien shall attach thereon for the taxes due upon the personal property, and shall not be released from such lien until all taxes are paid, as provided in section 3 of this act. Such judgments shall be a lien as aforesaid, as in other civil cases where judgments are rendered in the district court. Such liens shall not be extinguished until the delinquent tax and cost of sale for the same shall have been paid. The clerk of the district court may issue execution upon judgments rendered in his court as in other civil cases. Judgment may be rendered by default, for want of an answer, as in other civil cases. In case any person shall be sued for taxes on any lands or improvements, of which he was the owner, or in which he had a claim or interest at the time of the institution of suit, and shall be discharged from personal liability, under an answer in conformity with the third subdivision of section 52 of this act, and such lands or improvements shall be sold under a judgment obtained against it, and shall thereafter be redeemed by such discharged defendant, or if he shall pay the taxes and costs to prevent a sale, then such personally discharged defendant shall have, and is hereby given the right of recovery over against the owner at the time of the assessment, or any subsequent purchaser, for the full sum of taxes and costs, or redemption money paid. And in every case of such recovery, the judgment shall, in addition to the taxes and costs, or in addition to the redemption money paid, include twenty-five per centum of the amount of taxes and costs of redemption money as liquidated damages; and the receipt of the district or prosecuting attorney for taxes and costs, or of the ex officio tax receiver for the redemption money, shall be prima facie evidence of the debt and of its amount.

District attorneys' fees, costs, secs. 1603, 3677.

Cited, *State v. C. P. R. R. Co.*, 21 Nev. 106 (25 P. 442).

**3666. Possession of property obtained, how—Redemption—Property of persons under legal disability—Exceptions.**

**SEC. 54.** An act to regulate proceedings in civil cases in the courts of justice in the State of Nevada, approved March 9, 1869, and the several amendments thereto, or amendments which may hereafter be made thereto, or laws passed under the government of the State of Nevada, so far as the

same are not inconsistent with the provisions of this act, are hereby made applicable to the proceedings under this act, and any deed derived from the sale of real property under this act shall be conclusive evidence of the title, except as against actual frauds or the payment of the taxes, by one not a party to the action or judgment in or upon which such sale was made, and shall entitle the holder thereof to possession of such property, which possession may be obtained by action in a justice's court for the unlawful withholding thereof in the same manner as where tenants hold over after the expiration of their lease; *provided*, that the officer in selling such property shall only sell the smallest quantity that will pay the judgment and all costs. All sales of real estate sold for taxes shall be subject to redemption at any time within six months after date of sale, by the payment of all costs connected with the suit and sale, together with interest at the rate of three per cent per month from date of sale up to time of redemption. When property is sold belonging to minors or persons under legal disability, they shall have until six months after such disability is removed to redeem such property, as in other civil cases, by paying the whole amount of the judgment and all subsequent taxes and interests paid by and due to the purchaser at such sale, and fifty per cent in addition thereto. But this provision shall not apply when the executor or administrator of the estate, or the father, or, in case of his death, the mother or guardian of such minor children, or insane person, has been personally served with process.

That portion of this section declaring that "the deed derived from the sale of real property shall be conclusive evidence of title" is of doubtful validity; but even if binding, it cannot be held to mean more than that the recitals of the deed shall be conclusive; not to be contradicted by other evidence. If the deed shows on its face that the assessment was illegal and void it can convey no title. *Wright v. Cradlebaugh*, 3 Nev. 342, 357.

A tax deed, admitted to have been executed by the tax collector when offered as of itself conclusive evidence of title, was held not sufficient without proof of a judgment and order of sale. *Bolan v. Bolan*, 4 Nev. 150.

The record itself or a copy of a judgment properly authenticated is the best evidence

of its existence, and the only admissible, unless in case of the loss or destruction of the record. *Idem*.

The recital of a judgment in a tax deed is a mere assertion by the tax collector, and can no more prove the existence of a judgment than the assertion of any other person. *Idem*.

After a judgment has been shown and an execution thereon regularly issued and placed in the hands of a proper officer, his return on the execution, and his recitals on the deed which he executes in carrying out the commands of the writ, are proof of his official acts. *Idem*.

*Cited*, *State v. Y. J. S. M. Co.*, 14 Nev. 235, 236; *State v. C. P. R. R. Co.*, 21 Nev. 93 (25 P. 442).

### 3667. Treasurer may buy as trustee—No fees for services—How sold.

SEC. 55. It shall be the duty of the treasurers of the several counties of this state to attend all sales of property for delinquent taxes, and in case there shall be no bidders for any parcel or parcels of property offered for sale, to pay such tax and costs thereon, then such treasurers may bid for and buy in such parcel or parcels of property as others will not buy; and such treasurers shall take certificates of sale, or deeds, for such property, as other private buyers, specifying the trust aforesaid; and such treasurers, and their successors in office, shall hold the property so bought in by them in trust for the use and benefit of the state and county, and any officers having fees due them in such cases, subject to redemption provided for by law, and subject in all cases to the trust aforesaid. Redemption may be made from such treasurers in the same manner and upon the same terms as from any private buyer. When the time allowed by law for redemption shall have expired, and no redemption shall have been made, the officer who made such sale shall execute and deliver to such treasurer who bought in such property a deed of the same, in trust as aforesaid; and such treasurer, and his successors in office, upon obtaining a deed of any property, in trust as aforesaid, under the provisions of this act, shall hold such property in trust until the

same is sold, when, upon an order entered upon the record of the proceedings of the board of commissioners of his county, such treasurer, or his successor in office, for a consideration mentioned in such order, shall make, execute and deliver, upon the payment of such consideration to him, to any purchaser an absolute deed, discharged of any trust, of the property mentioned in such order of the commissioners.

See sec. 3767.

Cited, State v. V. & T. R. R. Co., 24 Nev. 110, 111 (49 P. 945).

See Lyon Co. v. Ross, under sec. 40 of this act.

### 3668. Property held in trust may be rented—Rents, how apportioned—Treasurer to make statement.

SEC. 56. While such property is held in trust, as in this act provided, such treasurer, or his successor in office, shall collect any rents arising from the property purchased by him, as other private persons do, during the time such property is subject to redemption; and after the time of redemption has expired, until such property can be sold, he may rent the same, with the approval of the board of commissioners, for a price to be fixed in their minutes. Such rents shall be paid out by the treasurer, or his successor in office, as follows:

First—To the payment of the costs and taxes for which it was sold, with the percentage allowed for redemption.

Second—To the payment of any taxes afterward accruing upon such property.

Third—Any balance shall be paid into the general fund of his county. The price for which any property shall be sold shall be appropriated in the same manner as the rents are directed to be paid in this section. The treasurer, or his successor in office, shall file in the office of the county auditor a monthly statement, on the first Monday in each month, of the amount of property sold and rents collected during the past month; and upon any money being paid him for purchase or rent, shall give a statement of the amount thereof to the person, who shall file the same with the county auditor; and such auditor shall give the person paying such money a receipt for the same, as having been paid to the treasurer, and expressing the purpose or consideration upon which such payment was made.

### 3669. Property to be included in certificate of sale—Duty of recorder.

SEC. 57. The officer selling any property to a county treasurer, in trust, as provided in this act, shall embrace in one certificate of sale all property bid off by such treasurer in any one day; and, at the expiration of the time for redemption, shall in one deed convey, in trust, to the treasurer who bought such property, or to his successor in office, all property sold to such treasurer and remaining unredeemed at any time after the expiration of the time for redemption; and the recorder of the county shall record such certificates and deeds without payment of his fees until such property shall be sold or rented to pay the same.

### 3670. Property held in trust to be assessed—Taxes paid from rent, when.

SEC. 58. During the time any property is held in trust, under the provisions of this act, it shall be annually assessed to such treasurer, and his successors in office, in the same manner that the taxable property of private persons is assessed, except that such assessment shall express that it is made against him as a trustee. But no proceedings shall be taken to enforce the collection of such taxes against the trustee. When the property is sold or rented for sufficient to pay the taxes and costs legally chargeable against such property, then the same shall be, by the trustee, fully paid; and in case any parcel of property shall not be of sufficient value to pay all the tax, costs and percentage legally chargeable against the same, then the board of commissioners,

upon a sale of such property, may remit the balance of such taxes over and above its value.

Cited, State v. V. & T. R. R. Co., 24 Nev. 113 (49 P. 945).

### 3671. Allowance to treasurer—Redemption money, how distributed—No fees from county.

SEC. 59. The county treasurer, for his services under this act, shall be allowed, upon the sale of any parcel of property held by him in trust or out of its rents, a reasonable compensation for his trouble, to be fixed by the board of commissioners in each case; and out of the sale price or rents of any property of which he is trustee, the treasurer shall pay the costs due any officer for the enforcement of the tax upon such parcel of property, and all taxes owing thereon; and upon the redemption of any property from him as trustee, shall pay the redemption money over to any officers having fees due them from such parcels of property, and pay the tax for which it was sold and redemption percentage according to the proportion such fees respectively bear to such tax. In no case shall any service rendered by any officer under this act become or be allowed as a charge against the county, nor shall the sale price or rent, or redemption money of any one parcel of property be appropriated to pay any cost or tax upon any other parcel of property than that so sold, rented or redeemed; and after paying all the tax and costs upon any one parcel of property, any balance remaining in the hands of the trustee shall by him be paid into the general fund of the county.

Cited, State v. V. & T. R. R. Co., 24 Nev. 113 (49 P. 945).

### 3672. Treasurer liable on his bond.

SEC. 60. Every county treasurer and his successor in office, becoming trustees under the provisions of this act, shall be liable upon his and their official bond for any misfeasance, malfeasance, failure or neglect to perform faithfully all the duties of their trust.

### 3673. Amount of fees—Costs may be apportioned by court—Fees, how collected.

SEC. 61. There shall be allowed to all officers, except district or prosecuting attorneys, the same fees as are allowed in other civil cases. All officers shall perform such services as may be required of them under this act without the payment of fees in advance. All costs shall be taxed and entered in the judgment against the person and the real estate and the improvements, when the judgment is the same against all; but if the judgment against the person and the property is for different sums, then the costs may be apportioned by the court as the same may be deemed just; *provided*, that no fees or costs shall be paid to any officer unless the same be collected from the defendant, except when property sold for taxes is purchased by the county, in which case the said county shall pay all fees and costs properly charged or taxed against such property, and the board of commissioners shall allow the fees and costs provided for in this section, and direct the same to be paid out of the general fund of the county.

County officers preferred creditors in assessment and collection of taxes. Grimes v. Goodell, 3 Nev. 79.

payment of fees out of the county treasury only in cases in which suits are brought by direction of the county commissioners. Fitch v. Elko Co., 8 Nev. 271, 274.

This section, as amended, contemplates the

### 3674. Duties of district attorney on collection of taxes.

SEC. 62. The district or prosecuting attorney shall, on the receipt of any money for taxes, enter the same on his delinquent list, opposite the description of the property, and shall, on Monday in each week, after the time fixed in this act for the commencement of actions against delinquent taxpayers, pay to the county treasurer all moneys collected by him for taxes, taking

duplicate receipts for the amounts so paid, one of which receipts he shall on the same day file with the auditor, and shall at the same time file with said auditor a list of all judgments obtained by him up to that date for taxes under the provisions of this act, stating therein the names of the defendants, if known, or if unknown, a description of the property, the amount of each judgment and the name of the court in which said judgment was obtained. He shall, on the Saturday next preceding the first Monday in April in each year, pay to the county treasurer all moneys received by him for taxes and not previously paid over, taking duplicate receipts therefor, one of which shall in like manner be filed with the auditor, and shall at the same time file with the auditor a list of all judgments obtained by him and not previously filed, as herein provided. He shall also, on the day last mentioned, make and file with the county auditor an affidavit stating that he has paid to the county treasurer all moneys collected by him for taxes prior to that date, and file the receipts therefor, and that the several lists filed by him, as herein directed, contain all judgments obtained by him under the provisions of this act.

### 3675. *Idem*—Taxes uncollected.

SEC. 63. On the first Monday of April and September in each year, the district or prosecuting attorney shall attend at the office of the county auditor with the delinquent list or lists, and the auditor shall then carefully compare the same with the treasurer's receipts and statements filed by the district or prosecuting attorney; and if the same shall be found to be correct, the auditor shall give to the district or prosecuting attorney a receipt specifying the same. The district or prosecuting attorney shall at the same time deliver to the auditor a written statement of all delinquent taxes upon said delinquent list or lists remaining uncollected, or for which suit has not been brought, with his reason in detail for not being able to collect the same, or for not bringing suit; and the auditor shall immediately file the said delinquent list or lists and statement with the clerk of the board of county commissioners, and the board of county commissioners shall revise the same by striking off such taxes as cannot be collected. The delinquent list or lists shall then be returned to the auditor, who shall note the changes made, and shall then return the same to the district or prosecuting attorney, taking his receipt therefor. The county auditor shall, in his report to the state controller, state the amounts stricken off the delinquent list or lists by the board of county commissioners. *As amended, Stats. 1907, 358.*

See secs. 3862, 3863.

The object of this section is to provide a means of balancing the account between the auditor and district attorney. The delinquent taxpayer cannot claim any advantage from it. *State v. C. P. R. R. Co.*, 10 Nev. 87, 90.

The district attorney is authorized to commence suit for delinquent taxes stricken off the list by a void order of the board of county commissioners. *Idem.*

Cited, *State ex rel. Drake v. Hobart*, 12 Nev. 413.

### 3676. Penalties for failure of district attorney to pay over.

SEC. 64. If any district or prosecuting attorney shall fail or refuse to pay to the county treasurer, as provided in this act, any money collected by him for taxes, he shall forfeit his office, and be forthwith removed therefrom, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment.

### 3677. Fee in tax suit.

SEC. 65. The district or prosecuting attorney shall be entitled, on each suit for the collection of delinquent taxes, to a fee of five dollars, with five per cent on the amount delinquent. Said fee and percentage shall be taxed

and collected as costs, but in no case to be charged against the county or state.

See secs. 1603, 3709.

The district attorney is entitled to five per cent on the tax and penalty. *State v. Cal. M. Co.*, 13 Nev. 289.

### 3678. Duties of assessor as to personal property.

SEC. 66. The county assessor in the several counties in this state, when he assesses the property of any person or persons, company or corporation liable to taxation, who do not own real estate within the county of sufficient value, in the assessor's judgment, to pay the taxes on both his or their real and personal property, shall proceed immediately to collect the taxes on the personal property so assessed; but the party paying such taxes shall not be thereby deprived of his right to have such assessment equalized, and if, upon such equalization, the value be reduced, the taxes paid shall be refunded to such party from the county treasury, upon the order of the board of county commissioners, in proportion to the reduction of the value made.

See sec. 3866.

An agreed statement that the assessor made a uniform and equal valuation of the kind, character, and species of merchandise to which defendant's belonged, does not show that the valuation of defendant's property, as made by the assessor, was uniform

with other kinds of personal property on the assessment roll, or that it was not equalized by the board at its true cash value, and is, therefore, insufficient to show that the raised valuation made by the board was unjust. *State v. Meyers*, 23 Nev. 274 (46 P. 512).

### 3679. Assessor may sell on summary process—Certificate to purchaser—Court may issue citation—Fees, how collected—Unlawful acts, penalties for.

SEC. 67. If the person or persons, company or corporation so assessed shall neglect or refuse to pay such taxes on demand of the assessor, the assessor, or his deputy, shall seize sufficient of the personal property of the person or persons, company or corporation so neglecting or refusing to pay, to satisfy the taxes and costs, and shall post a notice of such seizure, with a description of the property, in three public places in the township or district where it is seized, and shall at the expiration of five days, proceed to sell, at public auction, at the time and place mentioned in the notice, to the highest bidder, for gold or silver coin of the United States, a sufficient quantity of said property to pay the taxes and expenses incurred; and for this service the assessor shall be allowed from the delinquent party a fee of three dollars. Upon payment of the purchase money, he shall deliver to the purchaser of the property sold, with a certificate of the sale, the amount of taxes or assessment, and the expenses thereon, for which the property was sold, whereupon the title of the property so sold shall rest absolutely in the purchaser. If, in any instance, the county assessor shall be unable to find, seize and sell sufficient of the property of such person, persons, company or corporation to pay such taxes and costs of sale; and such person, persons, company or corporation shall neglect or refuse on request of the assessor, to pay the same, or neglect and refuse to turn out to the assessor property sufficient to pay such taxes and costs of sale, it shall be the duty of the assessor, if the sum exceed three hundred dollars, to go before the district court or the judge thereof, at chambers, and in cases of three hundred dollars and less sums, then before a justice of the peace of the township wherein such party may reside, and make affidavit of the fact of assessment, the amount of taxes, the inability to find and seize property sufficient to pay such taxes and costs of sale; also, the fact of neglect or refusal to pay the same, or turn out property sufficient to pay the same and costs of sale. And on the filing of such affidavit, the court or judge,

or justice of the peace, as the case may be, shall issue a citation, ordering the party to appear forthwith, or at a subsequent period not to exceed five days, before such court, judge or justice of the peace to answer under oath concerning his property. Such citation may be served by the assessor, sheriff, or any constable of the county, and shall be served by delivering a copy thereof to such party personally. On the examination, if it shall appear that such party or parties have any money, goods, chattels or effects, the judge or justice of the peace shall order sufficient thereof to be turned out to the assessor to satisfy such taxes and costs of sale, and also costs of proceeding on the citation; and in case of a wilful neglect or refusal by such party either to obey the order of citation or the order to pay, or to turn out property aforesaid, such party or parties shall be deemed in contempt of such court, judge or justice of the peace, and may be proceeded against as in other cases of contempt, in civil cases in the courts of justice in this state. For service under the provisions of this section, such fees shall be allowed as for similar services in civil cases, to be collected only from parties owing such taxes. In other respects than herein provided, the proceedings under this section shall be conducted as provided in the civil practice act of this state regulating proceedings supplemental to executions; and in case it appears from the affidavit of the assessor that such person or persons owing such taxes is about to abscond from the county, or is about to convey his property with intent fraudulently to evade the payment of such taxes, in such cases the citation herein mentioned may direct the officer serving the same, to arrest such party or parties and bring him, her or them before the court, judge or justice of the peace issuing the same. It shall not be lawful for a party served with the citation mentioned in this section, to sell or transfer his, her or their property or effects, so as to defeat the collection of taxes mentioned, or costs, or any part thereof. And any person or persons so doing shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine not to exceed two hundred dollars; and should the said taxes fail to be collected by such process, then no future liability shall attach to said assessor therefor.

Proceedings supplementary to execution, see secs. 5307-5314.

Cited, *Wells Fargo & Co. v. Dayton*, 11 Nev. 167.

Cited, *State v. Cal. M. Co.*, 15 Nev. 310.

### 3680. Assessor to pay over.

SEC. 68. The assessor shall, on the first Monday of each month, return to the auditor a list of all collections made under the provisions of the preceding section, under oath, and shall, at the same time, return all the original schedules of assessment of such property made the previous month, which schedules, after comparing with the sworn list of collections, the auditor shall file in his office, and shall enter upon the assessment roll of his county for that year, when the same shall have come into his hands, and mark the word "paid" opposite the name of each party whose taxes are so paid. It shall also be the duty of the assessor, on the first Monday of each month, to pay over to the treasurer of the county all moneys collected under the provisions of the preceding section, taking duplicate receipts from said treasurer for the amount so paid, one of which receipts the assessor shall file with the auditor.

Cited, *State v. Meyers*, 23 Nev. 277 (46 P. 512).

### 3681. Penalty for assessor's neglect—Duties of district attorney and auditor.

SEC. 69. Should the county assessor neglect or refuse to make the monthly statements of his collections of movable personal property tax, as required by law, or to file the original schedules of his assessments of such property, he shall be guilty of a misdemeanor in office, and shall, on conviction, be

liable to a fine of not less than one hundred dollars or more than five hundred dollars, and imprisonment in the county jail for not less than ten and not more than one hundred days, or both such fine and imprisonment, and shall be removed from office. In case of such neglect and refusal, the county auditor shall immediately inform the district attorney of his county of such facts, whose duty it is hereby made to commence proceedings against the assessor under this section.

### 3682. Controller to prepare blank receipts.

SEC. 70. It is made the duty of the state controller to prepare suitable blank receipts, to be issued by the several county assessors on the payment to them of the taxes on movable personal property. Such blank tax receipts shall be of the form selected by the controller, and shall be consecutively numbered by him for each county, and shall be countersigned by the county auditor.

### 3683. Controller to send receipts to auditor.

SEC. 71. Before the first of March in each year, the state controller shall transmit to the several county auditors a sufficient number of said blank tax receipts for use in each county. The county auditor, on receiving such tax receipts, shall receipt to the controller for the number so received, and shall immediately countersign and deliver them to the county assessor, taking his receipt for the number so delivered.

### 3684. Penalties imposed on assessors.

SEC. 72. Should the county assessor give any other receipt on the payment to him of any tax on movable personal property than that provided for in this act, he shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison for a term of not less than one year or more than five years, and shall be removed from office.

### 3685. Penalties imposed on county auditors for neglect—Controller may bring suit to enforce—Funds.

SEC. 73. The county auditor shall be liable on his official bonds for double the amount of the loss that the state and county may sustain through the defalcation of the assessor, or otherwise, in cases where he has not notified the district attorney of the neglect or refusal of the assessor to make his monthly statement, under oath, of collection of the tax on movable personal property, as required by law. The state controller shall have direction and control of all suits brought against the county auditor under this act, and a copy of the statement of amount lost by the state and county, made out and certified by the controller, with the official seal affixed thereto, shall be sufficient evidence to support an action in any court of competent jurisdiction for the amount of such loss, without proof of the signature or official character of such controller, subject, however, to the right of the defendant to plead and give in evidence as in other actions, all such matters as shall be legal and proper for his defense or discharge. All moneys recovered under such suit against the county auditor shall go, one-half into the general fund of the state, and one-half into the general fund of the county.

### 3686. Assessor to return unused blanks.

SEC. 74. On the first Monday in December of each year, the assessor shall return to the county auditor all blank receipts for taxes on movable personal property received by him and not used, and also all stubs of the receipts used; and the county auditor, after comparing the stubs of the receipts used with the monthly sworn statement made by the assessor, and the original schedules of assessment of movable personal property on file in his office,

shall immediately return such unused receipts and said stubs to the state controller.

### 3687. Payments quarterly same rate as other taxes.

SEC. 75. All proceeds of mines, including ores, tailings, borax, soda and mineral-bearing material, of whatever character, shall be assessed for purposes of taxation, for state and county purposes quarterly in the manner following: From the gross yield returned, or value of all ores, tailings, borax, soda or mineral-bearing material of whatever character, there shall be deducted the actual cost of extracting said ores or mineral from the mine; the actual cost of saving said tailings; the actual cost of transportation to the place of reduction or sale, and the actual cost of reduction or sale; and the remainder shall be deemed the net proceeds, and shall be assessed and taxed at the same rate ad valorem, as other property is taxed, as provided in this act; *provided*, that there shall be no allowance made for expenses incurred prior to the quarter for which the assessment is made, excepting tailings and mines producing not more than one ton of ore or mineral-bearing material per day, for which expenses may be deducted for the four consecutive quarters preceding the quarter for which the assessment is made; *and, provided further*, that the net proceeds shall not a second time be assessed for taxation so long as such proceeds, in the form produced, remain in the possession of the person, firm or corporation producing the same.

See state license and bullion tax agent, secs. 4240-4248.

Proceeds of mines are personal property, and as such are subject to taxation. *Virginia City v. Chollar-Potosi G. & S. M. Co.*, 2 Nev. 91.

In construing the act providing for the taxation of the net proceeds of mines: Held, that there is nothing to prevent the collection of such taxes quarterly. (*State v. Eureka M. Co.*, 8 Nev. 16, affirmed.) *State v. Cal. M. Co.*, 13 Nev. 203; *Virginia City v. C. P. Co.*, 2 Nev. 86; *State v. Manhattan S. M. Co.*, 4 Nev. 318.

Whether this is held as a substitute for the tax levied in the first section, or in addition thereto, it is equally void and unconstitutional. Products of the mines can neither be taxed more nor less than other taxable property. That portion of this section declaring that three-fourths of the value shall be subject to taxation, is manifestly unconstitutional, the value once being

established, the whole is liable to taxation. *State v. Eastabrook*, 3 Nev. 173, 176, 179.

See *State v. Kruttschnitt*, 4 Nev. 178, under sec. 352.

All ad valorem taxes whether on the proceeds of the mines or other property must be equal. *State v. Kruttschnitt*, 4 Nev. 178.

The provisions for quarterly assessment on the proceeds of mines and quarterly payment of taxes do not impose more than a regular pro rata of taxation upon the proceeds of mines nor require the same property to be paid for more than once. *Idem*.

The entire annual proceeds of mines are subject to taxation, and not the mere proceeds on hand when the assessor happens to visit the mine. *Idem*.

The taxation of the proceeds of mines is more favorable than if taxes were imposed directly on the mines. *Idem*.

### 3688. Tax on proceeds of mines a lien on mines.

SEC. 76. Every tax levied under the authority or provisions of this act on the proceeds of mines, is hereby made a lien on the mines or mining claims, from which ores or minerals bearing gold, silver, or other valuable metal or material is extracted for sale or reduction; which lien shall attach on the first day of January, April, July and October of each year, for the quarter year commencing on those days respectively, and shall not be removed or satisfied until such taxes are all paid, or the title to such mines or mining claims shall have absolutely vested in a purchaser under a sale for said taxes.

### 3689. Time and manner of making assessment—Assessed and collected, where.

SEC. 77. Between the first Monday in January and the first Monday in February, also between the first Monday in April and the first Monday in May, also between the first Monday in July and the first Monday in August, also between the first Monday in October and the first Monday in November,

in each year, the county assessor shall ascertain, by diligent inquiry and examination, the name, title, and location of all mines and mining claims in his county, from which ores, minerals, or tailings are being extracted or worked, and also the names of all persons, corporations, associations, companies or firms owning, claiming or having possession or control thereof, and he shall then ascertain and determine, as provided in this act, the number of tons and the value per ton of all ores, quartz, minerals or tailings extracted for reduction or sale from the said mines or mining claims as aforesaid, and shall list and assess the same to the person, firm, corporation, association or company extracting the ores or minerals as aforesaid, or owning or having possession, charge or control of said mine or mining claim. The taxes shall be assessed and collected in the county where such mines or tailings are situated.

Under this section, assessors may call for sworn statements of the amount and value of the proceeds of mines, but they are not bound by such statements in making their assessments. *State v. Kruttschnitt*, 4 Nev. 178, 179, 205-215.

The requirement of this section that the value of the proceeds of mines shall be ascertained "as provided in this act," has reference to the mode of allowance for the cost of working.

Taxes on proceeds of mines for the first

quarter of the year cannot be assessed, levied or collected before the first Monday of April of such year; and they are to be assessed, levied, and collected by the officers of the county in which the mines are then situated, though they may have been during such quarter in another county. *White Pine Co. v. Ash*, 5 Nev. 279, 280.

Cited, *State v. C. P. R. R. Co.*, 10 Nev. 85.

Cited, *Bradley v. Esmeralda Co.*, 32 Nev. 159, 166 (104 P. 1058).

### 3690. Statement furnished assessor—Penalty for false statement.

SEC. 78. For the purpose of enabling the assessor to make such assessment, he shall demand from the president, secretary, superintendent, treasurer or managing agent of each corporation or association, and from each firm or persons engaged in extracting ores or minerals, or working tailings within his county, a statement under oath or affirmation, of the total number of tons extracted, or worked, or sold by him or them during the preceding quarter year; the gross yield or value of the same in dollars and cents; the actual cost of extracting the same from the mine or tailings deposit; the actual cost of transportation of the same to place of reduction or sale, and the actual cost of reduction or sale of the same, for the last preceding three months respectively. If any person shall knowingly make or give, under oath or affirmation, as aforesaid, a false statement to the assessor, such person shall be deemed guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law for the punishment of that crime.

Irrelevant matter in statement goes for nothing. *State v. Eureka Con. M. Co.*, 8 Nev. 15.

The revenue laws require the sworn state-

ment of the product of a mine to show the amount of such product in weight, and not merely the amount in dollars; both are to be given. *State v. Kruttschnitt*, 4 Nev. 178.

### 3691. Books open to inspection—Penalty for refusal to show books.

SEC. 79. The account books relating to or used in the transaction of the business [of] any person, firm, company, association or corporation, engaged in working tailings or in extracting ores or minerals for reduction or sale, shall, on demand of the assessor or his deputy, be open to his inspection. If any such person, or the president, superintendent, treasurer, secretary or managing agent or person having charge of said books of such person, firm, company, association or corporation shall neglect or refuse to give, on demand, to the assessor or his deputy access to the books aforesaid, he or they shall be deemed guilty of a misdemeanor, shall be complained of by the assessor or his deputy, thereupon arrested and tried, and on conviction thereof, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment.

**3692. Failure to make statement, penalty.**

SEC. 80. In case of neglect or refusal of any person, firm, association, president, secretary, treasurer, superintendent or managing agent, or the person having charge of the books or mines of any person, firm, company, association or corporation, engaged in working tailings or in extracting ores or minerals, for reduction or sale, to give under oath or affirmation the statement required by this act, the assessor or his deputy shall make an estimate, from the best sources within his reach, of the number of all tons of tailings, ores or minerals worked or extracted by such person, firm, company, association or corporation, for the preceding quarter, and assess the same to him or them without making any deduction for actual costs of any kind, and such assessment shall be as binding, effectual and lawful as if made upon a sworn or affirmed statement.

**3693. Equalization.**

SEC. 81. Any person, firm, company, association or corporation, except such as shall have wilfully refused to give to the assessor or his deputy, on demand, access to the books of said person, firm, company, association or corporation, feeling aggrieved on account of the assessment made as in this act provided, may appear before the board of county commissioners, at any regular session or special session thereof, called for that purpose, and ask to have such assessment equalized; and such board may proceed to hear the allegations of the party complaining, and of the assessor or his deputy, and such other evidence as may be produced by either party, and by an order entered in the minutes of their proceedings, equalize such assessment by adding to or deducting therefrom, as may seem just, and such action shall be final.

See sec. 3638, meetings of board of equalization.

A taxpayer on the proceeds of mines may be lected or sued for. State v. Manhattan S. M. Co., 4 Nev. 318.  
complain of inequality of assessment upon  
him at any time before the taxes are col-

**3694. Account of ores to be kept by mill owner—Assessor to demand exhibition of books—Penalty for refusal.**

SEC. 82. The owner, agent or person owning or having charge or control of any mill, arastra, smelting furnace, or any process by which gold or silver, or other taxable products, are extracted, shall keep, or cause to be kept, an accurate account of the number of tons of ores, quartz, or minerals reduced or smelted, the name of the mine or mining claim from which said ore, quartz, or mineral was taken, the amount and value of the bullion or other taxable product derived by smelting or reduction from the ore, quartz or mineral from such mine or mining claim, and shall, upon demand of the assessor, or his deputy, give him a statement of the same, under oath or affirmation. And if the owner, agent or person, as aforesaid, neglect or refuse to give the statement as required in this section, the assessor, or his deputy, shall have the right to demand, and it [is] hereby made his duty to demand access to and inspection of all books of said owner, agent or person owning or having the charge or control of any mill, arastra, smelting furnace or other process by which gold and silver or other taxable products are extracted, relating to the business of such mill, arastra, smelting furnace or other process, as aforesaid, and if such owner, agent or person, as aforesaid shall, on demand of the assessor, or his deputy, neglect or refuse to give a statement, under oath or affirmation, as provided in this section, or refuse to give access to the assessor, or his deputy, to the books, as aforesaid, such owner, agent or person shall be guilty of a misdemeanor, and shall be arrested on complaint of the assessor, or his deputy, and on conviction before a justice of the peace, shall be punished by a fine of not less than one hundred nor more than five

hundred dollars, or by imprisonment in the county jail for not less than twenty nor more than ninety days, or by both such fine and imprisonment.

**3695. Statement of yield to be made by assessor.**

SEC. 83. From the statements or information so received, it is hereby made the duty of the assessor to make out immediately, a certified statement or statements of the number of tons of ores, quartz, or minerals, with the yield thereof per ton reduced by such mill, arastra, smelting furnace or other process, from the mine or mining claim of any person, firm, corporation, association or company, situated in any other county in this state, stating particularly therein the number of tons, and the value per ton, so reduced for such person, firm, corporation, association or companies, and transmit such certified statement immediately, by mail or express, to the assessors of the county wherein the mine or mining claim of such person, firm, corporation, association or company is located.

**3696. Quarterly statement to be made by assessor, form of.**

SEC. 84. It shall be the duty of the several county assessors within this state to prepare and complete quarterly, on or before the second Monday in February, May, August and November in each year, a tax-list or assessment roll of the proceeds of the mines for the preceding quarter year, alphabetically arranged in books furnished them by the county commissioners for that purpose, in which books shall be listed or assessed the proceeds of all mines in their respective counties, as provided in this act. The form of the assessment roll shall be substantially as follows:

Names of owners	Description and location of mine	Number of tons extracted for the quarter	Gross yield or value of the same in dollars and cents	Actual cost of extracting same from mine	Actual cost of transportation to place of reduction or sale	Actual cost of reduction or sale	Net yield, value in dollars and cents	Total amount of tax

The quarterly payments of taxes on the proceeds of mines are so arranged that the annual proceeds do not pay a larger pro rata, even as to interest account, than if one annual tax for the annual proceeds were imposed, payable at the time other annual taxes are payable. State v. Kruttschnitt, 4 Nev. 178.

The taxation of the proceeds of mines is more favorable to mining interests than if taxes were imposed directly upon the mines as upon other real property. Idem.

Cited, White Pine Co. v. Ash, 5 Nev. 280.

Cited, Thorpe v. Schooling, 7 Nev. 15-18.

Construed, Ex Parte Martin, 7 Nev. 140; Bowker v. Goodwin, 7 Nev. 135, 139, 140; Ex Parte Robinson, 12 Nev. 263 (28 A. R. 794).

The clause in this section, requiring the auditor to ascertain that the assessments on the assessment roll comply with the sworn statements, must be read in connection with sec. 101 and other parts of the act, and does not authorize him to alter the assessments so as to make them conform to the sworn statements; its object was merely for the detection of errors in calculation and clerical mistakes in transferring the result of statements accepted as correct to the assessment roll. State v. Kruttschnitt, 4 Nev. 179, 208-210.

Cited, State ex rel. Piper v. Gracey, 11 Nev. 234.

Cited, State ex rel. Drake v. Hobart, 12 Nev. 413.

**3697. Assessor to deliver sworn statement—Auditor to report to controller.**

SEC. 85. On the completion of his tax-list or assessment roll for each period of three months, the assessor shall attach his certificate thereto and

deliver it, and the sworn or affirmed statements provided for in this act, to the county auditor, who shall examine said assessment roll and ascertain that the assessments therein entered comply with the sworn or affirmed statements relating thereto; and that in case of neglect or refusal to give the statement herein required, that fact is noted under the name of the firm, corporation, company or association so neglecting or refusing. The county auditor shall then add up the columns of valuation as set down in the assessment roll, and shall prepare a statement (which shall be under oath) of the number of tons of ore, quartz or mineral, bearing gold and silver, and other taxable products listed upon said assessment roll, the total value thereof, the total amount on which the taxes were levied, and the total amount of taxes on the same, which statement he shall immediately forward to the state controller.

### 3698. Assessor to collect.

SEC. 86. After adding up the columns of valuation and extending the taxes as provided in the preceding section, the county auditor shall attach his certificate thereto, and shall, on or before the fourth Monday in February, May, August and November, in each year, deliver the assessment roll for the last preceding quarter, respectively, to the county assessor for collection, and shall charge the assessor with the full amount of taxes levied.

Cited, State ex rel. Piper v. Gracey, 11 Nev. 235.

### 3699. Assessor to give notice, when and how—Not to receive taxes, when—Delinquent tax list filed, when.

SEC. 87. Upon receiving the assessment roll of the taxes levied upon the proceeds of the mines, as provided in this act, for any quarter, the assessor shall forthwith give notice by publication in one newspaper, if there be any published in his county, and if none be published, then by posting notices in three public and conspicuous places in his county, that the taxes on the proceeds of the mines, for the preceding quarter, are due and payable, and that the laws with regard to their collection will be strictly enforced, and shall proceed to collect the taxes by demanding the same (either in person or by deputy) of every person, firm, corporation, association or company against whom they are assessed, his or their agent or agents, or the president, treasurer or trustee of any incorporated company so assessed. He shall use all due diligence, and make personal demand for taxes, if possible, on all persons, firms, corporations or companies owing the same, on or before the second Mondays in March, June, September and December, after which he need not make such personal demand, but shall retain the assessment roll in his office, and receive the taxes offered to be paid thereon until the close of his official business on the third Monday in March, June, September, and December in each year. After said dates it shall be unlawful for him to receive or receipt for any taxes due on the assessment for the preceding quarter respectively; but he shall immediately ascertain the total amount of taxes then delinquent on the assessment of the immediate preceding quarter, and file in the office of the auditor a statement of said amounts, verified by the oath of himself or deputy, and shall proceed to make out a copy of the quarterly assessment roll as far as relates to delinquent taxpayers. Said list shall be verified by the oath of himself or deputy, and shall be by him filed in the office of the county auditor, as follows: The delinquent list for the quarter commencing January first and ending March thirty-first, shall be filed on the fourth Monday in June in each year; the delinquent list for the quarter commencing April first and ending June thirtieth, shall be filed on the fourth Monday in September in each year; the delinquent list for the quarter commencing July first and ending September thirtieth, shall be filed on the

fourth Monday in December in each year, and the delinquent list for the quarter commencing October first and ending December thirty-first, shall be filed on the fourth Monday in March in each year.

Cited, *State v. Eureka Con. M. Co.*, 8 Nev. 15; *State v. Y. J. S. M. Co.*, 14 Nev. 228.

**3700. Assessor may force collections by sale—Fees of assessor—May give absolute title.**

SEC. 88. At any time while the assessment roll of any quarter is in the hands of the assessor for collection, the assessor may seize upon the personal property, or so much thereof as may be sufficient to satisfy the taxes and costs of any person, firm, corporation, association or company, who shall neglect or refuse to pay such taxes for one week after such demand of the assessor or his deputy; and shall post a notice of such seizure, with a description of the property and the time and place whereon it will be sold, in three public places in the township or precinct where it is seized, and shall, at the expiration of five days, proceed to sell, at public auction, at the time and place mentioned in the notice, to the highest bidder, for cash, a sufficient quantity of such property to pay the taxes and costs incurred. And for this service the assessor shall be allowed, from the party neglecting or refusing as aforesaid, a fee of three dollars and the same mileage a sheriff would be entitled to receive for traveling to the place to make a levy; and, upon payment of the purchase money, he shall deliver to the purchaser the property sold, together with a certificate of sale, and the amount of the taxes or assessment and expenses thereon, for which the property was sold, whereupon the title to the property so sold shall vest absolutely in the purchaser.

Mileage, see secs. 2037, 2040.

Cited, *State v. Y. J. S. M. Co.*, 14 Nev. 231.

**3701. Assessor to credit taxes paid.**

SEC. 89. Whenever any tax is paid to the assessor on the assessment of the proceeds of the mines, he shall mark the word "paid" opposite the name of the person, firm, corporation, association or company paying such tax, and shall give a receipt therefor, specifying the number of tons, and the value thereof, assessed to such person, firm, corporation, association or company, for the quarter for which such assessment roll was made out, with the amount of tax assessed thereon.

**3702. Assessor to attend at office of auditor.**

SEC. 90. On the fourth Mondays in March, June, September, and December in each year, the assessor shall attend at the office of the county auditor with the assessment of the proceeds of the mines for the quarter preceding respectively, and the auditor shall then and there administer an oath to the assessor, which shall be written and subscribed on his assessment roll, to the effect that each person, firm, corporation, association or company, and all proceeds of the mines assessed in said roll on which the taxes have been paid has the word "paid" marked opposite the name of such person, firm, corporation, association or company; and the auditor shall then foot up the amount of taxes remaining unpaid, and credit the assessor with the amount, and shall then make a final settlement with the assessor for all taxes charged against him on account of said assessment roll.

Cited, *State ex rel. Drake v. Hobart*, 12 Nev. 413.

**3703. Assessor to pay over.**

SEC. 91. On Monday of each week, while the assessment roll shall be in the hands of the assessor for collection, he shall pay over to the county treasurer all money coming into his hands from taxes on said assessment roll,

taking duplicate receipts therefor, one of which he shall file with the county auditor, who shall credit him and charge the county treasurer therewith.

This section, being merely to carry out the unconstitutional part of section 99, falls with it and is void. *State v. Eastabrook*, 3 Nev. 173, 180. Cited, *White Pine Co. v. Ash*, 5 Nev. 280, 281.

### 3704. Penalty for failure in duty.

SEC. 92. If any assessor shall refuse, for the period of five days, to make the payments and settlements with the treasurer and auditor of his county, as in this act specified, he and his sureties shall be held liable to pay the full amount of taxes charged upon the assessment roll for that quarter, and the district or prosecuting attorney, of his own volition, or on being instructed to do so by the state controller, or the board of county commissioners of the county, shall cause suit to be brought against such assessor and his sureties for the full amount due on the auditor's books, on account of such quarterly assessment; and if such suit is brought, no credit or allowance whatever shall be made to such refusing or neglecting assessor for the delinquent taxes outstanding.

### 3705. Additional bond, when.

SEC. 93. The board of county commissioners of each county shall exact an additional bond from the assessor in such penal sum (not to exceed twenty thousand dollars) as the said board shall believe to be necessary to insure the prompt and faithful payment to the county treasurer of all moneys received by such assessor for taxes on the proceeds of the mines.

### 3706. Duties of auditor and district attorney.

SEC. 94. The auditor shall, within three days after receiving the delinquent list on the assessment of the proceeds of the mines for any quarter year, deliver the same to the district or prosecuting attorney. The district or prosecuting attorney shall be held responsible on his official bond, given for the faithful performance of his duties in collecting state and county taxes, for any wrongdoing in collecting the taxes on the proceeds of the mines.

Cited, *State v. Y. J. S. M. Co.*, 14 Nev. 228.

### 3707. District attorneys to begin suits, when and where—Damage—Penalties.

SEC. 95. The district or prosecuting attorneys of the several counties of this state are hereby authorized and directed, immediately on receiving the delinquent list from the auditor, as provided in the preceding section, to commence action in the name of the State of Nevada against the person, firm, corporation, company or association so delinquent, and against the mines or mining claims from which the gold and silver-bearing ores, quartz or minerals, or other taxable products were extracted and assessed, so delinquent. Such action may be commenced in the county where such assessment is made, before any justice of the peace or court in said county having jurisdiction thereof, and such jurisdiction shall be determined solely by the amount of delinquent taxes sued for, not regarding the location of the mine or mining claim as to township, nor the residence of the person, firm, corporation, company or association, as to town, township, county or state. Ten per cent additional, by way of penalty, shall be collected on all delinquent taxes.

In construing the various sections of the revenue law relating to the collection of delinquent taxes: Held, that the per centum penalty does not apply to suits brought for the collection of delinquent taxes on the proceeds of mines. *State v. Cal. M. Co.*, 13

Nev. 203; *State v. Con. V. M. Co.*, 13 Nev. 228.

Cited, *State v. Y. J. M. Co.*, 14 Nev. 228.

Cited, *State v. Cal. M. Co.*, 15 Nev. 242. case of same title, 15 Nev. 311.

**3708. Form of complaint.**

SEC. 96. The complaint in said action may be as follows:  
 State of Nevada, County of..... [Title of court.]

The State of Nevada v. A. B. & Co., the possessory claim to the mine or mining claim (describing it). The State of Nevada, by C. D., district or prosecuting attorney of the county of....., complains of A. B., and also the following mine or mining claim (describing the mine or mining claim with the same particularity as in actions of ejection), and for cause of action says: That between the first Monday in..... (here insert the time in which the assessor is directed to make the assessment for the quarter for which the taxes are delinquent), in the county of....., in the State of Nevada, E. F., then and there being county assessor of said county, did duly assess and set down on an assessment roll for the quarter year commencing the first day of....., and ending the.....day of....., .....tons of gold and silver-bearing ore, quartz or mineral, or other taxable product, extracted from the mine or mining claim designated and described in this complaint; said ore, quartz or mineral was assessed at .....dollars per ton from the sworn (or affirmed) statement furnished by ..... his (or their, as the case may be) agent (or superintendent), to the assessor (or, in case no statement was furnished the assessor, then the assessed value may be stated from the best source of information within the assessor's reach); that said A. B. was then and there the owner of said possessory mine or mining claim, and did extract therefrom the gold and silver-bearing ore, quartz or mineral, or other taxable product, assessed, and upon which the taxes are now delinquent and unpaid; and that said ore, quartz or mineral, or other taxable product, was duly assessed to him, and upon it there has been duly levied, by the operation of the law taxing the proceeds of the mines, for the quarter commencing the first day of....., in the year of our Lord one thousand eight hundred and....., a state tax of .....dollars, and a county tax of .....dollars, amounting in the whole to.....dollars, all of which was duly assessed and levied against the proceeds of the mines or mining claim as aforesaid. Wherefore, plaintiff prays judgment against said A. B. for the sum.....dollars, and a separate judgment against said possessory mine or mining claim for the sum of.....dollars, the whole of said tax on the proceeds of the possessory mine or mining claim herein described, per quarter year delinquent, and for ten per cent damages for nonpayment thereof, as required by law, and for such further judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes, and the commencement of this action.

C. D., district or prosecuting attorney, County of.....

Cited, State v. Kruttschnitt, 4 Nev. 209, 210; State v. Y. J. S. M. Co., 14 Nev. 235.

**3709. What may be set up in answer.**

SEC. 97. So far as they are applicable, and not otherwise expressly provided in this act, the answer to the complaint as provided in the preceding section, the means and manner of serving the papers, fees of the district or prosecuting attorney, and officers serving papers, and in all other matters concerning the collection of delinquent taxes on the proceeds of the mines, the laws for the collection of taxes on real estate and personal property, as provided in this act, shall apply.

See secs. 3665, 3677.

Cited, State v. Cal. M. Co., 13 Nev. 222.

**3710. Controller to furnish blanks.**

SEC. 98. The state controller is hereby required to prepare and furnish

the necessary blanks and instructions for the statements required to be furnished his office.

Cited, *Hassett v. Walls*, 9 Nev. 392.

### 3711. Disposition of poll tax—Proviso.

SEC. 99. Each male resident of this state, over twenty-one and under sixty years of age (uncivilized American Indians excepted), and not by law exempt, shall pay an annual poll tax, for the use of the state and county, of three dollars; and for the purposes of this act, any person shall be deemed to be a resident of this state, who shall reside in this state, or who shall be employed therein upon any public or private works, for a period exceeding ten days; *provided*, that any person who has paid a poll tax in any other state or territory and has in his possession a receipt therefor, shall not be required to pay a poll tax in this state for the year represented by such poll-tax receipt issuing in another state or territory. *As amended, Stats. 1911, 53.*

See sec. 3841 (Const., sec. 256).

### 3712. [Sec. 100 superseded by sec. 3841.]

### 3713. Receipts, how issued.

SEC. 101. The auditor shall, from time to time, issue to the assessor (who shall be ex officio poll-tax collector) so many of the receipts for poll taxes as he may need, taking his receipt therefor and charging him therewith.

### 3714. Penalties imposed on assessors, when.

SEC. 102. No receipt for poll tax, other than that mentioned in section 100 of this act, shall be used or given for the payment of such tax; and any assessor who shall receive any poll tax without delivering the proper receipt required by law, shall be guilty of a misdemeanor, for each poll tax so received, and on conviction thereof, shall be punished by imprisonment in the county jail for not less than three months, nor more than one year, or by a fine of not less than one hundred dollars, nor more than one thousand dollars for each offense, or by both such fine and imprisonment.

### 3715. Bond of poll-tax collector.

SEC. 103. Upon receiving such receipts from the auditor, the assessor shall give a receipt to said auditor for the same, and the said auditor shall immediately charge the same to the assessor so receiving them. The board of county commissioners in each county shall exact (if they deem advisable) an additional bond from the assessor as ex officio poll-tax collector, with additional sureties in such penal sums as the said board shall believe to be necessary to insure the prompt and faithful payment to the county treasurer of all moneys received by such assessor for poll taxes.

### 3716. Receipt evidence of payment.

SEC. 104. No person shall be deemed or held to have paid his poll tax unless he be able to exhibit a receipt therefor, issued from the office of the state controller, or otherwise prove the payment of the same; and no receipt shall be valid for any year unless issued after the first Monday in January of such year.

See sec. 3711.

### 3717. Penalties for fraudulent issue of receipt.

SEC. 105. Any person or persons who shall pass, sell or transfer, or attempt to pass, sell or transfer, or who shall forge or fraudulently issue any receipt or receipts for poll tax, contrary to the spirit or intention of this act, shall be guilty of a felony, and on conviction thereof, shall be punished by imprison-

ment in the state prison for not less than one year nor more than two years.

**3718. Summary collection of poll taxes—Wages may be garnished—Employers may be held responsible, when—Liability of assessor.**

SEC. 106. To enforce the collection of poll taxes, as provided in this act, the assessor may seize so much of any and every species of personal property whatsoever, claimed by any person liable to, and refusing or neglecting to pay his poll tax, or property in the possession of, or due from any other person, and belonging to such person so refusing or neglecting to pay such poll tax, as will be sufficient to pay the same and costs of seizure, which costs shall not exceed three dollars, and shall sell the same at any time or place, giving verbal notice of one hour previous to such sale; and any person indebted to another, liable to pay a poll tax, but who has neglected or refused to pay the same, shall be liable to pay said tax for such other person, after service upon him by the assessor, of a notice in writing, stating the name or names of the person or persons so liable and owing a poll tax, and such debtor may, upon paying the same, deduct the amount thereof; and any person or persons, company or corporation, doing business within this state, and having by direct contract, or indirectly through other contractors, in their employ one or more persons liable to and owing a poll tax in this state, shall be liable for any and all poll taxes that may be due from such employees, and may deduct the amount from any sums due, or that afterwards may become due to such employees, whether such wages are payable directly to such employees or to other persons who furnish such employees under contract to such person or persons, company or corporation; and the assessors of the respective counties are authorized, and it is hereby made their duty, to seize so much of any and every kind of personal property whatsoever, claimed by such person or persons, company or corporation, refusing or neglecting to pay the poll tax of all persons in their employ in this state, as will be sufficient to pay the same and costs of seizure, and shall sell the property thus seized at any time and place, by giving notice to the claimant of at least one day of the time and place of sale; *provided*, that the assessor shall first require of the person or persons, or his or their agents, or, if a company or corporation, the president, secretary, superintendent, agent, manager, or whomsoever may be in charge of any works within this state, belonging to or under the control of such company or corporation, a statement, under oath, of the number of persons employed by them; and should any person thus required refuse or neglect to make such statement, as herein provided, it shall be the duty of the assessor to make an estimate of the number of persons in the employ of such person or persons, company or corporation, as he may deem just and reasonable, and the assessment thus made shall be as valid as though made and verified as herein specified; *and, provided further*, the county commissioners may, in their discretion, require the assessor to demand the statement and make the assessment, as provided in this section of this act, at different times, and at any time between the first Monday in January and the first Monday of December in each year; and if any person or persons, company or corporation, should have any persons in their employ not previously assessed, they shall make and furnish to the assessor a statement of the number of such unassessed persons in their employ, and shall thereupon be required to pay their poll tax, as provided for in this section of this act; *and, provided further*, that it shall be lawful for the assessor, if any person, or any company or corporation, through its proper officer, desire it, or if he fail to collect at the time of making the assessment of real and personal property, to enter upon the statement required by section 8 of this act, in cases where real estate is assessed, the number and amount of

poll taxes due from such person, company, or corporation, deliver receipts therefor, and mark upon the stub "Statement of (name)." Such poll taxes shall be entered in a separate column upon the assessment roll, and a lien shall attach to both the real and personal property of the person or persons, company or corporation, charged therewith. The poll taxes so charged shall be collected with the other taxes assessed, and should they become delinquent they shall be subject to the ten per centum penalty provided in section 42 of this act, and shall be collected with the real and personal property taxes. The assessor and his sureties shall be liable for all taxes not collected by him nor entered upon the assessment roll.

Cited, *State ex rel. Hallock v. Boyd*, 19 Nev. 357, 358 (11 P. 36).

Cited, *Bradley v. Esmeralda Co.*, 32 Nev. 159, 166 (104 P. 1058).

### 3719. Sale of property by assessor.

SEC. 107. The assessor, after having deducted the poll tax for which property was sold (as provided for in the preceding section), and the necessary fees and costs of sale, shall return the surplus of the proceeds to the owner of the property. A delivery of the possession of the property by the assessor or his deputy, to any purchaser, at any such sale, shall be sufficient title in the purchaser, without execution of a certificate of purchase thereof by the assessor.

### 3720. Refusing information a misdemeanor—Penalty.

SEC. 108. If any person shall give the assessor or his deputy a false name, or shall refuse to give his name, or if any person having men in his employ shall refuse to furnish the assessor or his deputy, when requested, the name and residence of each man employed by him, if known, or if such person shall refuse to grant free access to the assessor or his deputy to the building or place where such men are employed, he shall be guilty of a misdemeanor, and shall be arrested on complaint of the assessor or his deputy, and upon conviction before a justice of the peace, he shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment for a term of not less than two days nor more than three months, or by both fine and imprisonment.

3721. [Superseded by sec. 3841. See Constitution, sec. 256.]

### 3722. Assessor to pay over.

SEC. 110. On the first Monday in each month, the assessor shall pay over to the county treasurer all moneys in his hands collected as poll taxes, and take duplicate receipts therefor; and he shall, on the same day, repair to the office of the county auditor and make oath before the auditor of the total number of poll taxes collected by him during the last preceding month, and file, with the auditor, the county treasurer's receipt for the total amount of poll taxes collected; and the auditor shall charge the treasurer with said amount.

### 3723. Assessor to return receipts.

SEC. 111. On the first Monday in December, in each year, the assessor shall return to the county auditor all poll-tax receipts received by him and not used, and shall pay to the county treasurer the total amount collected, and not paid heretofore; and on the same day the county treasurer shall attend with the assessor at the office of the county auditor, and the county auditor shall, then and there, finally settle with the assessor for all poll-tax receipts signed by the treasurer and delivered to him.

See sec. 3841.

### 3724. Poll-tax roll.

SEC. 112. It shall be the duty of the assessor to keep a roll of the names

of all persons who shall pay a poll tax in each year, and the date and amount of each payment; also, in a separate column of said roll, the names of all persons liable to such tax, from whom he has demanded such tax, who have refused or neglected to pay the same, with the date of such demand. This return shall be certified by him as a true and full return of all persons from whom he has made such collection, or on whom he has made demand, and shall be verified by his oath or affirmation.

**3725. Auditor to transmit statement to controller.**

SEC. 113. On the second Monday in December it shall be the duty of the county auditor, and he is hereby required, to forthwith transmit to the controller of state a certified statement of the number of poll taxes received by him from the county treasurer, the number of such receipts issued by him to the assessor, the number of such receipts returned to him by the assessor, the amount of money paid over by the assessor to the county treasurer on poll-tax collections, the amount collected by the tax receiver, and the amount delinquent, and the number of such receipts then transmitted to the controller of state.

See sec. 3841.

The bills of county assessors for making the militia rolls must be passed upon by the state board of military auditors and paid

out of the militia fund of the state. State ex rel. Hobart v. Ryland, 14 Nev. 46, 48. Cited, Grimes v. Goodell, 3 Nev. 80, 81.

**3726. Penalty for neglect.**

SEC. 114. Any assessor who shall neglect to make the returns required by this act shall forfeit and pay the sum of two hundred dollars to the use of the county, which may be recovered by suit on his official bond against the sureties, and the same shall work a forfeiture of his office.

**3727. License, amount of.**

SEC. 115. The sheriff in the several counties of this state shall be ex officio collector of licenses, as provided in this act. There shall be levied and collected the following licenses:

First—From each proprietor or keeper of a billiard table, not kept for the exclusive use of the owner or his family, for each table, five (\$5) dollars per quarter year; for a nine or ten-pin or bowling alley, ten (\$10) dollars per quarter year, license to be granted for a term of not less than three months.

Second—From the manager, lessee or owner of any theater, five (\$5) dollars per day, if granted for a term less than one month; if granted for one month, twenty (\$20) dollars shall be paid; if granted for three months, forty (\$40) dollars shall be paid; if granted for one year, seventy-five (\$75) dollars shall be paid; and for each exhibition of serenaders, opera or concert singers, the same payment for license as is required for theatrical performances; for each exhibition of circus, caravan or menagerie, or any collection of animals for public amusement, twenty (\$20) dollars for each exhibition; and for each show of any figures and for each exhibition of wire-dancers or sleight-of-hand performances, or other exhibitions or performances, for hire, not herein enumerated, ten (\$10) dollars per day.

Third—For each pawnbroker, one hundred (\$100) dollars per quarter year.

Fourth—For each keeper of an intelligence office, fifteen (\$15) dollars per quarter year. All such licenses shall be paid for in advance.

County license collector, section 1280; see, also, section 954.

Licenses must be posted in a conspicuous place, section 6809.

Vending without license, penalty, section 6810.

Insurance companies and agents, sections 1279, 1280.

State liquor license, sections 3777-3785.

Peddlers, sections 3735, 3880, 3890-3897.

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Cigarettes, sections 3872, 3876.

Sheep, sections 3768-3774.

Automobiles, section 3877.

Glove contests, section 3881.

Traveling salesmen (exemption), section 3879.

Stationary engineers, sections 3898-3904.

See state license and bullion tax agent act, sections 4240-4248.

Foreign building and loan associations, section 1356.

The office of collector of licenses has been regarded in all revenue laws as a distinct office from that of sheriff. *Bradley v. Esmeralda Co.*, 32 Nev. 159, 16<sup>c</sup> (104 P. 1058).

### 3728. Bankers defined—License—Carriers.

SEC. 116. License shall be obtained by any person or persons, private association or corporation, doing business in this state, engaged in one or more of the following occupations, to wit: In buying foreign or inland bills of exchange, or sight checks, or drafts, or in loaning money at interest, or in buying or selling notes, bonds or other evidences of indebtedness of private persons, or state, county or city stocks or indebtedness; or stock of incorporated or unincorporated companies, or person or persons, or in buying or selling gold dust, gold or silver bullion, gold or silver coin, or engaged as keeper of savings banks, or engaged in receiving general or special deposits of gold dust, gold or silver coin, or bullion, for profit. All such persons, companies and corporations are hereby declared to be bankers within the meaning of this act; *provided*, that checks used in the transaction of business, which are drawn and payable within this state, shall not be included as being liable to the provisions of this act in regard to licenses. Licenses shall also be obtained by any person or persons, private associations or corporations, doing business in this state, and engaged in transmitting gold dust, gold or silver coin or bullion from any place in this state to any place without this state, or from one place to another place within this state, for profit, and the same shall be taken to be a common carrier, within the meaning of this act.

### 3729. Brokers defined—Licenses classified.

SEC. 117. Brokers, or such persons, associations or corporations as are engaged in one or more of the following occupations, to wit: In loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons, or in buying and selling United States government, state, county or city stocks, or other evidence of United States government, state, county or city indebtedness, or stocks, notes, bonds or other evidence of indebtedness of incorporated companies, or in buying and selling gold dust, gold or silver bullion, or gold or silver coin, or in receiving general or special deposits of gold dust, gold or silver bullion, or gold or silver coin, for profit, or in keeping or conducting savings banks, shall be divided into five classes, as follows:

Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter year and over, shall constitute the first class.

Those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars per quarter year, shall constitute the second class.

Those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars per quarter year, shall constitute the third class.

Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter year, shall constitute the fourth class.

Those doing business in any amount under fifty thousand dollars per quarter year, shall constitute the fifth class.

The license shall be given for the first class upon the payment of one hundred dollars per quarter year.

For the second class, eighty dollars per quarter year.

For the third class, fifty dollars per quarter year.

For the fourth class, thirty dollars per quarter year.

For the fifth class, twenty dollars per quarter year.

And a separate license shall be obtained for each establishment or separate house of such business located in the same county.

### 3730. Bankers classified—Amount of license—Common carriers liable.

SEC. 118. Bankers, as defined in section 116 of this act, shall be divided into seven classes, as follows: Those doing business in the aggregate to the amount of five hundred thousand dollars or more, per month shall constitute the first class.

Those doing business in the aggregate to the amount of three hundred thousand dollars, and less than five hundred thousand dollars, per month, shall constitute the second class.

Those doing business to the amount of two hundred thousand dollars, and less than three hundred thousand dollars, per month, shall constitute the third class.

Those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars, per month, shall constitute the fourth class.

Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars, per month, shall constitute the fifth class.

Those doing business to the amount of twenty-five thousand dollars, and less than fifty thousand dollars, per month, shall constitute the sixth class.

Those doing business in any amount less than twenty-five thousand dollars, per month, shall constitute the seventh class.

The license for the first class shall be given upon the payment of two hundred dollars per month.

For the second class, upon the payment of one hundred and fifty dollars per month.

For the third class, upon the payment of one hundred dollars per month.

For the fourth class, upon the payment of seventy-five dollars per month.

For the fifth class, upon the payment of fifty dollars per month.

For the sixth class, upon the payment of twenty-five dollars per month.

And for the seventh class, upon the payment of twelve dollars per month; and a separate license shall be obtained for each establishment or separate house of such business, located in the same county.

Common carriers, as defined in section 116 of this act, shall be liable to an annual license of one hundred and fifty dollars, payable quarterly; *provided*, that but one license shall be required from the same person, company or corporation in the same county.

See secs. 662, 3730.

### 3731. Merchants liable for license—Medicines—Exception.

SEC. 119. Every person who has a fixed place of business, who may deal in goods, wares, or merchandise, wines or distilled liquors, except the wines and distilled liquors produced or manufactured from the agricultural products of this state, when sold by the producer or manufacturer thereof, and except such as are sold by auctioneers under license according to law, shall pay quarterly an amount of money for license, as required by the class in which such person is placed by the sheriff of the county, under the provisions of the succeeding section; *provided, always*, that nothing herein shall be construed to extend to physicians, surgeons, apothecaries, or chemists, as to any wines or spirituous liquors which they may use in the preparation or compounding of medicines.

### 3732. Merchants liable—License classified—Amount of license.

SEC. 120. Every person who shall sell or vend any goods, wares or merchandise, or wines, or distilled liquors, drugs or medicines, jewelry, wares of precious metals, and persons who keep horses or carriages for rent or hire, except mules, horses, or animals used in the transportation of goods, shall obtain from the sheriff of the county in which such business may be transacted, for each of the branches of business, in this and the preceding sections enumerated, a license for the transaction of such business, at the following rates, to wit: All persons dealing as aforesaid, shall be classed according to the amount of the average monthly sales effected, in the following manner, that is to say:

Those who are estimated to make average monthly sales to the amount of one hundred thousand dollars or more, shall be constituted the first class.

Of seventy-five thousand dollars, and less than one hundred thousand dollars, shall constitute the second class.

Of fifty thousand dollars, and less than seventy-five thousand dollars, shall constitute the third class.

Of forty thousand dollars, and less than fifty thousand dollars, shall constitute the fourth class.

Of thirty thousand dollars, and less than forty thousand dollars, shall constitute the fifth class.

Of twenty thousand dollars, and less than thirty thousand dollars, shall constitute the sixth class.

Of ten thousand dollars, and less than twenty thousand dollars, shall constitute the seventh class.

Of five thousand dollars, and less than ten thousand dollars, shall constitute the eighth class.

Of one thousand dollars, and less than five thousand dollars, shall constitute the ninth class.

Of all amounts under one thousand dollars, the tenth class.

The license for the first class shall be given upon the payment of fifty dollars per month.

For the second class, thirty-seven dollars and fifty cents per month.

For the third class, twenty-five dollars per month.

For the fourth class, twenty dollars per month.

For the fifth class, fifteen dollars per month.

For the sixth class, ten dollars per month.

For the seventh class, seven dollars and fifty cents per month.

For the eighth class, five dollars per month.

For the ninth class, three dollars and seventy-five cents per month.

For the tenth class, two dollars and fifty cents per month; *provided*, that the sale of liquors and wines, by persons, licensed under this section shall not be in less quantities than one quart measure.

Cited, *Edgecomb v. Creditors*, 19 Nev. 159 (7 P. 533).

Cited, *Ex Parte Livingston*, 20 Nev. 286 (4 L. R. A. 732, 21 P. 322).

### 3733. Liquor dealers liable—License payers classified.

SEC. 121. Any person or persons who may dispose of any spirituous, malt or fermented liquors or wines, in less quantities than one quart, shall, before the transaction of any such business, take out a license from the sheriff of the county in which he or she proposes to do such business, and pay therefor the sum of ten dollars per month; *provided*, that all persons engaged in retailing liquors as aforesaid, in connection with entertainment for travelers, at any point distant one mile or more outside the limits of any city or town in this state, shall pay a quarterly license of fifteen dollars; *and provided, further*, that no such person or persons shall be entitled, under and by virtue of said license, to sell or cause to be sold within this state, any such spirituous, malt

or fermented liquors, or wines, on any day upon which any general election is held, or within the limits of any county or city on any day upon which any special or municipal election is held therein, but it shall be expressed in each and every license so granted, that the person or persons to whom the same is granted, shall and will not sell or cause to be sold, any such liquors or wines on such day or days.

State liquor license act, see secs. 3777-3785.

### 3734. Hotels classified.

SEC. 122. All tavern, hotel, or inn-keepers, all restaurants, public boarding houses, or eating stands, and all public lodging houses shall be divided into three classes, as follows:

Those doing business in the aggregate to the amount of three thousand dollars, or over, per month, shall constitute the first class.

Those doing business to the amount of one thousand dollars, and less than three thousand dollars, per month, shall constitute the second class.

Those doing business to the amount of less than one thousand dollars per month, shall constitute the third class.

The license for the first class shall be given upon the payment of forty-five dollars per quarter.

For the second class upon the payment of fifteen dollars per quarter.

And for the third class upon the payment of seven dollars and fifty cents per quarter; *provided*, that nothing in this section shall require the payment of any license for lodging houses that are kept in connection with eating houses, where the aggregate receipts of such lodging department does not exceed thirty dollars per month.

Nothing in this section shall be so construed as to include the right to sell spirituous or malt liquors and wines, but the same shall be distinct and separate business therefrom, and require separate and exclusive license therefor. Any house keeping two or more boarders shall be deemed a public boarding house.

### 3735. License to peddle—Sheriff to issue license—Misdemeanor.

SEC. 123. Every traveling merchant, hawker, or peddler who shall carry a pack or vend goods, wares, or merchandise of any kind, and every auctioneer, shall pay for such license the sum of ten dollars per month; and every traveling merchant, hawker, or peddler, who shall use a wagon, or one or more animals, for the purpose of vending any goods, wares, or merchandise of any kind, or wines, fermented or spirituous liquors, shall pay for such license twenty-five dollars per month; *provided*, that nothing in this section be so construed as to apply to the sale of fruits or (the) agricultural products of this state or the State of Utah. The county auditor shall issue to the sheriffs of the several counties the licenses contemplated in this section, which license so issued shall authorize the holders of the same to vend goods, wares, and merchandise as set forth in said license within the county wherein such licenses are obtained; and it is hereby made the duty of every justice of the peace, constable, sheriff, and all peace officers, to demand the license of any such peddler, hawker, or other person named herein, and if such person be found not to have a license, as directed by law, the person so offering any goods, wares or merchandise for sale, shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not less than fifty, nor more than five hundred dollars. *As amended, Stats. 1897, 31.*

See sec. 3890, et seq.

In construing section 1 of article 10 of the state constitution (ante, 352): Held, that it refers particularly to the levy of ad valorem taxes on all property, real and personal, and does not apply to licenses imposed for con-

ducting any business or profession. *Ex Parte Robinson*, 12 Nev. 263.

Traveling merchant required to pay a license as a merchant. Petitioner kept a stock of goods in San Francisco, and comes

to Virginia City, for the purpose of soliciting orders for goods: Held, that the City of Virginia was authorized to collect a license tax from him as a merchant. *Ex Parte Siebenhauer*, 14 Nev. 365.

City and county license may be required for the same business. *Idem*.

Meaning of word "solicitor." *Idem*.

This section as amended by Stats. 1877, 79, upheld as constitutional. *Ex Parte Robinson*, 12 Nev. 263 (28 A. R. 794).

The power to tax all property and business within this state is an essential attribute to its sovereignty; and there is no restraint upon its exercise when within constitutional limits, except the responsibility of the members of the legislature to their constituents. *Idem*.

A traveling merchant who has sold goods,

wares and merchandise, without having procured the license required by this section, can maintain an action for their value. *Mandlebaum v. Gregovich*, 17 Nev. 87, 88, 92 (45 A. R. 433, 28 P. 121).

This section does not prohibit the sale of goods by any person who has failed to procure the license; but it imposes a penalty against every one who sells or offers for sale any goods without having a license so to do. The penalty attaches to the person and does not affect the contract of sale. *Idem*.

This section was not enacted for the purpose of prohibiting or regulating the business of selling goods, but was intended to raise money for revenue purposes; to compel traveling merchants to contribute for carrying on and conducting their business in this state. *Idem*.

### 3736. Houses of amusement licensed—State and county division of.

SEC. 124. Any person or persons who may conduct any hurdy-gurdy house, dance house or concert saloon in this state, where women or girls are employed to dance or to solicit the purchase by the person visiting such house, either directly or indirectly, of any kind of liquor, or wine or cigars, or to solicit such persons so visiting to treat to any kind of liquor, wine or cigars, shall, before entering upon the conduct of such dance house, or hurdy-gurdy house, or concert saloon, take out a license, in addition to the retail liquor license, from the sheriff of the county in which such person or persons propose to carry on such business, and pay therefor the sum of five hundred dollars for each and every three months. All moneys received for licenses under the provisions of this act shall be paid three-quarters into the county treasury and one-quarter into the state treasury for general county and state purposes respectively. *As amended, Stats. 1903, 33; 1905, 208.*

See secs. 6511-6513, regulating location of hurdy-gurdy houses.

### 3737. Duties of sheriffs—When license to be procured—Infraction of law a misdemeanor—Penalty—Defendant may plead what.

SEC. 125. Each sheriff, as collector of licenses, shall make diligent inquiry and examination as to all persons in his county liable to pay for licenses, as provided in this act, and he is hereby empowered, and it shall be his duty, to require each person to make a statement, under oath or affirmation, of the amount of business which he or the firm of which he is a member, or for which he is agent or attorney, or the association or corporation of which he is president, secretary or managing agent, have done during the last preceding month or quarter, as the case may be, in order to carry out the provisions of this act. Thereupon, such person, agent, attorney, secretary, president or managing agent shall procure a license from said sheriff, of the class of which such party is liable to pay for, and in all cases where an underestimate is made by the party applying, the party making such underestimate shall be required to pay a double license for the next month, or quarter, as the case may be. License shall be procured immediately before the commencement of any business or occupation subjected to license tax, under the provisions of this act. Such license shall authorize the party obtaining the same, within his town, city or particular locality in the county to transact business as specified in such license; *provided*, that nothing in this act, nor in any license issued under it, shall be construed as authorizing any person to carry on any business within the limits of any incorporated city or town, authorized by its charter to impose city or town license, unless such person shall, in addition to the license required by this act, procure the license required by the ordinances, resolu-

tions or orders of such city or town; *and, provided further*, that any person or persons, who shall commence or continue to carry on or transact any business, trade, profession or calling, for the transaction of or carrying on of which a license is required by this act, without procuring such license, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars; *and, provided further*, that if any person or persons, required by the provisions of this act to take out a license, shall fail, neglect or refuse to take out such license in the manner provided in this act, or shall carry on, or attempt to carry on business without such license, the collector of licenses may direct suit, in the name of the State of Nevada, as plaintiff, to be brought against him or them for the recovery of the license money; and in such case, either the sheriff or district attorney may make the necessary affidavit, and a writ of attachment may issue, without undertaking being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars liquidated damages shall be included in the judgment and costs, and be collected from the defendant, and five dollars thereof shall be paid to the collector of licenses and ten dollars to the district or prosecuting attorney prosecuting the suit. Upon the trial of any criminal action, provided for by this section, the defendant shall be deemed not to have procured the proper license, unless he either produces it or proves that he did procure it; but he may plead in bar of the criminal action, a recovery and payment in a civil action against him, of proper license money, damages and costs.

Vending without license, penalty, sec. 6810.

### 3738. Limit as to time of license.

SEC. 126. The licenses provided to be granted by the provisions of this act, except theaters, menageries, or circus licenses, shall be granted for three, six or twelve months, at the option of the person applying for such licenses.

### 3739. How provided and distributed.

SEC. 127. The county auditor shall cause to be printed a sufficient number of blank licenses mentioned in this act, for the purposes herein mentioned. Each license shall also contain a blank receipt, to be signed by the sheriff on the delivery of such license to the purchaser thereof. The county auditor shall hand over to the treasurer of the county a sufficient number of blanks for the use of the county, which shall be charged to the treasurer on the auditor's books. The treasurer shall countersign the same and deliver them to the county auditor, taking his receipt therefor.

### 3740. Auditor to furnish license—To be fully made out—Statement of sheriff.

SEC. 128. The county auditor shall, from time to time, deliver to the sheriff as many of such licenses as may be required, and shall sign the same and charge them to the sheriff; *provided*, that before signing or delivering any license to the sheriff, the auditor shall fill out the license in full, stating therein to whom said license is issued, the kind of business authorized to be carried on under the license, the room, building and place where the business is to be carried on, the dates when said license begins and expires, and the amount of money to be paid therefor, and shall, at the same time, make entries upon the stubs in the license book. Whenever any license is returned by the sheriff unsold, the auditor shall cancel and file the license, and note the fact and date of such return and cancelation upon the stub thereof. No board of county commissioners shall audit or allow any claim in favor of a sheriff until there shall be filed with said board the certified statement of the auditor that all settlements required by section 129 of this act have been made by said sheriff. The amount of all licenses issued to the sheriff and not accounted for shall be deducted before any claim shall be allowed to a sheriff.

**3741. Sheriff to pay over—Duties of auditor—Liability of sheriff.**

SEC. 129. On the second Monday in each month the sheriff shall pay over to the treasurer all moneys received by him from licenses, and take from the treasurer duplicate receipts therefor; and he shall immediately on the same day return to the county auditor all licenses not issued or disposed of by him, and the county auditor shall credit him with the amount so returned; also, the receipts of money paid to the county treasurer, which receipts shall be filed with the county auditor. The county auditor shall charge the treasurer therefor, and open a new account with the sheriff for the next month; and it is hereby made the duty of each sheriff in his county to demand that all persons required to procure licenses in accordance with this act, take out and pay for the same, and he shall be held liable on his official bond for all moneys due for such licenses remaining uncollected by reason of his negligence.

**3742. Real property liable for license when—May seize and sell certain property.**

SEC. 130. For the purpose of collecting the revenues of the county and preventing the evasion of the license law, as provided in this act, or as may be provided in any law hereafter enacted, all billiard tables, bar fixtures, and furniture belonging to or in use for the purpose of carrying on the business of any billiard, drinking saloon, restaurant, tavern, hotel, inn, public boarding house, chop house, or eating stand, are held liable for the amount due for the license tax assessed on the same; and it is hereby expressly provided, that upon failure of the parties keeping any such establishment, or exercising ownership therein, to pay the license on the same in the manner and form as provided by law, the sheriff or properly authorized officer, whose duty it shall be to enforce the collection of any such license, may seize any such billiard table, bar fixtures, furniture or any other personal property, and shall proceed to sell in the same manner as provided in section 106 [infra, 3718] of this act, for the sale of personal property by the assessor for the collection of poll taxes, such property or so much thereof as may be requisite for the payment of such license as may be due and owing on account of the same.

**3743. All license tax to go into the county treasury.**

SEC. 131. All moneys received from licenses under the provisions of this act shall be paid into the county treasury and credited to the general county fund.

**3744. Possession of bogus license a felony.**

SEC. 132. If either the county treasurer, county auditor, sheriff or any other person shall issue, have in his possession, with intent to circulate or put into circulation, any other licenses than those properly issued to the sheriff under the provisions of this act, the person so offending shall be guilty of felony, and, on conviction, be sentenced to imprisonment in the state prison for a term of not less than one year nor more than four years; and any collector who shall receive the money for a license without delivering to the person paying for the same the license paid for, or who shall insert the name of more than one person or firm therein, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both such fine and imprisonment.

On a prosecution under this section, a charge to the jury which entirely ignores any question of criminal intent, is error. State v. Gardner, 5 Nev. 377-381.

**3745. Fee of sheriff.**

SEC. 133. The sheriff, as ex officio license collector, shall receive, and is

hereby authorized to retain, as compensation for the collection of licenses, six per cent of the gross amount on each business license sold.

This section did not repeal or modify the special and local act of 1889, 80, in regard to the compensation of the sheriff of Eureka County. State ex rel. Dunkle v. Beard, 21 Nev. 218 (29 P. 531).

Cited, Bradley v. Esmeralda Co., 32 Nev. 159, 166 (104 P. 1058).

### 3746. Duty of auditor and treasurer to make statement.

SEC. 134. The county auditor and treasurer of each county in the state shall, on the first Mondays of April, July, October and January, make a joint statement to the board of county commissioners, and forward a copy to the state controller, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury; the funds among which the same was distributed and the amounts to each; the total amounts of warrants drawn and paid, and on what funds; the total amounts of warrants drawn and unpaid; the accounts or claims audited or allowed and unpaid, and the fund out of which they are to be paid, and, generally, make a full and specific showing of the financial condition of the county, which shall be published in some newspaper published in the county, if there be one; if not, then by posting the same in a conspicuous place on the court-house of said county.

Mandamus will not issue to compel a county treasurer to make a statement after his term of office has expired. State ex rel. Storey Co. v. Kirman, 17 Nev. 380, 381 (30 P. 1075).

### 3747. County funds, how kept.

SEC. 135. Each county treasurer shall keep all moneys received by virtue of his office in his own possession, or on special deposit when authorized by law, and no one except the treasurer or his duly authorized deputy, shall receive or pay out any such moneys; and when any money shall be paid to the county treasurer he shall give to the person paying the same, a receipt therefor; which receipt, such person shall forthwith deliver to the county auditor, who shall charge the county treasurer with the amount therein specified, and give to the person paying the same an acquittance.

### 3748. Statement of funds to be sent to controller—Treasurer to settle with controller.

SEC. 136. The county auditors of the several counties shall, on the first Monday of each month, mail or express, prepaid, to the state controller, a statement of all state moneys in the respective county treasuries and from what sources derived, and the treasurers of the respective counties shall at all times hold themselves in readiness to settle and pay all moneys in their hands belonging to the state, whenever required so to do by order signed by the state controller and state treasurer, who are hereby authorized to draw such order whenever they deem it necessary. At the time the treasurer of any county shall pay to the state treasurer moneys required to be paid by order of the treasurer and controller, it shall be the duty of such county treasurer to deliver to the controller, a statement showing the amount so paid, and all sources from which received, and when received. The county treasurer shall, on the second Monday of June and December of each year, settle in full with the state controller, and send, in such manner as he shall designate, to the state treasurer, all funds which shall have come into his hands as county treasurer for the use and benefit of the state, taking therefor a receipt from the state treasurer, which receipt he shall cause to be filed with the controller. Before making payment, each county treasurer shall transmit to the state controller, by mail or otherwise, prepaid, a report from the county auditor, together with a duplicate thereof, stating specially the total amount collected, and the amount due the state from each particular source of revenue, the original of which shall be filed with the con-

troller, who shall enter upon the same, and also upon the duplicate, the cash paid to the state treasurer and the amount of the expenses allowed; and the county treasurer shall thereafter file the duplicate report with the auditor of his county, whereupon the auditor shall balance the treasurer's account; and it shall be the duty of the auditor to furnish the county treasurer with the report which such treasurer is required to produce in making his settlement with the state.

Cited, *State v. Pray*, 30 Nev. 219 (94 P. 218).

**3749. Vouchers for claims—Treasurer to pay out funds—Vouchers must be sent to controller.**

SEC. 137. Fully itemized vouchers shall be made, allowed and certified to in duplicate by the board of county commissioners, for all claims for salaries and other expenses for which the state is wholly or in part liable, and the clerk of the board of county commissioners shall certify such duplicate vouchers to the county auditor, who shall indorse on each the amount due from the state and county respectively, which amount shall be in proportion to the taxes levied for state and county purposes, and shall furnish the county treasurer one of the duplicates so indorsed. The county treasurer shall pay out of the moneys belonging to the state and county the amounts indorsed upon such duplicate, upon warrants drawn by the county auditor therefor, and shall cause the payee to receipt on said duplicate for the amount paid thereon for the state. The county treasurer shall transmit these duplicate vouchers to the state controller, for allowance in semiannual settlement provided for in the last preceding section; and no county treasurer shall be allowed to make any settlement with the state controller, or be in any manner released, he or his bondsmen, from liability for the full amount by him received, unless he send to the state controller the vouchers required by this section.

State to allow part compensation of revenue officers, sec. 1701.

**3750. County auditor must send statement to controller—What to contain.**

SEC. 138. It is hereby made the duty of the several county auditors of this state, on the second Monday of December of each year, to prepare and forward to the controller of state a statement showing: First—The indebtedness of such county, funded and floating, stating the amount of each class and the rate of interest borne by such indebtedness, or any part thereof, and the amount of cash in the county treasury, in its several funds. Second—A careful estimate of the value of all property owned by such county. Third—The aggregate value of the real estate and personal property in such county, as shown by the last assessment roll, stating each separately. Fourth—The rate of taxation in said year in such county, and the amount of poll taxes collected, and the number of registered voters. Fifth—The amount of taxes so assessed, stating the portion, if any, there was delinquent.

**3751. Misappropriation of public funds—Penalty—Each officer to perform single duties.**

SEC. 139. If any officer shall, directly or indirectly, use, loan, employ, or in any manner place out of his possession, otherwise than as on special deposit, any funds belonging to or collected by and paid to him, for the use and benefit of either the state or of any county, he shall be guilty of a felony, and on conviction thereof shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the state prison for a term not exceeding five years, or by both such fine and imprisonment. The treasurer, ex officio tax receiver, sheriff, assessor, auditor, clerk of the board of equalization, and each member of such board, shall each separately perform the duties required of him in his

office, and shall not perform the duties of any two offices under this act, except as provided in this act or by law; and any officer who shall, at the same time, perform the duties of any two officers, in any manner connected with the public revenue, except as in the manner provided in this act or expressly authorized by law, or any collecting or disbursing officer or auditor who shall refuse or neglect the performance of the duties required by this act, shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison for a term of not more than one year, and by a fine of not less than two hundred nor more than one thousand dollars, and shall forthwith be removed from office.

### 3752. Books open to inspection.

SEC. 140. The books, papers, and accounts of each officer, in regard to the assessment or collection of taxes, or to the receiving, auditing, or disbursing moneys of the state, or of any county, shall at all times during office hours, when not necessarily in use by the officers, be open to any person whomsoever to inspect or copy, without any fee or charge.

Cited, State ex rel. Drake v. Hobart, 12 Nev. 412, 413; State ex rel. N. T. G. & T. Co. v. Grimes, 29 Nev. 59.

### 3753. Duties of several county officers—Penalty for neglect—Temporary officer to give bond.

SEC. 141. Whenever any assessor, treasurer and ex officio tax receiver, sheriff and ex officio license collector, auditor, or other officer, upon whom duties devolve under this act, or under any other revenue act of this state, shall wilfully neglect to perform any such duties, or shall perform any in a careless or incompetent manner, he shall be deemed guilty of a misdemeanor, and shall be removed from office in the manner prescribed by law; and when an issue of facts shall be joined, under any presentment made or proceeding commenced to remove such officer from his office, the board of county commissioners (and in case such officer be a commissioner, the district judge) shall have power to suspend such officer from his powers and duties under this act, or under any other revenue act, and to appoint a competent person in his place, until the proper tribunal shall have either removed or acquitted such suspended officer; and any act concerning the revenue or the assessment or collection of taxes and licenses, or sale of property for the non-payment of taxes, performed by any such temporary officer, shall be as valid, and of the same force and effect as if performed by the suspended officer; *provided, however*, that such appointee shall first qualify and give such bond, with sureties, for the faithful performance of the duties of such office, as may be required of persons elected thereto.

### 3754. Officer to make settlements, when.

SEC. 142. Each assessor, treasurer, ex officio tax receiver, sheriff, ex officio license collector and district or prosecuting attorney, shall, on the Saturday next preceding the first Monday in January in each year, attend at the office of the county auditor, for the purpose of making a settlement with him, on account of all transactions connected with the revenue for the year ending on that day; and each and every such officer, on going out of office, shall deliver to his successor in office, all the public money, books, accounts, papers and documents appertaining to his office and in his possession, taking a receipt therefor.

### 3755. Affidavit of mortgage—Taxes to be filed—Penalty for false swearing—Duties of district attorney.

SEC. 143. Before satisfaction be entered upon any mortgage or lien, or any release of any mortgage or lien (other than mortgage given to secure the purchase money of the property mortgaged) be recorded, or filed for record,

in the several county recorders' offices of this state, the county recorder shall be satisfied, by affidavit made and filed [by] the mortgagee, or person holding such mortgage or lien, or his or their agent or attorney, that all the taxes, for state and county purposes, payable on the money or debts secured by the mortgage or lien, have been paid. Such affidavit must be in writing, and may be taken before the county recorder or any officer authorized to administer oaths. For filing such affidavit, the recorder shall be allowed twenty-five cents, and the officer administering the oath shall be allowed twenty-five cents; and if any person shall knowingly swear falsely in making such affidavit, he shall be deemed guilty of perjury, and punished accordingly; and if any county recorder shall enter, or permit to be entered, satisfaction of any mortgage or lien, without making an entry of, or filing such affidavit, he shall be liable, on his official bond, to pay to the state the sum of five hundred dollars, which may be recovered by an action, which it shall be the duty of the district or prosecuting attorney to prosecute; and the district or prosecuting attorney shall have for such prosecution twenty-five per centum of the amount recovered, to be collected from the defendant.

Mortgages, how assessed, secs. 3786-3790.

Cited, *Drexler v. Tyrrell*, 15 Nev. 135, 140.

### 3756. Affidavit on foreclosure of mortgage or lien.

SEC. 144. Whenever any action shall be brought for the purpose of foreclosure of any mortgage or lien, a similar affidavit to that mentioned in the preceding section shall be attached to the complaint in such action; and in case the same shall not have been attached at the commencement of the action, the court in which the suit is pending, on motion of any defendant therein, shall make an order staying all proceedings in such action until such an affidavit shall have been filed, or proof made of the payment of such taxes; and it shall be the duty of the court, before entering a decree or judgment in any such case, to require such affidavit or proof.

Cited, *Drexler v. Tyrrell*, 15 Nev. 140.

### 3757. Toll roads to report, how—Proceedings against toll road.

SEC. 145. All owners of toll roads or bridges in this state shall within ten days after the first Mondays in January, April, July and October, in person or by their agent or agents, make and file with the treasurer of his or their county in which such toll road or bridge, or the toll house thereon is situate, an affidavit showing the gross amount of toll upon such road or bridge for the three months next preceding the first Mondays of the month in which such settlement is made, and at the same time pay to such treasurer two per cent of such proceeds. And if any owner or owners of any toll road or bridge, shall, for the period of one month after the end of any quarter, as herein prescribed, fail to make such affidavit and payment, the franchise upon such road or bridge shall be forfeited, and the county commissioners shall thereupon direct the district attorney of the county to commence proceedings at once, by information, in the nature of quo warranto, to forfeit the franchise of the owner, or owners of such road or bridge thus in arrears, and to bring civil suit to collect of such owner or owners, the amount of such arrearage; and upon a recovery in such suit for collection, the court in which such suit is brought and tried, in addition to the costs of other officers, shall allow the district attorney a fee for such prosecution, not to exceed (in the discretion of the court) fifty dollars, which shall be taxed against the defendant or defendants in such suit, and recovered, as other costs in the action.

### 3758. Damages to go to school fund.

SEC. 146. It shall be the duty of the several county treasurers to pay to the treasurer of this state, to the credit of the general school fund of the state, all amounts collected by them under the provisions of the preceding

section, in the same manner and under the same regulations as other moneys due the state from counties are paid.

### 3759. Toll roads to be kept in repair—Duties of district attorney.

SEC. 147. It shall be the duty of the county commissioners of the several counties of this state to compel the owners of all toll roads and bridges in their respective counties to keep the same in good repair; and upon complaint of any person traveling such roads or crossing such bridges, it shall be the duty of the commissioners to ascertain the truth of such complaint, and if true, to notify the owner or owners of such road or bridge, or their agent or agents in charge thereof, and if such road or bridge is not repaired within a reasonable time, to be prescribed by such commissioners, then they shall direct the district attorney of their county to commence proceedings to forfeit such franchise.

### 3760. Fines to go to school fund.

SEC. 148. The full amount of all fines imposed and collected under, and for a violation of any penal law of this state, shall be paid into the state treasury to the credit of the state school fund, and costs shall in no case be deducted from the fine fixed by law, or imposed by the court.

### 3761. Insurance licenses to go to state.

SEC. 149. All amounts collected for fees and licenses under special "Acts to regulate insurance business in the state," and the state's apportionment of the amounts collected under a special "Act to restrict gaming," shall be paid into the state treasury to the credit of the general fund.

Gaming prohibited, sec. 6518.

See sec. 1280.

### 3762. County commissioners authorized to levy ad valorem tax.

SEC. 150. The board of county commissioners in each county of this state are hereby authorized and empowered to levy annually, on or before the first Monday in March, an ad valorem tax for county purposes not exceeding the sum of two dollars on each one hundred dollars value of taxable property in the county and such special taxes as may be authorized and required by law; *provided*, the total tax levy in any one year for all purposes shall not exceed five dollars on each one hundred dollars value of taxable property in any county or part thereof; *provided*, no levy in excess of one dollar and fifty cents on each one hundred dollars value of taxable property therein shall be so levied in any county of this state for county purposes unless the county is indebted for liabilities contracted prior to January 1st next preceding the making thereof and not bonded or funded, when a levy for county purposes, within the limit first above prescribed, such as in the judgment of the county commissioners will enable the county to discharge such indebtedness and meet the expenses of the current year, may be levied. *As amended, Stats. 1895, 22; 1899, 33.*

See *State v. Manhattan S. M. Co.*, 4 Nev. 318; *People v. Com. of Washoe Co.*, 1 Nev. 460; *Schweiss v. District Court*, 23 Nev. 232 (34 L. R. A. 602, 45 P. 289).

See secs. 3618, 3818.

### 3763. Amount and purpose to be stated.

SEC. 151. In making the annual levy the board shall designate the number of cents levied for each particular purpose, and shall add thereto the amount levied by law for state purposes. They shall cause said state and county levies to be entered on the records of their proceedings, and shall direct their clerks to deliver a certified copy thereof to the auditor, assessor and treasurer, each of whom shall file said copy in his office.

Cited, *State ex rel. Holley v. Boerlin*, 30 Nev. 480 (98 P. 402).

**3764. Redemption fund.**

SEC. 152. The board shall apportion the revenue coming into the county treasury, under the provisions of the two preceding sections of this act, into such funds as are now or may hereafter be provided by law; *provided*, that there shall be set aside such portion of all the moneys of the county, to create a redemption fund for the payment of outstanding indebtedness, as is provided by any law now in force, or which may hereafter be passed.

For apportionment of county revenues, see secs. 1555-1557.

Cited, State ex rel. Holley v. Boerlin, 30 Nev. 480 (98 P. 402).

**3765. No compensation other than salary.**

SEC. 153. For services rendered under the provisions of this act, county assessors, auditors and treasurers, except as specified in [this] the act, shall receive no compensation to themselves other than the salaries fixed by law.

**3766. Repealing clause.**

SEC. 154. An act entitled "An act to provide revenue for the support of the government of the State of Nevada," approved March 9, 1865 [p. 271], and all acts amendatory thereof and supplementary thereto, passed and approved prior to the year 1891;

An act entitled "An act granting further powers to district or prosecuting attorneys of the several counties, and attorneys of incorporated cities and towns, within this state, in suits for delinquent taxes, for the fiscal year one thousand eight hundred and sixty-four," approved February 18, 1865 [p. 163];

An act entitled "An act concerning the collection of taxes on personal property," approved February 17, 1866 [p. 69];

An act entitled "An act to provide for sales of property for delinquent taxes," approved March 1, 1866 [p. 161];

An act entitled "An act to legalize the publication of summons, in suits for the collection of delinquent taxes in the several counties of this state," approved March 12, 1867 [p. 111];

An act entitled "An act to enforce the payment of two per cent of the gross proceeds of all toll roads and bridges, as provided by law, to the general school fund of this state," approved March 13, 1867 [p. 120];

An act entitled "An act providing for the taxation of the net proceeds of mines," approved February 28, 1871 [p. 87], and all acts amendatory thereof and supplementary thereto;

An act entitled "An act to require assessors to pay over to the county treasurer monthly all poll taxes collected," approved February 14, 1873 [p. 54];

An act entitled "An act to limit the compensation of county auditors for extending taxes on the assessment roll," approved February 20, 1873 [p. 63];

An act entitled "An act to regulate the collection of taxes in disputed territory between counties," approved February 21, 1873 [p. 66];

An act entitled "An act to define the time for levying and assessing taxes for state and county purposes," approved February 25, 1873 [p. 96], and all acts amendatory thereof and supplementary thereto;

An act entitled "An act prescribing an additional penalty for nonpayment of taxes in certain cases after suit," approved March 7, 1873 [p. 169];

An act entitled "An act providing for the location and taxation of borax and soda mines and claims," approved March 7, 1873 [p. 187];

An act entitled "An act more fully defining the manner of collecting the taxes on movable personal property by the assessor," approved February 18, 1875 [p. 70];

An act entitled "An act in relation to special taxes," approved March 4, 1879 [p. 63];

An act entitled "An act to provide for the taxation of mines that produce a ton or less of ore or mineral-bearing material per day, and to encourage the prospecting of undeveloped mines," approved March 1, 1883 [p. 81];

An act entitled "An act to provide for the publication of the names of taxpayers, and the total valuations upon which said taxpayers pay taxes, appearing in the assessment rolls in the respective counties of the State of Nevada," approved March 5, 1885 [p. 62];

An act entitled "An act fixing the rate of poll tax in the State of Nevada, and to repeal all other acts relating thereto," approved February 23, 1887 [p. 78]; and all other acts and parts of acts passed and approved prior to the year 1891, so far as they conflict with the provisions of this act, are hereby repealed.

*An Act supplementary to an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain other acts relating thereto," approved March 23, 1891.*

Approved March 6, 1893, 106

**3767. Commissioners may order treasurer to sell property—Notices, how posted.**

SECTION 1. Whenever the time allowed by law for redemption of any property sold to any county treasurer for delinquent taxes, under the provisions of section 55 [ante, sec. 3667] of the act to which this act is supplementary, shall have expired, and the treasurer shall have come in possession of a deed to any property of an assessed value of less than five hundred dollars the board of county commissioners of such county may, by an order entered upon the record of the proceedings of said board, direct the treasurer or his successor in office to sell such property, and the proceeds of such sale shall be applied as now provided by law; *provided*, that notice of such sale shall be posted in at least three public places in the county, including one at the courthouse and one on the property, for a period of not less than twenty days prior to the day of sale, and no newspaper publication shall be required in any case where the assessed valuation of the property to be sold is less than five hundred dollars. *As amended, Stats. 1899, 79.*

Cited, Lyon Co. v. Ross, 24 Nev. 110 (50 P. 1).

*An Act supplemental to an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto," approved March 23, 1891, and to all acts amendatory thereof, and to provide for a license upon the business of owning, raising, grazing, herding or pasturing sheep in the several counties of the State of Nevada, and to declare a violation thereof a misdemeanor, and to provide a punishment therefor.*

Approved March 12, 1895, 53

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| 3768. License for running sheep—Grades.   | 3771. County auditors to prepare licenses. |
| 3769. License must be first procured—Penalty for violation.   | 3772. Fee of sheriff.                      |
| 3770. Collector of licenses to examine—Statement under oath—Action instituted—Evidence—Costs of action. | 3773. Sheriff receives 20 per cent.        |
|   | 3774. Word "person" defined.               |

**3768. License for running sheep—Grades.**

SECTION 1. Every person now engaged in, or [who] may hereafter engage in the business of owning, raising, grazing, herding or pasturing sheep, as either owner, lessee, or manager of said sheep, in any county in the State of Nevada, must annually procure a license therefor from the sheriff as collector of licenses of each of such counties and make payment therefor as follows in advance for each band, flock or bunch of sheep:

First—Such person owning or having in his possession or under his control as lessee or manager five thousand sheep or more shall be deemed of the first class and must pay the sum of two hundred and fifty dollars per

annum for the first five thousand sheep, and the further sum of fifty dollars per annum for every additional one thousand sheep or fraction thereof.

Second—Such person owning or having in his possession or under his control as lessee or manager four thousand sheep and less than five thousand shall be deemed of the second class and must pay the sum of two hundred dollars per annum.

Third—Such person owning or having in his possession or under his control as lessee or manager three thousand sheep and less than four thousand shall be deemed of the third class and must pay the sum of one hundred and fifty dollars per annum.

Fourth—Such person owning or having in his possession or under his control as lessee or manager two thousand sheep and less than three thousand shall be deemed of the fourth class and must pay the sum of one hundred dollars per annum.

Fifth—Such person owning or having in his possession or under his control as lessee or manager fifteen hundred sheep and less than two thousand shall be deemed of the fifth class and must pay the sum of seventy-five dollars per annum.

Sixth—Such person owning or having in his possession or under his control as lessee or manager one thousand sheep and less than fifteen hundred shall be deemed of the sixth class and must pay the sum of fifty dollars per annum.

Seventh—Such person owning or having in his possession or under his control as lessee or manager any number of sheep less than one thousand shall be deemed of the seventh class, and must pay the sum of twenty-five dollars per annum; *provided*, that the provisions of this act shall not apply to any person, persons, firm, company, association or corporation who shall be the owner and holder of land in the State of Nevada equal to one acre for each three sheep so owned, raised, grazed, herded or pastured; *and provided further*, that the lessee of lands shall not be deemed or taken as the owner and holder of land within the meaning of the provisions of this act; *and it is further provided*, that nothing in this act contained shall be so construed as to require the procurement of more than one license for the same sheep, in the State of Nevada during the same year. *As amended, Stats. 1901, 64.*

The word "holder" means one who is in possession, actual or constructive, of the land. *State v. Wheeler*, 23 Nev. 143, 148 (44 P. 430).

A lessee of land for a fixed term is an owner thereof, within the meaning of this act. *Idem.*

This statute, although a revenue measure, is a penal statute, and should be construed strictly. A proviso in a penal statute exempting persons from the operation of the act should be construed liberally in favor of the subject. *Idem.*

### 3769. License must be first procured—Penalty for violation.

SEC. 2. Every person who shall engage in the business of raising, grazing, herding or pasturing of any sheep as either owner, lessee or manager thereof within any county of the State of Nevada without first having procured a license therefor as prescribed by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine for each offense of not less than fifty dollars nor more than two hundred and fifty dollars, or imprisonment in the county jail for a period of not less than twenty-five days or more than ninety days.

### 3770. Collector of licenses to examine—Statement under oath—Action instituted—Evidence—Costs of action.

SEC. 3. The sheriff, as collector of licenses, of each county of the State of Nevada shall make diligent inquiry and examination concerning all persons in his county liable to the procurement of license as provided in this act, and he is hereby empowered, and it shall be his duty to require each such

person to make a statement under oath or affirmation of the number of sheep then or about to be owned by him or then or about to be in his possession or under his control as lessee or manager thereof within such county. Thereupon such person shall procure such license from such sheriff as collector of licenses according to the class to which he shall be shown by the number of such sheep to belong; and in all cases wherein an underestimate of the number of sheep is made by the person procuring such license, the person making such underestimate shall be required to pay a double license for the next year. Such license when procured shall authorize the party procuring the same within the county wherein the same is procured but in no other county to transact business as specified in such license; and if any such person required by the provisions of this act to procure a license shall fail, neglect or refuse to procure such license in the manner provided in this act or shall engage in or attempt to engage in any of the business mentioned in this act without procuring such license therefor, the sheriff as collector of licenses shall direct the commencement of, and the district or prosecuting attorney of the county shall immediately commence an action in the name of the State of Nevada as plaintiff against such person for the recovery of the license money and all damages according to the class in this act specified to which such person shall be proven to belong, and in such action either the sheriff as collector of licenses or the district or prosecuting attorney of the county, where such action is commenced may make the necessary affidavit and cause the undertaking to be furnished, necessary to the procurement of the issuance of the writ of attachment and a writ of attachment shall thereupon be issued and may be levied upon the sheep of such owner, lessee or manager within such county, and in case of recovery by the plaintiff in such action, judgment shall be entered for the amount found due for such license and twenty-five dollars liquidated damages for nonprocurement of licenses and all costs of such action, of which damages, ten dollars shall be paid to the sheriff as collector of licenses and fifteen dollars thereof shall be paid to the district or prosecuting attorney for their services in the action. Upon the trial of any criminal action provided for in this act, the defendant shall be deemed to have not procured the proper license unless he produces it or proves that he did procure it, but he may plead in bar of a criminal action a recovery and payment in a civil action against him of a judgment of proper license money damage and costs.

### 3771. County auditors to prepare licenses.

SEC. 4. The county auditors of the several counties of this state shall prepare, have printed and delivered to the sheriff as license collector of the several counties suitable blank licenses for the proper enforcement of the provisions of this act with blank receipts for the same when sold.

### 3772. Fee of sheriff.

SEC. 5. The sheriff as collector of licenses shall demand and collect from the person procuring such license a fee of two dollars for each license sold by him in addition to the amount paid for such license.

### 3773. Sheriff receives twenty per cent.

SEC. 6. All moneys collected for licenses under the provisions of this act, less twenty per cent (which may be retained by the sheriff as his commission for collecting the same) shall be paid to the county treasurer of the county wherein such licenses are collected, and shall be, by him, placed to the credit of the general fund of such county. *As amended, Stats. 1897, 114.*

### 3774. Word "person" defined.

SEC. 7. Whenever the word "person" occurs in this act it shall be held to

apply to and include any person, persons, firm, company, association or corporation.

*An Act supplemental to an act entitled "An act to amend an act entitled 'An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto,' approved March 23, 1891, and to repeal section 22, section 25, section 28, and section 29 of said act," approved February 25, 1893.*

Approved March 19, 1901, 89

**3775. Assessor to prepare printed list of taxpayers and property.**

SECTION 1. It shall be the duty of the assessor in each of the respective counties of the state on or before the second Monday of September in each year to prepare a printed list of all the taxpayers in the county, which list shall represent the value in figures of each subdivision, article, item, or separate piece of property assessed, as the same appears on the assessor's statements, with the total valuation in figures assessed to each taxpayer. A copy of said list shall be by said assessor delivered in person or mailed to each and every taxpayer in the county; *provided*, that the cost of printing the aforesaid list shall not exceed twenty cents for each name for as many copies as there are names on the list. The several boards of county commissioners in the state are authorized and empowered to allow the bill contracted by the assessor under this section, and the several county auditors are authorized to draw their warrants in payment for the same.

**3776. Idem—Other list unlawful.**

SEC. 2. It shall be unlawful for the county assessor to prepare any printed list of taxpayers, for distribution, other than provided for in this act.

*An Act supplemental to an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto," approved March 23, 1891, and to all acts amendatory thereof, and to provide for a state license upon the business of disposing at retail or wholesale of spirituous, malt or vinous liquors in this state, and providing penalties for violation hereof.*

Approved March 15, 1905, 228

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| 3777. State liquor license.                 | 3782. Quarterly statements.                           |
| 3778. Controller to provide blank licenses. | 3783. State license and bullion tax agent to enforce. |
| 3779. Sheriff to issue license.             | 3784. Penal provisions.                               |
| 3780. State liquor license, wholesale.      | 3785. Act, when takes effect.                         |
| 3781. Controller to furnish licenses.       |   |

**3777. State liquor license.**

SECTION 1. On the first day of July, A. D. one thousand nine hundred and five, and annually thereafter on January first, every person, firm, company or corporation manufacturing or selling, either at retail or wholesale, any spirituous, malt or vinous liquors shall in addition to the licenses now provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment or otherwise.

State license and bullion tax agent, duties in relation to liquor licenses, sec. 3783.

**3778. Controller to provide blank licenses.**

SEC. 2. The state controller is hereby authorized and required to have printed blank licenses in sufficient quantities to supply all of the counties of this state, duly numbered and bound together in convenient form, similar to the poll-tax books now issued by said state controller, said licenses to generally conform in words and blank lines to the following, to wit:

\$\_\_\_\_\_ STATE OF NEVADA LIQUOR LICENSE. No.\_\_\_\_\_  
----- County, Nevada.

This certifies that\_\_\_\_\_ has paid\_\_\_\_\_ (\$\_\_\_\_\_) dollars state liquor license, which entitles him, upon payment of the other licenses provided by law, to carry on the business of (retailing or wholesaling, as the case may be) spirituous, malt and vinous liquors in\_\_\_\_\_, in the County of\_\_\_\_\_, State of Nevada, for the year ending\_\_\_\_\_, 19\_\_\_\_\_, unless this or the other licenses provided by law be revoked by authority of law.

Sheriff of\_\_\_\_\_ County, Nevada.  
-----, State Controller.

3779. Sheriff to issue license.

SEC. 3. The several sheriffs of the respective counties of this state are hereby made the collectors of, and authorized and required to issue and collect, said licenses, and shall, upon the payment of fifty (\$50) dollars, issue a retail state license to any person, firm, company or corporation engaged in selling spirituous, malt or vinous liquors in quantities less than five gallons, and the word "Retail" shall be written in red ink across the face of such license; provided, that retail drug stores shall not be required to pay more than twelve (\$12) dollars per annum for such retail state liquor license.

3780. State liquor license, wholesale.

SEC. 4. Any person, firm, company or corporation disposing of spirituous, malt or vinous liquors in quantities in excess of five gallons shall be considered a wholesaler or rectifier, and shall pay a state liquor license of one hundred (\$100) dollars per annum, and the word "Wholesale" shall be written across the face of such license, in red ink.

3781. Controller to furnish licenses.

SEC. 5. The state controller shall, immediately after the passage of this act or as soon thereafter as the blank licenses can be secured, forward a sufficient number of same to each of the sheriffs of the respective counties of this state, and said sheriffs shall at once proceed under the provisions of this act to issue said licenses and to collect therefor.

3782. Quarterly statements.

SEC. 6. The sheriffs of the respective counties of this state are hereby required to make quarterly statements to and settlements with the state controller in the matter of the licenses herein authorized and required to be issued and collected, and to pay into the state treasurer quarterly all moneys by them severally collected for such licenses, taking his receipt therefor.

3783. State license and bullion tax agent to enforce.

SEC. 7. The state license and bullion tax agent shall have power and authority, and it is hereby made his duty, to enforce the payment and collection of the licenses herein provided.

See secs. 4240-4248.

3784. Penal provisions.

SEC. 8. Any person, firm, company or corporation violating any of the provisions of this act, or selling or attempting to sell any spirituous, malt or vinous liquor in this state after July first, 1905, without having first obtained or made application and paid for the state liquor license herein provided and required, shall be guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars,

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or by imprisonment in the county jail in the county in which such conviction is had for a period not less than sixty (60) days nor more than six months, or by both such fine and imprisonment for each and every offense; and any sheriff of this state failing, refusing or neglecting to collect the license herein provided shall likewise be guilty of a misdemeanor, punishable as aforesaid, and shall, upon conviction thereof, in addition to the punishment above imposed, forfeit his office, and such conviction shall operate per se to create a vacancy in such office, such vacancy to be filled as in the case of vacancies created in such office from other causes.

### 3785. Act, when takes effect.

SEC. 9. This act shall take effect on the first day of July, one thousand nine hundred and five; *provided*, that any person or persons applying for a license under this act shall only be required to pay a license fee for the remainder of the calendar year current when such application shall be made, apportioned at the annual rate. For the purpose of such apportionment each calendar year shall be divided into quarters beginning on the first days of January, April, July, and October, and in making the apportionment no period less than a quarter shall be considered. Persons applying for licenses at any time during a given quarter, however short the unexpired portion of such quarter may be, shall pay for the whole quarter; and nothing herein shall be construed as to entitle the person or persons who have paid for such license to have any part of the same refunded in the event of such person or persons not continuing to sell or dispose of such liquors until the end of the calendar year in which the license is issued; nor shall it be so construed as to permit the issuance of licenses to expire otherwise than with the calendar year in which issued. *As amended, Stats. 1907, 211.*

*An Act supplementary to an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto," approved March 23, 1891.*

Became a law March 23, 1911, 352

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| 3786. Taxation of mortgages and deeds of trust. | 3789. Duties of county recorders.                     |
| 3787. Taxes against whom levied.                | 3790. Taxation in cases of banks and trust companies. |
| 3788. Manner of assessment for taxation.        |   |

### 3786. Taxation of mortgages and deeds of trust.

SECTION 1. All taxable property must be assessed at its full cash value. Land and improvements thereon shall be separately assessed. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroad and other quasi-public corporations. In case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof. If any such security or indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall

be computed according to the tax levy for the preceding year; and every contract by which a debtor is obliged to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

### 3787. Taxes, against whom levied.

SEC. 2. The owner of a mortgage, deed of trust, contract, or other obligation whereby land or real property, situated in this state, is made security for the payment of a debt, and also the debt so secured, shall for the purpose of assessment and taxation, be deemed to be the person or persons to whom the security was given in the first instance, unless it appears on the record of the security that some other person is the owner; and all assignments or transfers of a debt secured as mentioned in this act shall, for the purposes of assessment and taxation, be null and void, unless such transfer or assignment is made in writing upon the margin of the record of the security, and the name of the person to whom such debt is assigned or transferred given; and in all cases such debt and security shall be assessed and taxed to the person or persons who appear on the record of such security to be owner or owners thereof; and a mortgage, deed of trust, contract, or other obligation whereby land or real property situated in no more than one county in this state is made security for the payment of a debt, together with such debt, shall be assessed and taxed to the owner of such security and debt in the county, city or district in which the land or real property affected by such security is situated. The taxes so assessed and levied on such security and debt shall be a lien thereon, and the debt, together with the security, may be sold for the payment of any taxes due thereon, in the same manner and with like effect that real property or land is sold for the payment of taxes.

### 3788. Manner of assessment for taxation.

SEC. 3. For the purposes of assessment and taxation no payment on any debt secured as hereinbefore mentioned in this act shall hereafter be taken into consideration by any assessor in this state, when assessing such debt and security as herein provided, unless such payment is endorsed in writing on the margin of the record of such security by the owner thereof, or his authorized agent, before the delivery by the county recorder to the board of equalization of the abstract of all unsatisfied mortgages and liens remaining on record in his office. And in all cases the assessor shall assess such debt and security for the full amount of such debt, that appears from the record of such security to be owing, unless in the judgment of the assessor the land or real property by which such debt is secured is not worth as many dollars as still appears unpaid of such debt, and then, in that case, he shall assess such debt and security at whatever sum he thinks to be their real cash value.

### 3789. Duties of county recorders.

SEC. 4. It is hereby made the duty of the several county recorders in this state to record in the margin of the record of all mortgages on land and real property, when requested so to do by the mortgagee or owner of the mortgage, all assignments thereof, or of the note or other evidence of debt thereby secured, and also all payments made thereon or the note or other evidence of debt secured thereby, and copies thereof certified by such recorder shall be received in evidence in all courts of this state with like effect as a certified copy of such mortgage. And all persons who now have mortgages recorded in this state, upon which partial payments have been made, are hereby allowed sixty days after this act takes effect to cause to be recorded in the recorder's office of the proper county such payments with the dates thereof.

**3790. Taxation in cases of banks and trust companies.**

SEC. 5. Where any bank or trust company is assessed in this state upon its shares or capital stock, and such bank or trust company is the owner of mortgages or trust deeds assessed to it upon lands within this state, the amount or value of such mortgages or trust deeds shall be deducted from the amount which it is assessed upon its shares or capital stock; and such bank or trust company shall only be assessed upon such sum for its shares or capital stock after deducting the value of the mortgages or trust deeds owned by it.

*An Act supplemental to an act entitled "An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto," approved March 23, 1891.*

Approved March 27, 1911, 391

**3791. Method of assessing property and franchises of express companies.**

SECTION 1. For the purpose of assessment and collection of taxes on the property and franchises of any express company the cash value thereof shall not be less than the largest amount on which the net profit of the company for the calendar year previous to the assessment or levy of the taxes will pay interest or dividends at the rate of eight per cent per annum. This net profit shall be the difference between the average gross annual earnings per mile on the mileage operated in this state on local and through business, including receipts for the transportation of parcels and property carried into, out of or through this state and the necessary annual average expense per mile on such mileage operated in this state in such transportation, carrying and operation of the express company under reasonable, economical and prudent management, estimated for the last calendar year previous to the levy. The actual annual deterioration of property used in the business shall be considered a part of the annual expense.

**3792. Express companies to make complete report.**

SEC. 2. Every express company shall include in the list or statement of taxable property now required by law to be made a statement of the gross receipts and expenses and the net income of the company, the amount paid in dividends and the amount held or carried over as surplus, for the last calendar year, and a statement of the total number of miles operated by such express company on any through lines which run through this state, and of the gross receipts and expenses thereon, and of the total number of miles operated by such express company exclusively in this state, and of the gross receipts and expenses thereon. Such list or statement shall be in no way conclusive or binding upon any officer, board or authority empowered by law to fix assessments or to collect taxes.

*An Act defining certain duties of county assessors, county commissioners, county clerks, county treasurer and ex officio tax receivers.*

Approved February 27, 1893, 52

[Sections 1, 2, 4, 7, 8 and 10 of this act, being substantially the same as sections 3624, 3635, 3636, 3640, 3642 and 3654, are omitted.]

**3793. Board of equalization.**

SEC. 3. The board of county commissioners of each county in this state, shall meet as a board of equalization on the third Monday of September in each year, to examine the assessment roll and equalize the assessment of property appearing upon the assessment roll in their respective counties, and shall continue in session from time to time until the business of equali-

zation is disposed of, but no later than the first Monday in October, and all the provisions of the statute as to notice and manner of equalization, shall be the same as now prescribed, except as to the dates of such meetings, which shall be as hereinbefore stated.

See secs. 3638, 3678, 3797.

### 3794. Duties of auditor.

SEC. 5. The county auditor, as soon as the assessment roll is delivered to him by the clerk of the board of equalization, shall proceed to add up the valuations, and to enter the total valuation of each kind of property, and the total valuation of all property on the assessment roll.

See sec. 3641.

### 3795. Auditor to deliver corrected roll.

SEC. 6. On or before the first Monday in November in each year, the auditor shall deliver the corrected assessment roll with his certificate attached thereto, together with the maps or plat books, to the ex officio tax receiver.

See sec. 3641.

### 3796. Tax receiver to settle.

SEC. 9. On the second Monday of December in each year the ex officio tax receiver shall also attend at the office of the county auditor with the assessment roll, and the auditor shall then and there administer to the ex officio tax receiver an oath, which shall be written and subscribed on the assessment roll, to the effect that each person and all property assessed in said roll, or [on] which taxes have been paid to him, has the word "paid" marked opposite the name of such person or a description of such property, and the auditor shall then foot up the amount of taxes remaining unpaid, and shall make a final statement with the ex officio tax receiver of all taxes charged against him on account of said assessment roll. The auditor shall then immediately transmit, by mail or otherwise, to the state controller a statement in such form as he may require, of all and each particular kind of property delinquent, and the total amount of delinquent taxes.

See sec. 3648.

*An Act to provide for a more uniform valuation and assessment of property in this state.*

Approved March 16, 1901, 61

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| 3797. State board of county assessors.                  | 3805. Idem—Reduction of levy.        |
| 3798. Idem—Officers—Powers—Penalty.                     | 3806. Auditors to notify controller. |
| 3799. Record to be kept.                                | 3807. Duty of assessors.             |
| 3800. Valuations to fix.                                | 3808. Expenses of attendance.        |
| 3801. Idem—Powers of assessors.                         | 3809. Assessor—Penal provisions.     |
| 3802. Tax levy.   | 3810. Idem—Suit—Costs.               |
| 3803. Idem—Personal property.                           | 3811. Expenses—Printing.             |
| 3804. Idem—Controller to notify assessors and auditors. | 3812. Excess taxes recovered.        |
|   | 3813. Appropriation.                 |

### 3797. State board of county assessors.

SECTION 1. The county assessors of the several counties of this state shall meet for a period not exceeding ten days in the office of the governor at Carson City, Nevada, on the second Monday in January of each year, and shall at such meetings establish a valuation through the state of all railroads and rolling stock of such railroads, of all telegraph and telephone lines, of all electric light and power lines, of all cattle and sheep, and upon all other kinds of property which in the judgment of said assessors can be valued and assessed more uniformly by said assessors, acting collectively, than by the several county assessors acting separately; *provided*, that in fixing such valuation the location and situation of such property shall be considered;

and, *provided further*, that nothing herein shall be so construed as to impair the right of the board of equalization of any county to equalize taxes on all property, the valuation of which has not been fixed at the annual meeting of the county assessors as provided in this section; but the said county board of equalization shall not have the power to equalize any property upon which a valuation has been placed by the said board of county assessors; *provided*, any taxpayer under the provisions of this act shall not be deprived of any remedy or redress in a court of law relating to the payment of taxes. *As amended, Stats. 1903, 95.*

See sec. 3814, 3840.

Live stock, see secs. 3843-3844.

Transient stock, secs. 3845-3861.

Cited, *Hardin v. Guthrie*, 26 Nev. 251, 252 (66 P. 744); *State v. C. & C. R. R. Co.*, 29 Nev. 487, 496-499 (91 P. 932).

### 3798. *Idem*—Officers—Powers—Penalty.

SEC. 2. At such meetings the governor shall be the chairman and the governor's secretary shall be the clerk. The governor shall have the casting vote in case of a tie. The state controller shall supply all information and data concerning the finances of the state, either on his own motion or by request of the board. Eight assessors shall constitute a quorum for the transaction of business, and a majority of the entire board shall decide any question before the meeting; *provided*, that in case of a tie on any question before the board, the chairman shall cast the deciding vote; and it is hereby made the duty of every assessor present at the meeting of said board to vote aye or no, upon every question put by the chairman of said meeting, and every assessor failing so to do shall forfeit his office and shall be proceeded against by the district attorney of said assessor's county, at the request of the attorney-general to enforce said forfeiture; *provided*, that, if at any meeting the assessor of any county shall, by reason of sickness or other unavoidable cause, be unable to attend any such meeting, then, in that event, the chairman of the board of the county commissioners of such counties shall attend such meeting, and shall act and vote in the place of such absent assessor, with the same force and effect as such assessor might do if present, and the governor or acting chairman of said meeting shall be and hereby is authorized to issue a subpoena for the attendance of any assessor who shall fail to attend, unless excused by the provisions of this act. And he is hereby further empowered to deputize anyone who is qualified by law to serve a summons to serve the same; *and provided further*, that, if at any meeting the governor or his secretary shall, for any reason, be unable to act as chairman or clerk, then, in that event, the state controller shall act as chairman, and in case the state controller shall also be absent, then the attorney-general shall act as chairman and as such chairman shall have all of the powers herein granted to the governor acting as such chairman. Any assessor who shall fail to attend the meetings provided for in section 1, unless he is prevented by sickness or other unavoidable cause, shall be subject to a penalty of \$500, to be collected in a suit instituted against said delinquent assessor or his bondsmen by the district attorney of the county of said assessor, on the request of the attorney-general; and shall be further subject to removal from office, should a majority of the state board of revenue hereinafter created order proceedings to that effect to be instituted. *As amended, Stats. 1903, 95.*

### 3799. Record to be kept.

SEC. 3. The chairman shall preside at all meetings and the secretary shall keep a full and correct record of the proceedings thereof, in suitable books which shall be provided for that purpose, and which shall be kept in the office of the governor.

**3800. Valuations to fix.**

SEC. 4. The valuation fixed at such annual meetings shall be the actual cash value of all such property as may be designated, as now provided by law, taking into consideration the locality of such property, and the assessors of the several counties shall assess and enter upon the assessment rolls of their respective counties all such property at the valuation designated by such meeting of county assessors, and shall fix the value and assess all property not so valued at said meeting in the manner now provided by law. *As amended, Stats. 1903, 96.*

**3801. Idem—Power of assessors.**

SEC. 5. The valuation fixed at such annual meetings shall be uniform on all such property as may be designated, except in cases where the value is affected by its locality or other consideration affecting its cash value; and the assessors of the several counties of the state shall fix values on all property not so valued at said annual meeting, in the manner now provided by law. *As amended, Stats. 1903, 96.*

**3802. Tax levy.**

SEC. 6. An annual ad valorem tax of eighty cents on each one hundred dollars of taxable property is hereby levied and directed to be collected for state purposes upon all taxable property in this state, including the net proceeds of mines, except such property as is by law exempt from taxation; *provided*, that such rate of eighty cents may be changed as hereinafter provided. Of the tax hereby levied fifty-three and four one-hundredths cents shall go into the general fund of the state, seven and one-fifth cents shall go into the territorial interest fund, seven and three-fifths cents shall go into the state interest and sinking fund, ninety-six one-hundredths of one cent shall go into the state university interest and sinking fund, four cents into the general school fund, eight-tenths of one cent into the university interest and sinking fund, 1897, No. 1, eight-tenths of one cent into the university interest and sinking fund, 1897, No. 2, and five and three-fifths cents into the contingent university fund.

See sec. 3617 for tax levy.

**3803. Idem—Personal property.**

SEC. 7. In assessing all personal property not secured by real estate, prior to making the final state levy as provided in this section, the state rate of eighty cents on each one hundred dollars valuation, provided in section 6, shall be collected and the state proportion shall be forwarded to the state treasurer in the first semiannual settlement. Immediately after the auditor's statement of valuation, provided for in section 10 of this act, shall have been received by the state controller, the governor, state controller, and attorney-general shall meet and ascertain the aggregate valuation of all the taxable property in the state, as reported by the several county auditors. They shall then proceed to fix the state rate of taxation (not to exceed eighty cents on each one hundred dollars) in proportion as the amount required to conduct the state government for the year stands to the whole property valuation in the state; but in no case shall they fix a rate which will give the state more revenue than necessary to meet the total amount of appropriations made by the last preceding legislature.

See sec. 3617.

**3804. Idem—Controller to notify assessors and auditors.**

SEC. 8. When the rate of state tax shall have been fixed as provided in section 7, it shall be the duty of the state controller to immediately notify the several county assessors and county auditors of the same.

See sec. 3617.

**3805. Idem—Reduction of levy.**

SEC. 9. In case of a reduction being made, in the levy for state purposes, each of the several counties of the state shall be credited by the state controller with the difference between the amount previously paid to the state during that fiscal year and the amount due under the rate fixed in accordance with the provisions of section 7 of this act, and the amount so credited shall be deducted in making the next settlement with the state.

**3806. Auditors to notify controller.**

SEC. 10. The several county auditors shall, annually, on or before the fourth Monday in October of each year, forward to the state controller a statement under seal of his office of the aggregate assessment of all property on the assessment roll in his county, segregating the personal from the real property.

**3807. Duty of assessors.**

SEC. 11. It shall be the duty of each county assessor to fix the valuation of all property which may be assessed by him at the valuation placed upon the same kind of property at the regular annual meeting of assessors for the state. *As amended, Stats. 1903, 97.*

See sec. 3617.

**3808. Expenses of attendance.**

SEC. 12. There shall be allowed and paid to each county assessor attending the meetings of county assessors required in section 1, the actual expenses of such assessors in going to and returning from his county to attend each meeting; and an itemized statement of such expenses duly verified shall be presented to the state board of examiners, who shall audit the same as other claims against the state are allowed and paid.

**3809. Assessor—Penal provisions.**

SEC. 13. Should any assessor in this state neglect to assess property in accordance with the provisions of this act, or laws now in force or effect, or place a greater or less valuation on any property that has been fixed at said meeting of assessors, the state board of revenue, which is hereby created, consisting of the governor, state controller and attorney-general, shall instruct the district attorney of said assessor's county to bring suit against such assessor and his bondsmen for the sum of five hundred dollars as a penalty therefor, which said sum when collected, shall be paid into the general fund of the state treasury, and such board may instruct the attorney-general to request the district attorney of said assessor's county to institute suit against such assessor for his removal from office for such neglect or refusal. The suit shall be tried in the district court having jurisdiction in the county where property is situated. *As amended, Stats. 1903, 97.*

See sec. 3828.

**3810. Idem—Suit—Costs.**

SEC. 14. The district attorney shall have the assistance and advice of the attorney-general in prosecuting the suit in case the governor and state controller shall deem it advisable. In case of an adverse decision of the court, the state shall pay all costs. Either party to the suit shall have the right of appeal to the supreme court and the usual stay of proceedings, upon the filing of the proper bond to be approved by the judge of the court.

**3811. Expenses—Printing.**

SEC. 15. Neither the governor, state controller or attorney-general shall receive any additional compensation for their services imposed by this act; but shall be allowed their actual traveling expenses when absent from the capitol

on duty connected with or required by this act. Such claim for expenses shall be accompanied by proper vouchers and shall be audited and allowed as other claims against the state. All printing necessary to carry out the provisions of this act shall be ordered by the said state officers at the state printing office, and the state printer is hereby authorized and directed to supply the same.

### 3812. Excess taxes recovered.

SEC. 16. Any taxpayer who shall have paid taxes on personal property prior to making the final levy during any fiscal year, shall be entitled to have any excess he may have so paid refunded at any time during that year by presenting a claim in regular form against the county where such taxes were paid, for the amount of such excess, and the same shall be audited and paid out of the excess so created in the state fund in the county treasury.

As to assessment of property which comes into existence as additions or otherwise, see *State v. C. & C. R. R. Co.*, 29 Nev. 487 (91 P. 932).

### 3813. Appropriation.

SEC. 17. The sum of three thousand (3,000) dollars is hereby appropriated out of any money in the general fund not otherwise appropriated to carry out the provisions of this act.

*An Act to provide revenue for the support of the government of the State of Nevada.*

Approved March 6, 1893, 109

### 3814. How railroads are to be assessed.

SECTION 1. In all cases where a railroad is located and is being or has been constructed in or through one or more counties of this state, the president, secretary, general superintendent or managing agent of the corporation, company or person owning the same, or managing agent thereof, within the county, shall within a reasonable time after demand by the county assessor of any county in or through which such road is being or has been constructed, furnish to such assessor a statement under oath or affirmation, which shall be in writing, duly subscribed and sworn to before some officer authorized by the laws of this state to administer oaths, setting forth the length of said road in such county and the value thereof, with a list of the property, real and personal [except rolling stock], pertaining thereto, also the whole length of said road within the state, and the number and value of all locomotives and cars, commonly known as rolling stock, used on said road within this state, and an apportionment of the value of such rolling stock to such county, the same to be estimated according to the proportion which the true portion in said county bears to the whole length of said railroad within the state. But in the event that any portion of the rolling stock or personal property of a railroad company, operated wholly within this state, shall not be used or employed in all the counties through or into which such railroad runs, then such portion of said rolling stock or personal property shall only be assessed in the county or counties where used or employed, and shall not be considered in any apportionment of the value of the rolling stock or personal property of such railroad in counties where not used or employed. The statement, however, shall not be conclusive, nor shall the value therein fixed bind the assessor; but he shall, notwithstanding, proceed to value and assess said property according to his official judgment.

See sec. 3794.

When a railroad company claims that its taxes, as assessed by the county assessor, have been reduced, it must affirmatively show the jurisdictional fact that a complaint

was made by it to the board of equalization of the assessor's valuation on the property. *State v. C. P. R. R. Co.*, 17 Nev 259 (30 P. 887).

The records of the board must show that

the complaint was made; the oral testimony of the members of the board is inadmissible. *Idem*.

The board has the right to amend its record so as to make it conform to the truth, and an amendment made by order of the board of county commissioners after it had ceased to sit as a board of equalization was admissible to show the facts upon which the board of equalization acted in reducing an assessment. *Idem*.

There is nothing in the constitution which indicates that it was intended to confer upon county assessors the sole right to assess property, or upon county commissioners the sole right to equalize its valuation. *Sawyer v. Dooley*, 21 Nev. 390 (32 P. 437).

The right of a de facto member of the board of assessors and equalization to exercise the duties of his office cannot be collaterally questioned. *Idem*.

See citation of this case under Const., sec. 325, p. 106, ante; also Const. sec. 278, p. 82, ante.

This act (Stats. 1891, 56) authorizes the board to equalize the value of railroads, as well as other property, and to raise the assessed value of the same, without regard to whether the owner applies for a reduction of the valuation. *Idem*.

Where the admitted net profits of a railroad were \$8,500, an assessment of the road for taxation at \$175,000 was justified by evidence that the current rate of interest for loans of large amount was from 4 to 6 per cent. *State v. N. C. R. R. Co.*, 26 Nev. 357 (68 P. 294).

The cash value of a railroad for purposes of taxation must be determined mainly by its net earnings, capitalized at the current rate of interest, taken in consideration with any immediate prospect of any increase or decrease in earning capacity; and if the utility of the road, as so determined, is not equal to the cost, which is prima facie its value, the value must be determined by

utility alone. *State v. V. & T. R. R. Co.*, 23 Nev. 283, 293 (35 L. R. A. 759, 46 P. 723); *State v. N. C. R. R. Co.*, 28 Nev. 186 (113 A. S. 834, 81 P. 99).

The fiscal year for the purpose of taxation of railroads, the same as for all other property, commences on January first. *State v. V. & T. R. R. Co.*, 24 Nev. 53 (49 P. 945).

The rule being that the value of a railroad, for the purpose of taxation, should be determined, mainly, by its net earnings capitalized at the current rate of interest, a jury is justified in finding that the rate to be used in the computation is the rate of interest which investments command, and not that on temporary loans. *Idem*.

The net income of a railroad for purposes of taxation is the difference between the gross receipts and the expenses as they would have been under reasonably economical and prudent management. *Idem*.

On an issue as to the earning capacity of a railroad for purposes of taxation, classifications of items of expense by the company in its ledger or other accounts are not evidence in its favor, except as they are substantiated by the original entries of the transactions in its books. *Idem*.

On such an issue it would be presumed, in the absence of a contrary showing, that charges for things essential to the operation of the road represented reasonable and economical expenditures. *Idem*.

On such an issue taxes actually paid should be added to the operating expenses and deducted from the gross income. *Idem*.

In the absence of proof that a county levying a tax in excess of \$1.50 per \$100 is not indebted for liabilities contracted prior to the year of the levy, it would be presumed in support of the levy that it was so indebted. *Idem*.

Evidence held insufficient to support assessment. *State v. V. & T. R. R. Co.*, 23 Nev. 283, supra.

### 3815. Definition of the word "railroad"—Personal property assessed, how.

SEC. 2. The word "railroad" shall be held to include, in addition to the track of said railroad, including the rails, couplings, spikes, ties, bridges, culverts, tunnels, cuts, fills, embankments, and the land owned by the right of way of such railroad, all the structures, fixtures, improvements and buildings of said railroad owned thereon or used in connection therewith. The personal property belonging to said railroad, or used in connection therewith, and in operating the same, including the rolling stock, furniture, tools, implements, wood and coal, shall be valued and assessed separately from the track of said road, and shall be listed and entered on the assessment roll under the head of personal property; all buildings and superstructures belonging to or used in connection with said railroad, except such as form a part or the track of said road, including depots, storehouses, woodsheds, machine shops and round-houses, shall be assessed separately from the track and listed as real estate.

### 3816. Portion to be assessed as part of whole.

SEC. 3. In ascertaining, assessing and fixing the value of any railroad for taxation the assessor shall assess it the same as other property, and shall consider, treat and assess the portion thereof at its value within his county as

an integral part of a complete, continuous and operated line of railroad, and not as so much land covered by the right of way merely, nor as so many miles of track consisting of iron rails, ties and couplings.

### 3817. Failure to furnish statement.

SEC. 4. If any corporation, company, or person owning such railroad failing, neglecting, or refusing, after being notified, to furnish a statement for assessment and taxation, as provided in this act, the county assessor may proceed to make the assessment in the same manner as in other cases, and as provided in an act to provide revenue for the support of the government of the State of Nevada, approved March twenty-three, eighteen hundred and ninety-one.

Taxation—C. P. R. R. subject to. (Railroad Co. v. Peniston, 18 Wall. 5, cited). State v. C. P. R. R. Co., 10 Nev. 47.

Sworn statement of railway company must show affirmatively that the person making it is one of the persons named in the statute, and be subscribed by him. State v. Washoe Co., 5 Nev. 317.

On failure of assessor to demand statement, held that the burden of proof was upon the railroad company desiring equalization to show the fact of neglect to make the demand. *Idem*.

See State v. Washoe Co., 7 Nev. 83.

Failure to make statement—Excludes from equalization—Sufficiency of statement—Description of property—Verification of statement good when intention is clear—Delivery of statements proven orally. State v. C. P. R. R. Co., 17 Nev. 259 (30 P. 887).

Since the act of Congress of July 10, 1886, the surveyed but unpatented lands within the grant to the Central Pacific railroad are no longer exempt from taxation by reason of the government lien thereon for the costs of surveying, etc. The conditions contained in that act to the effect that the lien shall continue, and that the United States may become a preferred purchaser at any tax sale of such land, control such sales, and there is no necessity for a legislative acceptance by the states of the conditions of the act. State v. C. P. R. R. Co., 21 Nev. 247 (30 P. 686, affirmed, 162 U. S. 512).

The cash value of a railroad is measured by the amount of cash required to procure it, provided its utility is commensurate with its cost; and the amount of cash required to procure a railroad is the necessary cost of its construction. State v. C. P. R. R. Co., 10 Nev. 47.

Principles of valuation and taxation elaborately discussed and explained. *Idem*.

The actual cost of a railroad is *prima facie* its value; but if it appears that the actual cost was in excess of the necessary cost, the necessary cost is its proper standard. If it further appears that the net income of the road does not amount to current rates of interest on its necessary cost, and is not likely to do so, or if the business of the road is likely to be destroyed or impaired, by competition or other cause, or, in short, if the utility of the road is not equal to its cost, then its value is less than its cost, and must be determined by reference to its utility alone. (State v. C. P. R. R. Co., 10 Nev. 47, affirmed.) State v. V. & T. R. R. Co., 23 Nev. 283 (35 L. R. A. 759, 46 P. 723).

Under Stats. 1891, pp. 137, 138, providing that all property shall be assessed at its actual cash value, and that the term "cash value" means the amount at which the property would be appraised if taken in payment of a just debt from a solvent debtor, the value of a railroad for the purpose of taxation must be determined mainly by its net earnings, capitalized at the current rate of interest, taking into consideration any immediate prospect of an increase or decrease in the earning capacity of the road. *Idem*.

Net earnings of railroad. Replacing bridge deducted as part of expenses of the year. *Idem*.

State v. V. & T. R. Co., 23 Nev. 432 (49 P. 38); State v. V. & T. R. Co., 24 Nev. 53 (49 P. 945).

The omission of the assessor to state the number of acres of land assessed to a railroad company where the number of miles of the road is stated—where it is not shown that the railroad company was injured by the failure to state the number of acres—does not make the assessment void. State v. C. P. R. Co., 10 Nev. 47.

### *An Act in relation to levying and assessing taxes for state and county purposes.*

Approved March 19, 1891, 189

### 3818. Duties of commissioners—Levy of taxes—May raise or reduce.

SECTION 1. All state and county taxes required to be levied by the boards of county commissioners of the several counties of this state in pursuance of the revenue laws of this state, shall hereafter be levied by such boards of county commissioners on or before the first Monday of March in each year; *provided*, that if after the equalization of taxes in the several counties of this state, it shall appear that the levy previously made by the board of

county commissioners of any county of this state for county purposes will result in the collection of a revenue, either in excess or a deficiency of the requirements of such county for the current year, then, and in such event, the board of county commissioners in any such county shall have the power, and it is hereby made the duty of such board of county commissioners, to immediately meet and either reduce or raise the rate of taxation, so previously levied, to such a sum as such board in its judgment may consider sufficient to insure the collection of such an amount of revenue as will answer all the requirements of such county for such current year. *As amended, Stats. 1893, 119.*

See sec. 3762.

*An Act regulating the assessment and taxation of banks and of the shares of stock therein.*

Approved March 20, 1907, 202

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| 3819. All bank property to be assessed.                              | 3823. Assessor to receive true and complete list of stockholders. |
| 3820. All bank shares to be assessed to the holders—Full cash value. | 3824. Bank held liable for taxes upon its shares.                 |
| 3821. Real estate.   | 3825. Lien on shares of stock, when.                              |
| 3822. Real estate only to be assessed to bank.                       |   |

**3819.** All bank property to be assessed.

**SECTION 1.** All of the property of every bank in which no shares of stock have been issued shall be assessed to it in the same manner and form as other property is assessed to the owners thereof.

**3820.** All bank shares to be assessed to the holders—Full cash value.

**SEC. 2.** All shares of stock in banks, whether of issue or not, existing by authority of the United States, or of the State of Nevada, or of any other state, territory, or foreign government, and located within the State of Nevada, shall be assessed to the owners thereof in the county, city, town or district where such banks are located, and not elsewhere, in the assessment of all state, county, town or special taxes, imposed and levied in such place, whether such owner is a resident of said county, city, town or district, or not. All such shares shall be assessed at their full cash value on the first day of May, first deducting therefrom the proportionate value of the real estate belonging to the bank, at the same rate and no greater than that at which other moneyed capital in the hands of citizens and subject to taxation is by law assessed. And the persons or corporations who appear from the records of the banks to be the owners of shares at the close of the business day next preceding the first day of May in each year shall be taken and deemed to be the owners thereof for the purposes of this section.

**3821.** Real estate.

**SEC. 3.** The real estate belonging to any bank shall be assessed to it in the same manner and form as other real estate is assessed to the owners thereof.

**3822.** Real estate only to be assessed to bank.

**SEC. 4.** No bank in which shares of stock have been issued shall be assessed upon other property than its real estate and no stockholder in such bank shall be assessed on account of his property interest therein except for his share of stock as hereinbefore provided.

**3823.** Assessor to receive true and complete list of stockholders.

**SEC. 5.** Every bank in which shares of stock have been issued, and the officers thereof, shall upon the request of the assessor deliver to him in full,

a true and complete list of the names of the stockholders in such bank and of the number of shares owned by each on the close of business on the day preceding the first day of May, as shown by its books and records, and shall also upon such request deliver to the assessor a true statement of the total number of shares comprising the capital stock of the bank.

### 3824. Bank held liable for taxes upon its shares.

SEC. 6. Every bank in which shares of stock have been issued shall pay to the tax collector, or other person authorized to collect the taxes of the state, county, city, town or district in which the same is located at the time in each year when other taxes assessed in the said state, city, town or district become due, the amount of the tax so assessed in such year upon the shares in such bank, and if such tax is not so paid the said bank shall be liable for the same and for equal penalties provided for by law in the collection of delinquent taxes upon other property.

### 3825. Lien on shares of stock, when.

SEC. 7. The shares of such bank in which shares of stock have been issued shall be subject to the tax paid thereon by the bank or by the officers thereof, and the bank and the officers thereof have a lien on all the shares in such bank and on all the rights and property of the stockholders in the bank and the property thereof for the payment of said taxes.

## COUNTY REVENUE

### *An Act relating to county government and the reduction of the rate of county taxation.*

Approved March 13, 1903, 107

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| 3826. County tax rate in certain counties. | 3832. Emergency tax.                         |
| 3827. Idem.                                | 3833. Floating debt tax—Scrip.               |
| 3828. Idem—Excess void—Penalty.            | 3834. Unlawful to contract certain indebted- |
| 3829. Budget of county expenses.           | ness.  |
| 3830. Idem—Prohibitions—Penalty.           | 3835. Annual and quarterly reports.          |
| 3831. Loan in case of necessity.           | 3836. Certain counties exempt from act.      |

### 3826. County tax rate in certain counties.

SECTION 1. In all counties whose tax rate for county purposes for the year 1904, exclusive of tax to pay the interest and maintain the sinking funds of the bonded indebtedness of such counties, did not exceed one dollar and fifty cents on each one hundred dollars of assessed valuation, the tax rate for such county purposes for the year 1905 shall be two and one-half cents lower on each one hundred dollars of assessed valuation than the tax rate for such county purposes was in 1904; and thereafter such tax rate shall be diminished annually at the rate of not less than two and one-half cents on the one hundred dollars of assessed valuation until it reaches seventy cents on the one hundred dollars of assessed valuation; and thereafter the permanent limitation of taxation for such county purposes, exclusive of the tax to pay the interest and maintain the sinking fund aforesaid, shall be seventy cents on the one hundred dollars of assessed valuation; *provided*, that, in counties whose tax rate for the year A. D. 1908 was less than fifty cents on each one hundred dollars of assessed valuation, the board of county commissioners thereof may fix the rate for the year A. D. 1909, at not exceeding one dollar and thirty-five cents on each one hundred dollars of assessed valuation, and shall thereafter during each subsequent year reduce such tax rate as in this act provided. *As amended, Stats. 1905, 187; 1909, 46.*

See sec. 3837.

Cited, State ex rel. Holley v. Boerlin, 30 Nev. 475 (98 P. 402).

**3827. Idem.**

SEC. 2. In all counties whose tax rate for county purposes for the year 1904, exclusive of the tax to pay the interest and maintain the sinking funds of the bonded indebtedness of such counties, exceeded one dollar and fifty cents on the one hundred dollars of assessed valuation, the tax rate for such county purposes for the year 1905 shall be five cents lower on each one hundred dollars of assessed valuation than the tax rate was for such county purposes in 1904; and thereafter such tax rate shall be diminished annually at the rate of not less than five cents on each one hundred dollars of assessed valuation until it reaches one dollar and fifty cents on the one hundred dollars of assessed valuation; and thereafter shall be reduced annually at the rate of two and one-half cents on the one hundred dollars of assessed valuation until it reaches seventy cents on the one hundred dollars of assessed valuation; and thereafter the permanent limitation of taxation for such county purposes, exclusive of the tax to pay the interest and maintain the sinking fund aforesaid, shall be seventy cents on the one hundred dollars of assessed valuation; *provided*, that in counties whose tax rate for the year A. D. 1908 was less than fifty cents on each one hundred dollars of assessed valuation, the board of county commissioners thereof may fix the tax rate for the year A. D. 1909 at not exceeding one dollar and thirty-five cents on each one hundred dollars of assessed valuation, and shall thereafter during each subsequent year reduce such tax rate as in this act provided. *As amended, Stats. 1905, 187; 1909, 47.*

See sec. 3837.

**3828. Idem—Excess void—Penalty.**

SEC. 3. Any tax levied in excess of the limitation imposed by sections 1 and 2 hereof, shall be void as to such excess, and any commissioner voting therefor shall be removed from office in a suit to be instituted by the district attorney in said county wherein said commissioner resides upon request of the attorney-general acting under the instructions of a majority of the state board of revenue, consisting of the governor, the controller and the attorney-general.

See secs. 3809, 3837.

**3829. Budget of county expenses.**

SEC. 4. The commissioners shall, between the first Monday of January and the first Monday of March, make a budget of the amount estimated to be required to pay the expense of conducting the public business of the said county for the next ensuing fiscal year. The budget shall be prepared in such detail as to the aggregate sum and the items thereof as the commissioners shall deem advisable. After the final estimate is made in accordance herewith, it shall be signed by a majority of the commissioners and the county clerk, and the several sums shall then be appropriated for the ensuing fiscal year to the several purposes therein named. The estimate shall be filed in the office of the auditor.

**3830. Idem—Prohibitions—Penalty.**

SEC. 5. It shall not be lawful for the commissioners or for any officer of the county to authorize, allow or contract for any expenditure unless the money for the payment thereof is in the treasury and especially set aside for such payment. Any commissioner or officer violating the provisions of this section shall be removed from office in a suit to be instituted by the district attorney of the county wherein said commissioner resides, upon the request of the attorney-general.

**3831. Loan in case of necessity.**

SEC. 6. In case of great necessity or emergency, the board of commissioners by unanimous vote, by resolution reciting the character of such necessity or emergency, may authorize a temporary loan for the purpose of meeting such necessity or emergency, but such resolution shall not take effect until it has been approved by resolution adopted by a majority of the state board of revenue, and the resolution of the state board of revenue shall also be recorded in the minutes of the county commissioners.

**3832. Emergency tax.**

SEC. 7. It shall be the duty of the commissioners at the first tax levy following the creation of such emergency indebtedness to levy an extra tax sufficient to pay the same, which shall be designated "Emergency Tax."

**3833. Floating debt tax—Scrip.**

SEC. 8. The commissioners of any county in the state which has a floating debt or scrip outstanding, shall either levy a tax for the year 1903 in addition to the county tax above specified, for the payment of such scrip or floating indebtedness, or shall fund such floating debt in bonds providing for the payment of the principal and current interest at a rate not to exceed five per cent per annum, in not more than ten equal annual installments. The tax levied for the payment of such floating debt shall be designated "Floating Debt Tax."

**3834. Unlawful to contract certain indebtedness.**

SEC. 9. After the fiscal year 1903 it shall be unlawful for the commissioners of any county in this state to contract any floating indebtedness or to contract any obligation whatever, except bonds authorized by law, or such emergency loan, unless the funds are in the treasury for the payment of the same and are specially set aside for the payment thereof. Any commissioner voting for incurring any obligation, except a bonded indebtedness authorized by law, or such emergency loan, when there are not sufficient funds in the county treasury properly applicable thereto, shall be removed from office in a suit to be instituted by the district attorney of said county wherein said commissioner resides, upon the request of the attorney-general acting under the authority of the state board of revenue.

**3835. Annual and quarterly reports.**

SEC. 10. Annual reports, in addition to the quarterly reports now made to the controller of the state, pursuant to law, shall also be made, from which a classified table as to the accounts of each county shall be made by the controller of the state and published in his annual report. The state board of revenue shall prescribe the general form of such annual reports and the items and details which shall be given, with a view to securing and publishing, for comparison and criticism, the transaction and doings of each county in the state.

[Sec. 11 repealed by Stats. 1905, 188.]

**3836. Certain counties exempt from act.**

SEC. 12. Nothing in this act shall apply to any county that has a debt exceeding two hundred thousand dollars. *As amended, Stats. 1905, 188.*

*An Act to fix the rate of county taxation in counties of this state, and repealing all acts or parts of acts inconsistent with this act.*

Approved March 1, 1911. 28

**3837. Lawful to increase tax rate in certain counties.**

SECTION 1. In all counties whose tax rate for county purposes for the year 1910, exclusive of tax to pay the interest and maintain the sinking fund of the bonded indebtedness of such counties, did not exceed one dollar and

five cents on each one hundred dollars of assessed valuation, it shall be lawful for the board of county commissioners of such counties to fix the tax rate for such county purposes for the year 1911 at not exceeding one dollar and thirty-five cents on each one hundred dollars of assessed valuation, and such board of county commissioners shall thereafter, during each subsequent year, fix such tax rate at a sum not to exceed one dollar and thirty-five cents on each one hundred dollars of assessed valuation.

See sec. 3826.

*An Act requiring a minimum valuation to be placed upon lands in the State of Nevada for purposes of taxation.*

Approved March 20, 1911, 100

### 3838. All land to be assessed—Minimum valuation.

SECTION 1. Hereafter no patented land of any description in the State of Nevada owned by any individual, partnership, association, estate, corporation or otherwise, and no land held under any state land contract, shall be assessed for less than one dollar and twenty-five cents per acre, either by the county assessors of the various counties or by any state board of assessors or similar body.

### 3839. County assessor liable for taxes on unassessed land.

SEC. 2. If the county board of equalization shall ascertain that any land within its county has been assessed upon a valuation of less than one dollar and twenty-five cents per acre, or has not been assessed at all, said board shall immediately notify the county assessor to pay into the county treasury the taxes due on such land upon a valuation of at least one dollar and twenty-five cents per acre in such a sum as will yield the full amount of taxes due upon such land upon its true value and which valuation shall not be less than one dollar and twenty-five cents per acre. If such county assessor fail to pay such taxes within ten days after such notification by the county board of equalization, it is hereby made the duty of the district attorney to file and prosecute diligently a suit against such assessor and his surety or sureties on his official bond for the amount of such taxes.

### 3840. Valuation of state board to stand when not under minimum.

SEC. 3. If at any time hereafter the state board of assessors should place a valuation upon any lands within the State of Nevada, the provisions of this act shall apply to such valuation so placed, and in the event of the violation of the provisions of this act by said state board of assessors, it is hereby made the duty of the attorney-general to instruct the various district attorneys to file and prosecute diligently suits against the several assessors comprising said board as hereinbefore provided.

See sec. 3797.

*An Act providing for the disposition of poll-tax collections.*

Approved March 27, 1911, 376

### 3841. Poll tax applied to road work; counties to furnish receipts.

SECTION 1. From and after the passage of this act all money received from poll-tax collections shall be by the county commissioners of the various counties of this state set aside for the exclusive use of the different road districts, of the several counties, according to the amounts collected in the various road districts and all receipts for poll taxes shall hereafter be furnished by the respective counties instead of the state controller and all poll-tax receipts shall be signed by the county assessor.

Superseding sec. 3712.

See Const., sec. 256.

See sec. 3711.

*An Act to exempt from taxation all Young Men's Christian Association buildings, furniture and equipments, and the lots of ground on which they stand, used therewith and necessary thereto, and to repeal all acts in conflict with the provisions of this act.*

Approved March 18, 1911, 127

**3842. Y. M. C. A. property exempt from taxation; exception.**

SECTION 1. There shall be exempt from taxation all Young Men's Christian Association buildings with their furniture and equipments, and the lots of ground on which they stand, used therewith and necessary thereto; *provided*, that when any such property is used for any other than Young Men's Christian Association purposes, and a rent or other valuable consideration is received for its use, the same shall be taxed.

*An Act to provide revenue for the support of the government of the State of Nevada.*

Approved March 13, 1895, 59

**3843. Assessments of live stock—Upon uninclosed lands—Situs for taxation.**

SECTION 1. In the cases of horses, mules, asses, cattle, sheep, goats, hogs and all other live stock running at large and grazing upon uninclosed lands, whether in charge of a herder or not, the assessment provided for by the general revenue law of this state may be made, and the taxes thereon collected at any time during the calendar year; and the fact that such live stock may have been assessed, and the taxes thereon for the same year paid in some other state or territory, shall not exempt it from assessment and taxation in this state. When such live stock is the property of nonresidents of this state its situs for purposes of taxation shall be the county in which it is first assessed; *provided*, that nothing herein contained shall be so construed as to prevent the free passage of such live stock through this state for commercial purposes, or to deny to the citizens of each state all the privileges and immunities of citizens of the several states.

**3844. Tax to be equalized, when.**

SEC. 2. When the property described in section 1 of this act shall have been assessed as therein provided and the taxes thereon collected, as prescribed by the general revenue law of this state upon complaint in writing by the owner, his agent or any person aggrieved (which complaint shall be made within ten days after the collection of said taxes, and shall be filed with the county clerk), that the assessment was too high or too low, it shall be the duty of the board of county commissioners within ten days after the filing of such complaint, to meet as a board of equalization to equalize the same, and the proceedings shall be the same as in other cases of equalization.

See sec. 3638.

*An Act defining and classifying transient stock and providing for the assessment, collection and distribution of taxes on the same, and providing penalties for violation of its provisions.*

Approved March 9, 1903, 65

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| 3845. Transient stock, how determined.   | 3850. Taxes, to what county paid.                                |
| 3846. Certificate required to be filed upon bringing live stock into any county. | 3851. County assessor to furnish owner with certificate—Form of. |
| 3847. Duty of county clerk upon receiving certificate.                           | 3852. Exemption of owner to pay additional tax, how obtained.    |
| 3848. Per capita tax on transient stock—Proviso—Alternative.                     | 3853. Duties of county commissioners of different counties.      |
| 3849. Assess in county where first found.  | 3854. Assessor to make full assessment.                          |

- 3855. County commissioners to commence suit, when—Defendant in action.
- 3856. Penalty for moving stock with intent to move out of state—Misdemeanor.
- 3857. Failure to file certificate a misdemeanor—Fine and punishment.

- 3858. Further punishment for violation of provisions of this act—Duties of assessors.
- 3859. Punishment for failure of certain officers to perform duties.
- 3860. Construction of the word "person" used in this act.
- 3861. Repealing clause.

**3845. Transient stock, how determined.**

**SECTION 1.** That for the purpose of taxation as hereinafter provided, transient stock shall be deemed to be:

- 1. All stock brought into the state by any person or persons other than bona fide residents thereof, for the purpose of being grazed, and
- 2. All stock owned by residents of the state and driven or removed from one county to another for the purpose of being grazed.

**3846. Certificate required to be filed upon bringing of live stock into any county.**

**SEC. 2.** It shall be the duty of every person or persons bringing live stock into any county of the state for the purpose of being grazed for any length of time, to set out in a certificate signed by such person or persons or their agents, the number of live stock with the marks and brands on the same, and file said certificate with the county clerk of the county in which said live stock shall be first brought, which certificate shall be substantially in the following form:

State of Nevada, County of \_\_\_\_\_, ss.

I, \_\_\_\_\_, of \_\_\_\_\_, hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 190\_\_, I brought into the County of \_\_\_\_\_ from the State of \_\_\_\_\_, head of \_\_\_\_\_ branded \_\_\_\_\_ on the \_\_\_\_\_ and marked as follows: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 190\_\_.

Signed by \_\_\_\_\_

**3847. Duty of county clerk upon receiving certificate.**

**SEC. 3.** It shall be the duty of the county clerk upon said certificate being filed, to keep an index of the same in his office, and if the assessment rolls are in his possession or in the possession of the county treasurer, he shall, as clerk of the county, enter an abstract of such certificate upon the assessment roll for the current year; otherwise he shall deliver to the county assessor a certified copy of such certificate and the county assessor shall enter an abstract of such certificate upon the assessment roll for the year.

**3848. Per capita tax on transient stock—Provisos—Alternative.**

**SEC. 4.** Every person or persons, other than bona fide residents of the state, bringing live stock into the state, for the purpose of being grazed for any length of time, shall be required by the assessor of the county where such certificate is filed, to pay the sum of twenty cents on each and every head of sheep, and forty cents on each and every head of cattle or other live stock so certified, which collection shall be deposited with the county treasurer; *provided*, that said twenty cents per head on sheep, and forty cents per head on cattle and other live stock, shall at the end of such year be returned to the person paying the same, upon a showing that he has paid the regular annual tax in that county for that year upon all said property the same as other persons have paid on like property permanently located in the state; or such portion of said payment shall be returned as shall exceed the amount of the regular tax for said year; *provided, further*, that any person so certifying to the ownership of transient stock, in lieu of the payment of the said twenty

cents per head on sheep, and forty cents per head on cattle and other live stock, may execute a bond to such county with two or more sureties, to be approved by and filed with the county treasurer, conditioned that such person will regularly and punctually pay all taxes which may become due thereon during the year. *As amended, Stats. 1909, 75.*

**3849. Assessed in county where first found.**

SEC. 5. Except as in the next section provided, all stock owned by residents of the state and driven or removed from one county to another to be grazed shall be assessed as other personal property in the county where first found after January first in each year, and such assessment shall be listed on the assessment rolls and the taxes collected in such county the same as on other personal property.

**3850. Taxes, to what county paid.**

SEC. 6. The taxes on all live stock owned by residents of the state and driven or removed from one county to another for the purpose of being grazed, that are grazed for any portion of the year in the county where owned, shall be paid in the county where owned, and it shall be the duty of the assessor of each county to list all such transient stock owned by residents of this state on a listing blank before February the fifteenth of each year, and transmit such list to the assessor of the county in which said stock were owned, who shall assess said stock and enter said assessment on the assessment roll of said county, and assess against said stock any special school tax which may have been levied in the school district in which said stock are owned, and the same shall be collected by the treasurer of the county in which said stock are owned.

**3851. County assessor to furnish owner with certificate—Form of certificate.**

SEC. 7. It shall be the duty of the county assessor in each county, at the time of assessing any transient stock, to furnish the owner of said transient stock or his agent with a certificate and such copies thereof as the owner or his agent may require showing the time, place, number, and description of the animals assessed; *provided*, residents and other persons not owning sufficient real estate within the state to secure the payment of said taxes shall have complied with the provisions of section 4 of this act before they shall be entitled to such certificate. Such certificate shall be substantially in the following form:

State of Nevada, County of \_\_\_\_\_, ss.  
 I, \_\_\_\_\_, do hereby certify that I am the assessor of \_\_\_\_\_  
 County, State of Nevada; that I have this day assessed for the year 190\_\_\_\_,  
 \_\_\_\_\_ head of \_\_\_\_\_ branded on the \_\_\_\_\_ and marked as follows:  
 \_\_\_\_\_ the property of \_\_\_\_\_, a resident of \_\_\_\_\_  
 county, State of \_\_\_\_\_.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.  
 By \_\_\_\_\_, Deputy. \_\_\_\_\_, Assessor.

**3852. Exemption of owner to pay additional tax, how obtained.**

SEC. 8. Whenever the owner of any transient stock or his agent shall drive or remove such stock into another county for grazing or feeding purposes, he shall not be required to pay any additional taxes on said stock to such county into which they are driven or removed; *provided*, that such owner or his agent shall file with the county clerk of such county a copy of the certificate set forth in section 7, together with a statement from said owner or his agent showing the date when such stock were brought into said county and the date when they will probably leave. Such certificate

and statement must be filed in each county into which such stock are driven or removed, in order to claim the exemption from further taxation.

**3853. Duties of county commissioners of different counties.**

SEC. 9. On the fifteenth day of January of each year it shall be the duty of the county commissioners of each county wherein such certificate and statements have been filed, showing that live stock, upon which the taxes have been paid in any county for the previous year, have ranged for a portion of such year in another county, to file a statement with the county commissioners of the county wherein the taxes for such year have been paid, claiming from such county such proportion of the taxes as the time during which such live stock ranged in said county, will bear to the whole of the year, which said account after deducting therefrom the costs of assessing and collecting the same, shall be paid by the county receiving the entire tax to the county or counties entitled to a division thereof, as above set forth, with the exception that no portion of the tax collected for state, district school or municipal purposes shall be considered in this connection.

**3854. Assessor to make full assessment.**

SEC. 10. If the assessment in the county where first made is not in full, then the assessor of such other county in which such transient stock may be ranging, is authorized to assess such stock to the number omitted in the previous assessment, and such taxes on the number so assessed shall be paid in the county where such last assessment is made.

**3855. County commissioners to commence suit, when—Defendant in the action.**

SEC. 11. It shall be the duty of the county commissioners of the county in which such live stock shall be herded or grazed without having first complied with the provisions of this act, upon receiving satisfactory information of such fact, to institute such civil action in the name of the county against the person so herding or grazing such live stock, or his agent. If the owner of such live stock be not known to such commissioners, it shall be lawful to make an agent of such person, or any person, having the care and custody of such live stock, the defendant in such action, and service of the summons upon such agent, or person having the care and custody of such live stock, shall be considered and held to be personal service upon the owner thereof.

**3856. Penalty for moving stock with intent to move out of state—Misdemeanor.**

SEC. 12. If any person having the care or custody of such live stock shall, pending an action instituted as provided in the last section, drive or move said live stock out of the county with intent to move the same out of the state, or with the intent to evade the payment of the forfeiture hereinbefore named, upon affidavit to that effect being made and filed in an action being brought to recover said forfeiture or tax herein provided, writs of attachments may issue as in civil actions, and the proceedings therein shall be as in other cases, except that no undertaking or attachment shall be required; and in addition thereto, any person so driving or moving such live stock shall be guilty of a misdemeanor and be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment, for each and every offense.

**3857. Failure to file certificate a misdemeanor—Fine and punishment.**

SEC. 13. Any person named in section 2 of this act, or his agent, who shall bring any live stock into this state for grazing purposes, and shall herd

or graze the same in any county of the state without first filing said certificate, and without paying the amount of money per head as hereinbefore provided, or giving the bond named in section 4 of this act shall be guilty of a misdemeanor and be punished by a fine in a sum not less than one hundred dollars nor more than five hundred dollars, and shall further forfeit and pay the sum of forty cents for each and every head of cattle thereof, and ten cents for each and every head of sheep, for the use of said county, which said forfeit shall be collected by a civil action in the name of the county in which said live stock are, or were, so herded or grazed.

### 3858. Further punishment for violation of provisions of this act—Duties of assessors.

SEC. 14. Any person, or his agent, bringing live stock from one county in this state into another county for grazing purposes without filing the statement and certificate as provided by section 8 of this act, within thirty days after he has crossed the county line, shall be guilty of a misdemeanor and be punished by a fine of not less than ten dollars nor more than one hundred dollars, or imprisonment in the county jail not to exceed six months, and in addition thereto said live stock shall not be exempt from taxation in the county from which they are taken. Any assessor of any county may, when he finds live stock belonging outside of his county ranging within his county lines, enumerate such stock and render to the county clerk of the county where the stock belong, or the county where they were first certified to as herein required, a certificate setting forth the time that such stock entered and the time such stock left his county. A certificate so rendered shall be of the same force and effect as though made by an agent of the owner of the stock.

### 3859. Punishment for failure of certain officers to perform duties.

SEC. 15. Any county officer or member of the board of county commissioners or board of equalization, who shall fail to perform the duties prescribed in this act, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars or more than five hundred dollars.

### 3860. Construction of the word "person" used in this act.

SEC. 16. Within the meaning of this act the word "person" shall be construed to mean and include corporations, whether domestic or foreign, joint-stock companies, firms or other associations associated together and doing business.

### 3861. Repealing clause.

SEC. 17. All acts and parts of acts in conflict with this act are hereby repealed; *provided*, that this act shall not be construed to affect or repeal an act approved March 23, 1891, entitled "An act supplemental to an act entitled 'An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto,'" or any act supplemental thereto or amendatory thereof.

*An Act in relation to delinquent taxes, and providing for the adjustment of the accounts between the treasurer and auditor.*

Approved March 28, 1907, 357

### 3862. Duties of certain officers—Delinquent taxes less than \$300.

SECTION 1. That on the first Monday in April and September in each year, the county treasurer and ex officio tax receiver shall attend at the office of the county auditor with the delinquent tax-list or lists, and the auditor shall then carefully compare the same with the receipts and statements filed by the treasurer and ex officio tax receiver; and, if the same shall be found to

be correct, the auditor shall give to the treasurer and ex officio tax receiver a receipt specifying the same. The treasurer and ex officio tax receiver shall, at the same time, deliver to the auditor a written statement of all delinquent taxes upon said delinquent list or lists, remaining uncollected with his reason in detail for not being able to collect the same; and the auditor shall immediately file the said delinquent list or lists and statement with the clerk of the board of county commissioners, and the board of county commissioners shall revise the same by striking off such taxes as cannot be collected. The delinquent list or lists shall then be returned to the auditor, who shall note the changes made, and shall then return the same to the county treasurer and ex officio tax receiver, taking his receipt therefor. The county auditor shall, in his report to the state controller, state the amounts stricken off the delinquent list or lists by the board of county commissioners.

See secs. 3646, 3675.

### 3863. *Idem.*

SEC. 2. Nothing in this act shall apply to any delinquent tax amounting to more than three hundred dollars of any one person, firm or corporation.

*An Act allowing the payment of taxes in equal semiannual installments and regulating the collection of taxes on personal property.*

Approved March 16, 1897, 95

### 3864. Taxes paid in December and June.

SECTION 1. Any person charged with taxes on real estate and personal property according to existing law, may, at his option, pay the full amount thereof on or before the first Monday in December of each year; but if he shall pay one-half of such taxes, as the same shall appear on the assessment roll taxed against him, on or before the first Monday in December of each year, then, in such case, the remaining half of said taxes shall not become delinquent prior to the first Monday in June next ensuing; but if such person shall fail to pay the first half of said taxes, as herein provided, then the entire tax shall become due and shall be collected, as now provided by law, and all taxes, of which the first half shall not be paid on or before the first Monday in December of each year, shall be subject to have added thereto a penalty of ten per cent, and all taxes of the preceding year which remain due and unpaid on the first Monday in June of each year shall be subject to, and there shall be added thereto a like penalty of ten per cent.

See secs. 3644, 3659.

### 3865. Treasurer to advertise delinquencies.

SEC. 2. Immediately after the first Monday in June of each year, the county treasurer, and ex officio tax receiver, shall advertise the property upon which such delinquency has attached, and upon which such delinquent taxes are a lien for sale in all cases, and in the same manner, and for the same length of time as he is now required by law to advertise the same, and if the amount of such taxes and delinquency, exclusive of poll tax and penalties, exceed three hundred dollars, action shall be instituted to recover the same, as now provided by law; and if such delinquency amounts to only three hundred dollars or less, then the county treasurer, as ex officio tax receiver, shall advertise and sell the said property for the amount of said delinquency and costs.

See secs. 3646, 3651.

### 3866. Assessor to collect entire amount of personal tax, when.

SEC. 3. It is hereby made the specific duty of all county assessors, at the time of assessing personal property, to collect the entire amount of tax on

such personal property, unless the owner thereof shall be the owner of real estate, situate within his county, sufficient, in the judgment of the county assessor, to amply secure the payment of the entire tax on both such sale as might become a lien thereon, by reason of such taxes becoming delinquent.

See sec. 3678.

### LICENSES

*An Act empowering boards of county commissioners, town trustees or city boards to revoke and discontinue business licenses, under certain conditions.*

Approved March 10, 1903, 80

3867. Licenses may be revoked for cause.

3869. Applicable to cities and towns.

3868. Complaint—Proceedings.

3870. Penalty.

3871. Failure of duty—Forfeiture of office.

#### 3867. Licenses may be revoked for cause.

SECTION 1. The boards of county commissioners of the several counties of this state are hereby empowered and authorized to revoke, withdraw and discontinue any business license granted or issued by the sheriff or other proper officer of their respective counties, where there is reason to believe that such business is a nuisance, a menace to public health or detrimental to the peace or morals of any community in the county in which such business may be conducted; *provided*, that such revocation, withdrawal or discontinuance of such license shall, when the action is taken on motion of or at the instance of a member of the board, be by unanimous consent of the members of such board.

This section is not repugnant to any provision of our state or federal constitutions, and under it, at the instance of a member and by unanimous consent of the board, a license may be revoked without notice to

the licensee where there is reason to believe that the business is a nuisance, a menace to public health, or detrimental to peace or morals. *Wallace v. Reno*, 27 Nev. 71, 76 (103 A. S. 747, 63 L. R. A. 337, 73 P. 528).

#### 3868. Complaint—Proceedings.

SEC. 2. Any resident taxpayer of any school district in the State of Nevada may file a complaint with the board of county commissioners, or with any board having control and direction of the county, city or other municipal government, praying against the continuance of any business which has been previously licensed by the sheriff or any other proper officer, reciting that such business is a nuisance, a menace to the public health or detrimental to the peace or morals of the community, and reciting such further facts as may be pertinent in the premises, said complaint to be accompanied by a petition or protest signed by not less than ten per cent of the resident freeholders of such school district, and any board of county commissioners, or other county, town, city or municipal board, with which such complaint and petition or protest is so filed, shall, at its first meeting thereafter, or at any special meeting in the interim, thoroughly investigate the charges and, if found justifiable, instruct the sheriff, or other proper officer to revoke, withdraw and discontinue such license. The delivery of such complaint and petition or protest to the chairman or any member of said board, or to the clerk or secretary of said board, shall be considered a filing of the same sufficient to cover the provisions of this section, and the failure or refusal of such board to, within thirty (30) days after the filing of such complaint and petition or protest, if said charges are justified, to instruct the sheriff or other proper officer to revoke, withdraw and discontinue the license of any business so complained and petitioned and protested against, shall ipso facto work a forfeiture of office and create a vacancy in the entire membership of said board, which such vacancy shall thereupon and within ten (10) days thereafter be filled by the proper appointing power, and said appointees shall otherwise qualify, all as is by law now provided or as may hereafter be provided.

**3869. Applicable to cities and towns.**

SEC. 3. This act is hereby made applicable to all licensing officers, town boards and city trustees and to the city council or board of aldermen of any incorporated city, town or municipal government within this state.

See *Wallace v. Reno*, under sec. 1 of this act.

**3870. Penalty.**

SEC. 4. Any failure or evasion on the part of the person holding and operating under such license in complying immediately with the instruction of the sheriff or other proper officer, shall be punishable, as by law provided, in the same manner as where no license has been previously granted, and it is hereby made the duty of the district or city attorney, as the case may be, to institute proceedings, upon such failure or evasion, to carry out the provisions of this act and to punish the offender.

Vending without license, see sec. 6810.

**3871. Failure of duty—Forfeiture of office.**

SEC. 5. The failure or refusal of the sheriff or other proper officer to carry out the orders and instructions of the board with reference to the revocation, withdrawal and discontinuance of licenses complained against under the provisions of section 2 of this act, and the failure of the district or city attorney to perform his duty as in section 4 provided, within ten (10) days after such order is made, shall ipso facto work a forfeiture of and vacancy in his office, such vacancy to be filled and the appointee to qualify as provided by law.

*An Act licensing the sale of cigarettes and cigarette paper, and other matters relating thereto.*

Approved March 1, 1897, 29

3872. Cigarette license.

3873. *Idem*—Must take out license.

3874. Must not sell or give to person under twenty-one years.

3875. Penalty.

3876. Collected and accounted for.

**3872. Cigarette license.**

SECTION 1. From and after the passage of this act the quarterly license for the sale of cigarettes or cigarette paper shall be fifteen dollars.

**3873. *Idem*—Must take out license.**

SEC. 2. Any person, firm, association or corporation engaged in dealing, in selling, giving away or offering to sell cigarettes or cigarette paper after the passage of this act, shall take out a quarterly license provided for in section 1 of this act.

**3874. Must not sell or give to person under twenty-one years.**

SEC. 3. It shall be unlawful for any person or persons, firm, association, corporation or managing agent of any person, firm, association or corporation to sell, give away or offer to sell cigarettes or cigarette paper to any person or persons under the age of twenty-one years.

**3875. Penalty.**

SEC. 4. Any person, firm, association or corporation or the managing agent of any person, firm, association or corporation violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each and every offense in any sum not less than one hundred dollars nor more than five hundred dollars.

**3876. Collected and accounted for.**

SEC. 5. The license provided for in this act shall be collected and accounted

for in the same manner as other licenses for state and county purposes are now collected.

This act supersedes an act on the same subject, Stats. 1893, 33.

*An Act fixing and regulating licenses on automobiles and providing a penalty for a violation thereof.*

Approved March 6, 1909, 77

**3877. Automobiles, license of.**

SECTION 1. From and after the passage of this act, any person or persons, firm, company, corporation or association who keeps or uses automobiles of any description for hire or rent, shall obtain from the sheriff of the county in which such business is transacted, a license for the transaction of such business and pay therefor the sum of two dollars and fifty cents (\$2.50) per month.

**3878. Failure to procure license misdemeanor—Penalty.**

SEC. 2. Any person violating the provisions of this act shall be guilty of a misdemeanor and punished by a fine of not less than twenty dollars (\$20) nor more than one hundred dollars (\$100), or by imprisonment in the county jail for a term not exceeding sixty days.

*An Act forbidding the collection of licenses from drummers and traveling salesmen from manufactories, jobbers and wholesale houses located in the State of Nevada.*

Approved March 29, 1907, 374

**3879. License—Salesmen exempt.**

SECTION 1. On an after the first day of April, 1907, it shall be unlawful for any county, city or town to impose or collect any licenses or tax upon or from any drummer or traveling salesman employed by, and selling the goods of, any manufacturer, compounder, wholesaler or jobber whose factory or store is located in Nevada.

See sec. 3893.

**3880. Not applicable to peddlers or hucksters.**

SEC. 2. The provisions of section 1 of this act shall not apply to peddlers or hucksters.

See secs. 3890-3895.

*An Act to restrict and license glove contests, or exhibitions between man and man, and to repeal all other acts in conflict therewith.*

Approved January 29, 1897, 11

3881. Who may procure license.

3885. Contest to be within enclosure.

3882. Sheriff to issue license—Cost thereof.

3886. Regulation by municipal corporations prohibited.

3883. County auditor to prepare license.

3887. Division of license money.

3884. Physicians to certify condition of contestants.

3888. Admission fee allowed.

3889. Penalty for violation.

**3881. Who may procure license.**

SECTION 1. Any male person over the age of twenty-one years may procure a license for an exhibition in a public place for any contest or exhibition with gloves between man and man for a wager or reward, and the weight of the gloves shall not be less than four ounces used in said contest or exhibition.

**3882. Sheriff to issue license—Cost thereof.**

SEC. 2. The sheriff of any county in which the exhibition named in sec-

tion 1 of this act is to be held, shall issue a license for such exhibition or contest upon payment to him of the sum of one thousand (\$1,000) dollars.

### 3883. County auditor to prepare license.

SEC. 3. Blank licenses shall be prepared by the county auditor of the county in which the exhibition or contest named in section 1 of this act is to be held, which license shall be issued and accounted for as is by law provided for in respect to other county licenses. Each license delivered by the sheriff under the provisions of this act shall contain the name of the licensee and the name of the contestants for the reward or wager offered for such exhibition or contest.

### 3884. Physicians to certify condition of contestants.

SEC. 4. The licensee shall ten hours before any proposed contest or exhibition under the provisions of this act, file with the county clerk where such contest or exhibition is to be held, a certificate in writing executed by two regular practicing physicians of this state, showing that the contestants named in the license are in sound physical health and condition.

### 3885. Contest to be within enclosure.

SEC. 5. That such exhibition or contest shall be within an enclosure sufficient to exclude the view of the public not in attendance thereat, and no intoxicating liquors of any kind shall be sold or given away at or during the contest or exhibition as aforesaid upon the grounds or within the enclosure where said exhibition or contest is held.

### 3886. Regulation by municipal corporations prohibited.

SEC. 6. No town, city or municipal corporation in this state shall have power to prohibit, suppress or regulate any such glove exhibition or contest, or the license therefor as provided by this act, and no such exhibition or contest shall take place on Sunday.

### 3887. Division of license money.

SEC. 7. All moneys received for licenses under the provisions of this act shall be paid one-tenth (1-10) into the county treasury and nine-tenths (9-10) into the state treasury for general county and state purposes.

### 3888. Admission fee allowed.

SEC. 8. Any person procuring said license is hereby authorized to charge an admission fee to such exhibition or contest.

### 3889. Penalty for violation.

SEC. 9. Any person or persons who shall participate in, conduct, or manage any glove contest or exhibition contrary to the provisions of this act, shall be deemed guilty of a misdemeanor and on conviction thereof be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not to exceed six months.

*An Act to provide for licensing itinerant and unsettled merchants, traders, peddlers and auctioneers.*

Approved March 24, 1905, 260

3890. License—Peddlers—Auctioneers.

3893. Not applicable to drummers.

3891. Idem—Definition.

3894. Method of collection—Farm and range products exempt.

3892. Idem—\$300 per month.

3895. Penalty.

### 3890. License—Peddlers, auctioneers.

SECTION 1. It shall be unlawful for any itinerant or unsettled merchant, trader, peddler or auctioneer to sell or offer for sale any goods, wares or mer-

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chandise at any place in the State of Nevada, without first obtaining and paying for a license, as hereinafter provided; and all sales or contracts of sale made without such license shall be null and void.

See secs. 3735, 3880.

See soldiers' and sailors' exemption, secs. 3896, 3897.

Cited, Chapin v. Justice Court, 29 Nev. 157 (86 P. 552).

### 3891. *Idem*—Definition.

SEC. 2. An itinerant or unsettled merchant, trader, peddler or auctioneer, within the meaning of this act, shall include every person, firm, or corporation, selling or offering for sale any goods, wares or merchandise, which has no permanent store or other place of business at some point or points within this state, and which is not permanently located and regularly taxed therein.

### 3892. *Idem*—\$300 per month.

SEC. 3. Each and every itinerant and unsettled merchant, trader, auctioneer or peddler shall, before selling or offering for sale any goods, wares or merchandise within this state, procure a license for each and every county in which such person shall attempt to sell or offer for sale any goods, wares or merchandise, which license shall not be granted for more than one month and shall cost the applicant three hundred dollars (\$300).

### 3893. Not applicable to drummers.

SEC. 4. This act shall not apply to drummers and commercial travelers representing and acting for wholesale houses in this and other states so long as they do not attempt the sale of goods, wares and merchandise at retail in competition with established retail dealers, nor shall it in any sense alter or change the present existing laws governing merchants, traders, peddlers and auctioneers permanently established and doing business in this state; *provided, however*, that its provisions shall apply to and be enforced against any peddler or auctioneer acting for or on behalf of any itinerant merchant or trader.

See sec. 3879.

### 3894. Method of collection—Farm and range products exempt.

SEC. 5. The licenses provided for under this act shall be issued and collected as other city and county licenses are issued and collected. The provisions of this act shall not apply to the sale, or offering for sale, of the products of any farm, ranch or range situated within this state.

### 3895. Penalty.

SEC. 6. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty dollars (\$20) nor more than five hundred dollars (\$500), or imprisoned not less than ten (10) days, nor more than six (6) months. Any sheriff who fails to enforce the provisions of this act and exact the license required thereunder after his attention has been called by any citizen of this state to a violation or attempted violation of its provisions, shall himself be liable to prosecution and punishment under this act.

*An Act to provide for the issuance of license to honorably discharged soldiers, sailors and marines of the military and naval service of the United States in the late war of the rebellion who desire to carry on the business of peddler or auctioneer.*

Approved March 25, 1909, 314

### 3896. Soldiers and sailors, exemption.

SECTION 1. Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state

and a veteran of the late rebellion, shall have the right to peddle, hawk, vend and sell his own goods, and to engage in the business of auctioneering, without paying for the license as now provided by law by those who engage in such business, but any such soldier, sailor or marine may engage in such business by procuring a license for the purpose as provided in the next section of the act.

See sec. 3892.

### 3897. *Idem.*

SEC. 2. On presentation to the sheriff of any county in which such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, in the war of the late rebellion, such sheriff shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of peddler or auctioneer.

*An Act authorizing and empowering the boards of county commissioners of the several counties of this state to regulate, issue licenses and to revoke the licenses of stationary engineers and others having charge or control of stationary engines, steam boilers, hoists, and other hoisting apparatus and machinery.*

NOTE—Original act approved March 17, 1905; title amended as above, March 29, 1907, 407.

3898. Stationary engineers—License.  
3899. *Idem*—Duties of commissioners.  
3900. Oath as to experience.

3901. License revoked for cause.  
3902. License good in any county.  
3903. License fee.  
3904. Acting without license—Penalty.

### 3898. Stationary engineers—License.

SECTION 1. In addition to the various other powers and duties provided by law for the boards of county commissioners of the several counties of this state said boards shall have the power, and it is hereby made their duty, to regulate the operation of stationary engines, steam apparatus or other hoisting machinery used for the purpose of hoisting or lowering men or material from a shaft or mine subject to and in conformity with the provisions of this act. *As amended, Stats. 1907, 407.*

### 3899. *Idem*—Duties of commissioners.

SEC. 2. The several boards of county commissioners are hereby authorized and required to prepare engineer's licenses and oaths and affidavits, as hereinafter provided, which licenses shall be issued, on application therefor, under the provisions of this act, and which, before issuance, must be signed by a majority of the board issuing same.

### 3900. Oath as to experience.

SEC. 3. No license shall be granted or issued to any person to operate any stationary engine, steam boiler, hoist, apparatus or machinery, until the applicant therefor shall have taken and subscribed to an oath that he has had at least one year's experience in the operation of steam boilers and machinery, or whose knowledge and experience is not such as to justify the board before whom such application is made in the belief that he is competent to take charge of all classes of steam boilers and other stationary hoisting machinery. *As amended, Stats. 1907, 407.*

### 3901. License revoked for cause.

SEC. 4. Whenever complaint is made against an engineer holding a license as herein provided that he, through negligence, want of skill or inattention to duty, has permitted any boiler in his charge to burn, or has jeopardized life or property, the board shall make a thorough investigation of the charge, and, upon satisfactory proof that the same is true, shall revoke the

license of such engineer; and whenever a complaint is made that any person holding a license as herein provided has been in a state of intoxication or insobriety while on duty, such charge shall be thoroughly investigated by the board, and, upon satisfactory proof of its truth, the license of such person shall be revoked forthwith, and no license shall thereafter be issued to such person by any board of county commissioners of this state.

### 3902. License good in any county.

SEC. 5. A license issued by any board of county commissioners of this state, as herein provided, shall, so long as the same remain unrevoked, entitle the lawful holder thereof to the privileges thereby conferred in any other county of this state upon his recording the same with the clerk of the board of commissioners of the county in which he desires to exercise those privileges.

### 3903. License fee.

SEC. 6. For the license herein provided, the applicant shall before the issuance of same, pay a fee in the sum of five (\$5) dollars, which fee shall be assigned to the general fund of the county in which paid.

### 3904. Acting without license—Penalty.

SEC. 7. Any person operating any stationary engine, steam boiler, hoist or other stationary machinery or apparatus or hoisting machinery used for the purpose of hoisting or lowering men or material from a shaft or mine, where the lives, health or limbs of men may be involved, who has not first procured the license herein provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than fifty (\$50) dollars nor more than two hundred and fifty (\$250) dollars, or by imprisonment in the county jail not less than thirty nor more than one hundred and twenty days, or by both such fine and imprisonment, in the discretion of the court; *provided*, that nothing in this act contained shall be held to apply to those operating in person their own private apparatus nor to persons operating any stationary engine, steam boiler or other apparatus or machinery for town or city purposes. *As amended, Stats. 1907, 408.*

Previous acts in relation to revenue have had the following citations:

**Act of 1861, 144**—Sec. 1: Trustees v. Ormsby Co., 1 Nev. 337; State v. Y. J. S. M. Co., 14 Nev. 230, 236.

Sec. 2: State ex rel. Nightingill v. Storey Co., 1 Nev. 266.

Secs. 4, 20:

Possessory rights to mining claims are property and, as such, taxable. Hale and Norcross G. & S. M. Co. v. Storey Co., 1 Nev. 105.

Sec. 6:

When the law provides an officer shall be elected every two years, but does not provide when the incumbent shall go out or the newly elected come into office, the newly elected may qualify and enter on the duties of his office as soon as he receives his certificate of election. The former incumbent will hold until he does qualify. Cordiell v. Frizell, 1 Nev. 130, 131, 133.

Secs. 7, 8: Cited, Cordiell v. Frizell, 1 Nev. 131.

Sec. 13:

The situs of cattle for the purpose of taxation is not to be controlled by the mere residence of the owner. Barnes v. Woodbury, 17 Nev. 383, 384 (30 P. 1068).

After a review of the facts, it was held that the situs of the cattle, for the purpose of taxation, was at the home ranch, where they belonged. (Leonard, J., dissenting.) *Idem.*

Secs. 41, 46: Cited, Feusier v. Virginia City, 3 Nev. 59, 68.

Sec. 88: Cited, State v. Logan, 1 Nev. 115.

**Act of 1862, 131**—Sec. 6: Cited, Cordiell v. Frizell, 1 Nev. 131, 133.

Sec. 9: Kruttchnitt v. Hauck, 6 Nev. 163.

Sec. 40: Cited, Feusier v. Virginia City, 3 Nev. 66.

Sec. 85: People v. Logan, 1 Nev. 112, 115.

**Act of 1864, 37**—Sec. 3: Cited, Hale and Norcross G. & S. M. Co., v. Storey Co., 1 Nev. 108.

Sec. 4: Cited, Cordiell v. Frizell, 1 Nev. 131-133.

**Act of 1865, 271**—Sec. 53:

County treasurers are not entitled to deduct, as percentage commission allowed to the county, ten per cent of the poll taxes collected by them, as ex officio tax receivers, from the amount payable into the state treasury for state purposes. State ex rel. Hallock v. Boyd, 19 Nev. 357 (11 P. 36).

Cited, State ex rel. Hallock v. Donnelly, 20 Nev. 215 (19 P. 680).

Sec. 86: Cited, *State ex rel. Hobart v. Ryland*, 14 Nev. 49; *Grimes v. Goodell*, 3 Nev. 80.

Sec. 87:

The auditor, assessor, and tax collector are preferred creditors, and entitled to their pay for assessing and collecting the taxes before the money collected is distributed among the several funds to which it properly belongs. *Grimes v. Goodell*, 3 Nev. 79, 80.

Cited, *State ex rel. Hobart v. Ryland*, 14 Nev. 48.

Sec. 90: This section upheld, *Ex Parte Crandall*, 1 Nev. 294, but afterwards reversed in *Crandall v. State*, 6 Wall. 35.

Secs. 91, 93: Cited, *Ex Parte Crandall*, 1 Nev. 300.

Sec. 106:

Under this act a quarterly tax for the year 1867 was properly levied, and its operation in respect to such tax could not properly be called retroactive. *State v. Manhattan S. M. Co.*, 4 Nev. 319, 337.

*State v. Kruttschnitt*, 4 Nev. 178, as to constitutionality of this act, approved. *Idem*.

Sec. 126:

The schedule of stamp duties contained in the amendment of this section by Stats. 1871, 142, supersedes and abrogates all others and is the only one in force. *Thorpe v. Schooling*, 7 Nev. 16, 17.

Sec. 127: Cited, *Sime v. Howard*, 4 Nev. 473.

Sec. 129: Cited, *State v. Cal. M. Co.*, 13 Nev. 222.

Sec. 139:

The clause which exempts from stamp duty those bonds which are "required in a legal proceeding" is not confined to those bonds without which no action could be maintained or prosecuted, but is more general and means all bonds required to give either party to a legal proceeding any advantage or privilege to which he would be legally entitled in the course of that proceeding upon the execution of a proper bond. *Bowers v. Beck*, 2 Nev. 157, 160.

A mere declaration in writing that the person making it holds land conveyed to him in trust by another is not such a conveyance or instrument as requires either a United States or a state revenue stamp. *Sime v. Howard*, 4 Nev. 473, 481.

Act of 1866, 161:

Cited, *Fitch v. Elko Co.*, 18 Nev. 273; *State v. Washoe Co.*, 5 Nev. 321; *Warren v. Quill*, 9 Nev. 265.

Act of 1867, 111:

The board of county commissioners while sitting to equalize assessments as provided in this act are not controlled by the restrictions imposed upon the board of equalization under the general revenue act, and it could not, like the board of equalization, refuse to equalize an assessment because a sworn statement had been refused on demand of the treasurer. *V. & T. R. R. Co. v. Ormsby Co.*, 15 Nev. 340-342, 345-348.

This act was intended to authorize summary proceedings; but it gives to all persons

so assessed, without conditions, a right to have their assessments equalized by the board of county commissioners. *Idem*.

The board of county commissioners, sitting to equalize assessments for taxes made by the tax receiver under this act, is entirely distinct from the board of equalization provided by the general revenue law, though composed of the same persons. *Idem*.

Under this act the right is expressly given to all persons without exception to have their assessments equalized upon making application within the proper time to the board of county commissioners; and if the board refuses to act it may be compelled to do so by mandamus. *Idem*.

Under the provisions of this act a railroad company applied to the county commissioners to have the "subsequent assessment roll" as to its property, equalized; the commissioners thereupon ordered the entire subsequent roll to be stricken out and remitted. It was held that the act was beyond their powers and that the order was void. *State ex rel. Swift v. Ormsby Co.*, 6 Nev. 95-97.

The commissioners had no power to interfere with the subsequent assessment roll, except upon application of some person feeling aggrieved and even then, in granting relief, not to go beyond the application made. *Idem*.

The evident object of this act is to make all assessments made by the treasurer final or, at least, exempt them from any supervision by the county commissioners, except in cases where application might be made by a person aggrieved. *Idem*.

Under this act the board of county commissioners are empowered to modify, equalize or discharge any supplemental assessments therein provided for, upon proper application of the party in interest. *State ex rel. Mason v. Ormsby Co.*, 7 Nev. 392, 393, 395, 396.

This act does not limit the power of the board of county commissioners in reference to the modifying, equalizing or discharging of supplemental assessments; but is evidently intended to enlarge it in distinction to the restrictions imposed on the commissioners sitting as a board of equalization under the general revenue law. *Idem*.

Action may be taken by the board of county commissioners to modify, equalize or discharge such assessments irrespective of the particular character of session of the board; nor is there any limitation imposed by the statutes as to the time of application. *Idem*.

The exercise of the functions of the board of county commissioners in the discharge of a supplemental assessment is not obnoxious to the constitutional division of powers (ante, sec. 258). *Idem*.

The discharge of a supplemental assessment under this act is entirely different to an equalization of the same. *Idem*.

Where application was made to board of county commissioners to equalize a supplemental assessment under this act, which was denied, and afterwards an application was

made to discharge the same assessment, it was held that the board had not exhausted its power in reference to the assessment by its action on the application to equalize. *Idem.*

**Act of 1867, 159:** Cited, *White Pine Co. v. Ash*, 5 Nev. 281, 288.

**Act of 1867, 163:** Cited, *Gibson v. Mason*, 5 Nev. 312; *State v. Y. J. S. M. Co.* 14 Nev. 230.

**Act of 1869, 184—Sec. 3:** This section does not confer a discretion upon the board of equalization to determine whether there is a legal excuse or not, nor authorize equalization when no such statement is furnished. *State ex rel. Thompson v. Washoe Co.*, 7 Nev. 84.

The "legal excuse" mentioned in this section is only to be considered in case of a criminal prosecution as provided by act of 1866, 168, sec. 6, and not in proceedings before the board of equalization. *Idem.*

**Act of 1871, 87—Sec. 1:** This section does not authorize the exemption of \$15 per ton on all ores so worked in addition to the actual cost of working them, but only where such actual cost exceeds 60 per cent of the gross yield. *State v. Eureka Con. M. Co.*, 8 Nev. 15.

In the passage of this act the legislative intent obviously was, first, to tax all the gross yield less the actual cost, and, second, to limit a maximum beyond which not even actual cost should be deducted; in other words, only to exempt the actual cost, provided it did not exceed 60 per cent of the gross yield in cases of ores worked by wet process and 60 per cent, together with \$15 per ton in case of ores worked by dry process. *Idem.*

The admission of the original assessment roll, notwithstanding there was no dollar mark attached to the figures purporting to indicate the amount of the tax due or assessed, was held not error. *Idem.*

Matters inserted in the statements of the proceeds of a mine, the insertion of which is not authorized by the statute, go for nothing, and the assessor is not bound to pay any regard to them. *Idem.*

The mine owner working his ores under the Frieberg process is not entitled to an exemption of \$15 per ton in addition to the actual cost of working the ore. (*State v. Eureka Con. M. Co.*, 8 Nev. 15, affirmed.) *State v. Northern Belle M. & M. Co.*, 13 Nev. 250.

**Sec. 2:** Cited, *State ex rel. Piper v. Gracey*, 11 Nev. 234; *State v. Cal. M. Co.*, 13 Nev. 216.

The provision of the statute as to the time for completing the assessment roll is merely directory, and any irregularity in that respect is a defense in an action for taxes only to the extent that the taxpayer has been injured thereby. *State v. Northern Belle M. Co.*, 15 Nev. 386.

**Sec. 6:** Cited, *State v. Cal. M. Co.*, 13 Nev. 216.

**Sec. 7:** The written notice required by this section to be given by the assessor is

not a prerequisite to liability of the producer for the tax, but only intended to hold a party reducing ores extracted by others to the extent of the value of the ores in his possession when notified. *State v. Eureka Con. M. Co.*, 8 Nev. 16.

**Sec. 10:** There is nothing in the use of the word "manner" in this section to prevent the collection of such taxes quarterly—the word "manner" as there used does not mean "time." *State v. Eureka Con. M. Co.*, 8 Nev. 16. Cited, *State v. Cal. M. Co.*, 13 Nev. 203, 215–217.

**Act of 1873, 66—Sec. 1:** Cited, *Eureka Co. v. Lander Co.*, 21 Nev. 148 (24 P. 871).

Where property is claimed for taxation by two different counties, its regular assessment by one of the counties, and the payment of the taxes to that county prior to the commencement of the action for delinquent taxes in the other county, is complete defense to the latter action. *State v. C. P. R. R. Co.*, 21 Nev. 172, 176 (26 P. 225).

A board of equalization is of special and limited jurisdiction, having only such powers as are specially conferred upon it. The statute gives it the power to determine all complaints concerning the assessment of property, but after the determination of such complaints its action is final and it has no power to reconsider and change its action. *Idem.*

**Act of 1873, 169:** Act construed, *State v. Cal. M. Co.*, 13 Nev. 203. Cited, *State v. Cal. M. Co.*, 15 Nev. 241, 250, 253.

This act held constitutional, it being a general law imposing the same burden upon all persons similarly situated and belonging to the same class. *State v. Con. Va. M. Co.*, 16 Nev. 432, 441, 448, 449.

**Act of 1875, 105—Sec. 1:** If a written statement is not furnished to the assessor as required by this section, the board of equalization has no power to reduce the assessment. *State v. C. P. R. R. Co.*, 17 Nev. 260, 272 (30 P. 887).

The statement need not contain an itemized list of the various articles of personal property; it will be sufficient if it contains a list of property of the railroad company, real and personal, pertaining to its road. *Idem.*

The fact of the delivery of the statement to the assessor is not a proceeding of the board of equalization and need not be shown by its records. *Idem.*

Where a school district has been in existence since 1871 and has continued during that time to receive public funds for its support and has had three special taxes levied and collected for its benefit without its legal organization ever having been questioned, a taxpayer on whose property such a tax is levied is precluded from attacking the legality of the organization of the district. *State v. C. P. R. R. Co.*, 21 Nev. 75 (25 P. 296).

This section construed. *State v. C. P. R. R. Co.*, 21 Nev. 75, 80 (25 P. 296).

**Act of 1879, 143:** Held unconstitutional as being a special law in violation of secs.

278 and 279, ante. State v. Cal. M. Co., 15 Nev. 234, 248, 256.

Sections 2 and 4 of this act held unconstitutional for the same reason. State v. Con. Virginia M. Co., 16 Nev. 432, 448, 449.

**Act of 1897, 17:** The legislature may, by the enactment of a proper law, add to the qualifications of electors, prescribed by Const. sec. 250, ante, the requirement of the pay-

ment of an annual poll tax. State ex rel. Wilson v. Stone, 24 Nev. 308-310 (53 P. 497).

The above act, however, is unconstitutional, as its title does not comply with Const. sec. 275, ante. Idem.

**Act of 1897, 35—Sec. 1:** Cited, State ex rel. Cutting v. Westerfield, 24 Nev. 36 (49 P. 554).

## REWARDS

To authorize and require the payment of rewards in certain cases, section 3905.

To authorize county commissioners to offer and pay rewards in certain cases, sections 3906, 3907.

Governor shall offer reward for violation of election laws, see section 1831; for escapes or murderers, section 2831.

Bank examiner may offer for larceny from bank, section 646.

*An Act to authorize and require the payment of rewards in certain cases.*

Approved February 26, 1877, 92

**3905. Governor to offer standing rewards for highway robbery—Peace officers not eligible for, when.**

**SECTION 1.** The governor shall offer a standing reward of two hundred and fifty dollars for the arrest of each person engaged in the robbery of, or in the attempt to rob, any person or persons upon, or having in charge in whole or in part, any stage-coach, wagon, railroad train, or other conveyance, engaged at the time in conveying passengers, or any private conveyance within this state, and for the arrest of each person engaged in the robbery of, or in the attempt to rob, any person or persons upon any highway in the State of Nevada, the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested; *provided*, no reward shall be paid except after such conviction; *and provided further*, that the provisions of this act shall not apply to any sheriff, constable, marshal, or police officer, who shall make such arrest in the performance of the duties of his office in the county where such officer resides, or in which his official duties are required to be performed. *As amended, Stats. 1885, 35.*

This act has no application to offenses committed against the United States and tried in its courts, but applies to persons who violate the state law, and who are arrested on process issued out of state courts,

and who are therein convicted. Sias v. Hallock, 14 Nev. 332, 334, 336.

The reward must be paid to the person or persons making the arrest. Idem.

Cited, on another point. State ex rel. Wilkins v. Hallock, 20 Nev. 73 (15 P. 472).

*An Act to authorize the county commissioners of the several counties in this state to offer and pay rewards in certain cases.*

Approved March 3, 1869, 114

**3906. Commissioners may offer rewards in case of murder—How made and revoked.**

**SECTION 1.** Hereafter, when it shall come to the personal knowledge of the county commissioners, or a majority thereof, of any of the counties in this state, that the crime of murder has been committed in said county, or whenever one or more of the residents of the county shall state in writing and under oath that such crime has been committed in the county, and

that to the best of their knowledge and belief, the person or persons, whether known or unknown, committing the crime, has or have not, at the time of making such statement, been apprehended or taken into custody, and the board, from such statement or other evidence, believe that a murder has been committed, and that the offering of a reward would tend to cause the arrest of the perpetrator or perpetrators of the crime, the board of county commissioners, or a majority thereof, are authorized to offer a reward for the arrest and safe delivery of such criminal or criminals to the proper officers; *provided*, that in no case shall a reward be offered, as provided in this act, for more than five hundred dollars in each case; and such offer shall expire so soon as the board of county commissioners offering the reward shall make an order to that effect, which they are authorized and empowered to do at any general session, or at a special session convened without notice, and shall cause the same to be entered in their minutes of proceedings. No reward shall be offered as herein authorized until after an order shall have been made by the board and entered in the minutes of their proceedings, reciting the name of the person or persons murdered, and the amount of the reward offered, and the order shall have been approved by the board and attested in the usual manner of attesting the minutes of their proceedings in other cases.

### 3907. Rewards, how paid.

SEC. 2. All claims for rewards, as provided for in the preceding section, shall be allowed and paid as other claims against the county, under the direction of the county commissioners, as provided for by law.

## SALES OF MERCHANDISE

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| <p>3908. Purchaser of merchandise in bulk or otherwise than in ordinary course of trade to demand and receive verified statement of creditors.</p> <p>3909. Creditors to be notified and paid, otherwise sale void.</p> | <p>3910. Sale in violation of act, felony—False statement, perjury.</p> <p>3911. Sale or transfer defined—Creditors may waive provisions.</p> <p>3912. Who are vendors within meaning of act.</p> |
|---|---|

*An Act to regulate the purchase, sale, transfer, and encumbrance of a stock of goods, wares, or merchandise, in bulk, or any portion of a stock of goods, wares and merchandise, otherwise than in the usual course of trade, and prescribing penalties for the violation thereof.*

Approved March 20, 1907, 208

3908. Purchaser of merchandise in bulk or otherwise than in ordinary course of trade to demand and receive verified statement of creditors.

SECTION 1. It shall be the duty of every person who shall bargain for or purchase any portion of a stock of merchandise, otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, or an entire stock of merchandise in bulk, for cash or on credit, before paying to the vendor or his agent or representative, or delivering to the vendor or his agent or representative, any part of the purchase price thereof or any promissory note or evidence therefor, to demand of and receive from such vendor or agent, or if the vendor or agent be a corporation, then from the president, vice-president, secretary, or managing agent of such corporation, a written statement, sworn to substantially as hereinafter provided,

of the names and addresses of all the creditors of said vendor to whom said vendor may be indebted, together with the amount of the indebtedness due or owing or to become due or owing by said vendor, to each of the said creditors, and it shall be the duty of the said vendor or agent to furnish such statement, which shall be verified by an oath, to the following effect:

State of Nevada, County of \_\_\_\_\_, ss.

Before me, personally appeared (vendor or agent as the case may be) who being by me first duly sworn upon his oath, did depose and say that the foregoing statement contains the names of all the creditors of (name of vendor), together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by (vendor) to such creditors, and that there are no creditors holding claims due or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement and in this affidavit that are within the personal knowledge of the affiant.

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, A. D. ...

See secs. 1078, 1079.

### 3909. Creditors to be notified and paid, otherwise sale void.

SEC. 2. Whenever any person shall bargain for or purchase any portion of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, or an entire stock of merchandise in bulk, for cash or on credit, and shall pay any part of the price, or execute and deliver to the vendor thereof or to his order, or to any person for his use, any promissory note or other evidence of indebtedness, to give credit, whether or not evidenced by promissory note or other evidence of indebtedness, for said purchase price or any part thereof, without at least five days previously thereto having demanded and received from the said vendor or his agent the statement provided for in section 1 of this act, and verified as there provided, and without notifying also at least five days previously thereto, personally or by registered mail, every creditor as shown upon said verified statement of said proposed sale or transfer is to be made, and the time and conditions of payment, and without paying or seeing to it that the purchase money of said property is applied to the payment of bona fide claims of the creditors of the vendor as shown upon said verified statement, share and share alike, such sale or transfer shall be fraudulent and void.

### 3910. Sale in violation of act, felony—False statement perjury.

SEC. 3. Any vendor of any portion of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business or an entire stock of merchandise in bulk, or any person who is acting for or on behalf of such vendor shall knowingly or wilfully make or deliver or cause to be made or delivered a statement as provided for in section 1 of this act, which shall not include the names of all the creditors of such vendor with the correct amount due and to become due to each of them, or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one, nor more than five years, or shall be fined in any sum not exceeding \$2,000, or both fine and imprisonment.

### 3911. Sale or transfer defined—Creditors may waive provisions.

SEC. 4. Any sale or any transfer of any portion of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business or an entire stock of merchandise in

bulk, or whenever an interest in or to the business or trade of the vendor is sold or conveyed, such shall be deemed a sale and transfer in contemplation of this act; *provided, however*, that if such vendor produces and delivers a written waiver of the provisions of the act from at least a majority in number and amounts of his creditors as shown by such verified statement, then and in that case, the provisions of this act shall not apply.

3912. Who are vendors within meaning of act.

SEC. 5. Sellers, or vendors and purchasers, under this act shall include corporations, copartnerships, and individuals, but nothing contained in this act shall apply to sales or transfers by executors, administrators, receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy or by any public officer under judicial process.

## SIGNATURE BY MARK

*An Act to provide for marks instead of signatures.*

Approved December 17, 1862, 33

3913. Marks instead of signatures—Witnesses.

SECTION 1. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person make his mark, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

## SOLDIERS

In relation to compensation for official services in cases of pensioners, section 3914.

To provide for payment of funeral expenses of indigent ex-soldiers, section 3915.

*An Act in relation to compensation for official services in cases of pensioners.*

Approved January 21, 1889, 18

3914. Pensioners not charged fees.

SECTION 1. No fee or charge shall be made by any state, county or township officer of this state for administering oaths or certifying or acknowledging any paper for United States pensioners in any matter pertaining to their pensions.

*An Act to provide for payment of funeral expenses of indigent ex-soldiers.*

Approved February 27, 1893, 55

3915. Funeral expenses of indigent ex-soldiers paid by county.

SECTION 1. Whenever the remains of any indigent ex-soldier, dying within this state, shall have been given interment by and at the expense of any Grand Army post or United Spanish war veteran camp, the post or camp rendering such service shall be entitled to receive from the county of which such deceased ex-soldier was a resident at the time of his death, a sum not less than twenty-five dollars, and not more than forty dollars, such sum to be allowed and paid in the manner provided for the payment of other bills against the county. *As amended, Stats. 1905, 70.*

Right to peddle, hawk, and sell own goods, and engage in auctioneering without license, sec. 3896.

## STATE AGRICULTURAL SOCIETY

An act to incorporate, sections 3916–3920.

To provide for management and control of, sections 3921–3931.

For the aid and benefit of, section 3932.

*An Act to incorporate a state agricultural society, and provide for the management thereof.*

Approved March 7, 1873, 138

3916. Society incorporated—Powers.

3919. Membership — Power to fix annual meeting.

3917. Further powers.

3918. Officers—Managers—How elected—Governor appoints directors.

3920. Debt to be incurred limited.

### 3916. Society incorporated—Powers.

SECTION 1. There is hereby established and incorporated a society to be known and designated by the name and style of the "Nevada State Agricultural Society," and by that name and style shall have perpetual succession, and shall have power to contract and be contracted with, to sue and be sued, and shall have authority to have and use a common seal, to make, ordain and establish, and put in execution, such by-laws, ordinances, rules, and regulations as shall be necessary for the good government of said society, and the prudent and efficient management of its affairs; *provided*, that said by-laws, ordinances, rules and regulations shall not be contrary to any provision of this charter, or the laws and constitution of this state or the United States.

### 3917. Further powers.

SEC. 2. In addition to the powers above enumerated, the society shall, by its name, have power to purchase, hold, and lease any quantity of land, not exceeding in the aggregate six hundred and forty acres, with such buildings and improvements as may be erected thereon, and may sell, lease and dispose of the same at pleasure. The said real estate shall be held by such society for the purpose of erecting buildings and other improvements designed for the meeting of said society, and calculated to promote and encourage the interest of agriculture, horticulture, mechanics, manufactures, stock raising, and general domestic industry.

### 3918. Officers—Managers—How elected—Governor appoints directors.

SEC. 3. The officers of such society shall consist of a president, three vice-presidents, five directors, a secretary, and a treasurer, all of whom shall be members of such society, and shall have the management of the fiscal, prudential, and other concerns of such society, and shall be styled the board of managers. The said officers, with the exception of two of said directors, who shall be annually appointed by the governor of this state, shall be elected annually by the members of the society, at such time and in such manner as in the by-laws of said society may be prescribed, and shall hold their offices for the term of one year, and until their successors enter upon their duties. And said board of managers shall have power to fill vacancies in said board that may happen during their continuance in office, except a vacancy caused by the death, resignation, or removal from the state of either of the said directors appointed by the governor, in which event such vacancy shall be filled by appointment of such governor.

### 3919. Membership—Power to fix annual meeting.

SEC. 4. Such society may provide by its by-laws for membership of such society, and fix the prices of such membership and the terms of duration

thereof; and the members of such society shall determine by vote the place where the annual meeting and exhibition of such society shall be held, which vote shall be taken annually, and the members shall vote either in person or by proxy.

### 3920. Debt to be incurred limited.

SEC. 5. Such society, by the unanimous vote of the board of managers, for the purpose of purchasing or leasing property, as provided for by section 2 of this act, or for the purpose of paying for property, may create debts or liabilities not exceeding twenty-five thousand dollars, which they may secure by mortgage upon the property of said society.

*An Act to provide for the management and control of the state agricultural society by the state.*

Approved March 7, 1885, 77

3921. Declared state institution.

3926. May appoint marshals and police.

3922. Governor to appoint board of agriculture.

3927. Board to collect and disseminate information.

3923. Duties of board.

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3925. Powers of board—State not liable for debts.

3930. Blanks to be furnished.

3931. Secretary to report organization.

### 3921. Declared state institution.

SECTION 1. The state agricultural society is hereby declared to be a state institution.

### 3922. Governor to appoint board of agriculture.

SEC. 2. Within ten days after the passage of this act the governor shall appoint twelve resident citizens of the state, who shall, when organized, constitute a state board of agriculture, who shall, except as hereinafter provided, hold office for the term of four years, and until their successors are appointed and qualified. Vacancies occurring from any cause in the board shall be filled by appointment of the governor for the unexpired term of the office vacated.

No charge for commissions, sec. 4260.

### 3923. Duties of board.

SEC. 3. Within ten days after their appointment, the persons so appointed shall qualify as required by the constitution, and shall meet at the office of the state agricultural society, and organize by the election of one of their number as president, and one as vice-president of the board and [of] said society, who shall hold said offices of president and vice-president for the term of one year, and until their successors are elected and qualified. The board shall also elect a secretary and treasurer, not of their number, who shall each hold office at the discretion of the board. *As amended, Stats. 1893, 18.*

### 3924. Classification of members.

SEC. 4. At the same meeting the members of the board shall, by lot, or otherwise, classify themselves into four classes of three members each. The terms of office of the first class shall expire at the end of the first fiscal year; of the second class, of the second year; of the third class, of the third year; of the fourth class, at the end of the full term of four years. The fiscal year shall be from the first of December to the first of December. *As amended, Stats. 1893, 18.*

### 3925. Powers of board—State not liable for debts.

SEC. 5. The state board of agriculture shall be charged with the exclusive management and control of the state agricultural society as a state institu-

tion; shall have possession and care of its property, and be intrusted with the direction of its entire business and financial affairs. They shall define the duties of the secretary and treasurer; fix their bonds and compensation, and shall have power to make all necessary changes in the constitution and rules of the society to adapt the same to the provisions of this act, and to the management of the society, its meetings and exhibitions. They shall provide for an annual fair or exhibition by the society of all the industries and industrial products of the state at the city of Reno; *provided*, that in no event shall the state be liable for any premium awarded or debt created by said board of agriculture.

### 3926. May appoint marshals and police.

SEC. 6. The board shall have power to appoint all necessary marshals and police to keep order and preserve peace at the annual fairs of the society, and the officers so appointed shall be vested with the same authority for the preservation of order and peace, on the grounds and in the buildings of the society, that executive peace officers are vested with by law.

### 3927. Board to collect and disseminate information.

SEC. 7. Said board shall use all suitable means to collect and disseminate all kinds of information calculated to educate and benefit the industrial classes, develop the resources, and advance the material interests of the state, and shall, on or before the first day of February of each year, report to the governor a full and detailed account of their transactions, statistics, and information gained, and also a full financial statement of all funds received and disbursed. They shall also make such suggestions and recommendations as experience and good policy may dictate for the improvement and advancement of the agricultural and kindred industries.

### 3928. Reports to be printed and distributed.

SEC. 8. The superintendent of state printing shall, each year, print and bind four hundred volumes of said transactions, and deliver the same to said board of agriculture for distribution and exchange. He shall also do such job printing as said board may require to carry out the provisions of this act.

### 3929. Shall receive reports of county and district associations.

SEC. 9. The directors or board of managers of each county and district agricultural society or association, and of county, district or state horticultural and stock-breeding association or society, organized and acting under the laws of this state, shall report annually, on or before the first day of April, to the state board of agriculture, the name and postoffice address of each officer of such society or association; and, on or before the first day of December, shall report to the board of agriculture the transactions of said society, including the premiums offered, the list of stock and articles exhibited and the premiums paid, the amount of receipts and expenditures for the year, the new industries inaugurated, and any and all facts and statistics showing the development and extent of the industries, products and resources of the county or district embraced within the management of such society or association; *provided*, that the provisions of this act shall not apply to any board of commissioners or other body organized under the laws of this state, the object of which is to promote viticultural industries, unless such board or body shall voluntarily request the privilege of making such reports as are called for by this act, in which case this board or body shall enjoy equal privileges as are accorded to other institutions devoted to agriculture.

### 3930. Blanks to be furnished.

SEC. 10. To facilitate such reports the state board of agriculture shall

have prepared and shall furnish such societies with necessary schedules and blanks for such reports; and such state board shall include such reports from societies and associations, or so much thereof as they may deem advisable, in their report to the governor.

**3931. Secretary to report organization.**

SEC. 11. When said state board of agriculture shall have been organized and classified as provided herein, the secretary of the board shall report such organization and classification to the governor. He shall also report any vacancy that may occur in said board at any time.

*An Act for the aid and benefit of the state agricultural society.*

Approved March 28, 1907, 340

[Sections 1, 2 and 3, making appropriation and providing for its disposition, omitted.]

**3932. Additional members of board created.**

SEC. 4. The governor is hereby authorized and directed to appoint three additional resident citizens of the state to act as members of the state board of agriculture.

No charge for commissions, sec. 4260.

See district agricultural societies, secs. 432-444.

Counties to aid state exhibits, secs. 3935-3940.

## STATE ARMORY BUILDING

*An Act relating to the custody of the state armory building and grounds.*

Approved February 28, 1907, 53

**3933. Adjutant-general custodian of.**

SECTION 1. The adjutant-general of the State of Nevada is hereby made the custodian of the state armory building and grounds.

## STATE BOUNDARY

*An Act to define and establish a portion of the western boundary of the State of Nevada.*

Approved February 27, 1903, 38

**3934. Defining part of western boundary line.**

SECTION 1. That portion of the western boundary line of the State of Nevada southeastward from Lake Tahoe, and extending to the southwesterly corner of said State of Nevada, that is to say: Southeastward from the intersection of the thirty-ninth degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich to the southwesterly corner of said State of Nevada, as lately surveyed, established and marked by the United States coast and geodetic survey, completed during the year 1900, and now recognized by the State of California, is hereby declared to be the true, correct and legal boundary line of the State of Nevada, between Lake Tahoe and the southwesterly corner of the State of Nevada, and the said line as surveyed, established and marked aforesaid shall now and hereafter be recognized and considered by the courts of this state as the boundary of this state between the two said points.

See Const., sec. 368, ante.

## STATE EXHIBITS

Empowering county commissioners to levy special tax to cover expenses of displaying products of county at expositions, sections 3935, 3936.

To encourage the exhibition of Nevada products, sections 3937-3940.

*An Act empowering the county commissioners to levy a special tax to cover the expenses of displaying the products of the county at expositions.*

Approved March 20, 1911, 136

### 3935. County tax for exhibits at expositions.

SECTION 1. From and after the passage of this act, the county commissioners of the various counties are hereby empowered to levy a special tax for the purpose of displaying the products of the county at expositions.

### 3936. Tax limited.

SEC. 2. The county commissioners are hereby authorized to use their discretion in the levying of such tax to cover the legitimate expenses incurred in the display of any such products at any such exposition; *provided*, that in no case shall such tax levy exceed four cents on each one hundred dollars in any one year.

*An Act to encourage the exhibition of Nevada products.*

Approved March 6, 1903, 52

### 3937. Counties may aid state exhibits.

SECTION 1. Whenever the State of Nevada by act of legislature shall have decided to make a state exhibit at any exposition, the various counties may, for the purpose of more efficiently representing their resources and products, by order of their respective county commissioners, employ some person or persons to collect county exhibits and forward the same pursuant to instructions from the state board of commissioners of such expositions.

### 3938. Exhibits to be marked.

SEC. 2. All collectors acting under authorization of county commissioners, shall collect and mark each and all samples in accordance with such instructions from the state board as may be necessary to secure clearness and uniformity of system in the state exhibit.

### 3939. Expenses a county charge.

SEC. 3. The commissioners of each county may order the payment of such expenses as may be incurred in collecting such exhibit out of any available fund.

### 3940. County may maintain permanent exhibit—Expense limited.

SEC. 4. The commissioners may, for the purpose of illustrating, exhibiting and advertising the resources of their counties, maintain permanent exhibits at suitable places either in this state or elsewhere, provided that they shall not expend for the maintenance of such permanent exhibit more than twenty-five dollars in any one month. Nothing in this section shall be so construed as to conflict in any way with sections 1, 2 or 3.

## STATE HYGIENIC LABORATORY

*An Act to establish and maintain a state hygienic laboratory at the University of Nevada for the diagnosis of infectious diseases, for research, providing for the appointment of a director and assistants, and making an appropriation therefor.*

Approved March 25, 1909, 325

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| 3941. Laboratory at university—Purpose—Free. | 3944. Director to make examination and research—Infectious diseases—Who may require. |
| 3942. Regents to purchase equipment.         | 3945. Director to publish bulletins and annual reports.                              |
| 3943. Director and assistant—Qualifications. |  |

### 3941. Laboratory at university—Purpose—Free.

SECTION 1. There shall be established and maintained at the University of Nevada at Reno, for the use of the health officials and physicians of the State of Nevada, a state hygienic laboratory for the diagnosis of infectious diseases and the conduct of research into the nature, cause, and control of such diseases; *provided*, such diagnosis and researches shall be free of charge.

### 3942. Regents to purchase equipment.

SEC. 2. The regents of the University of Nevada shall, from the money hereby appropriated, purchase suitable equipment, apparatus, chemicals and supplies for the maintenance of such laboratory in the existing laboratories of the University of Nevada at Reno.

### 3943. Director and assistant—Qualifications.

SEC. 3. The regents of the University of Nevada shall, upon the recommendation of the president, appoint a director of said laboratory from the existing instructing staff of the university. The director shall be a skilled bacteriologist and shall have general supervision of the performance of all duties required by this act. The regents of the University of Nevada shall appoint one assistant whose time shall be exclusively devoted to the work designated in this act, under the supervision of the director of the laboratory.

### 3944. Director to make examination and research—Infectious diseases—Who may require.

SEC. 4. It shall be the duty of the director of this laboratory and of his assistants to examine promptly and report to the person sending it, such material, free of charge, as may be submitted by any health officer or health board or any physician licensed to practice medicine in the State of Nevada, for the diagnosis of any infectious disease, in which laboratory methods are of recognized value; to examine such other clinical and pathological material as may, in the discretion of the director, appear feasible; and to undertake research into the nature, cause, diagnosis, and control of the infectious disease.

### 3945. Director to publish bulletins and annual reports.

SEC. 5. The director shall publish annually a report of the work done in the laboratory during the preceding year under the provisions of this act. Such results of the investigations that may be conducted under this act as are considered of interest to the public shall be published from time to time, either in connection with the annual reports, or in separate series of circulars or bulletins, or both, in the discretion of the director.

## STATE LIBRARY

Act in relation to, sections 3946-3953.

Prescribing office hours for state library, sections 3954-3959.

To authorize state librarian to appoint assistant, section 3960.

To provide for disposal and sale of duplicate copies of books, section 3961.

Authorizing employment of engineer and janitor for state library building, sections 3962-3964.

### *An Act in relation to the state library.*

Approved February 14, 1865, 153

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| 3946. What books and documents preserved in the state library.         | 3951. Penalties, how recoverable—Duty of librarian to bring suit.   |
| 3947. Secretary of state ex officio librarian—Catalogue—Report.        | 3952. Fees for official commissions and all fees of office of secretary of state to go into library fund—Surplus annually distributed to general and school fund. |
| 3948. Who may take books from the library—Number limited.              | 3953. Fee for admission of attorney—Library fund.   |
| 3949. Register of books issued—How long books retained.                |   |
| 3950. Penalty for injury or failure to return books—Three times value. |   |

### **3946. What books and documents preserved in the state library.**

SECTION 1. All books, maps, and charts, now belonging to, or which may hereafter come into possession of this state, by purchase or otherwise; all books, maps, charts, pamphlets, and other documents, which, by any state officer, may be received in their official capacity from the general government, or in exchange from other states or territories, or received from foreign nations, or donated to the state by any person or corporation, shall be placed in the state library, and shall be carefully preserved by the librarian.

### **3947. Secretary of state ex officio librarian—Catalogue—Report.**

SEC. 2. The secretary of state shall be ex officio state librarian, and shall take charge of the library, and all papers and furniture properly belonging thereto, under such regulations as are herein provided, or which may hereafter be prescribed by law. He shall be responsible for the safe keeping of all the property of the state library, and shall cause all the books, maps, charts, pamphlets, and other documents thereof, to be impressed with the proper stamp or seal, after the same shall have been procured by the directors hereinafter named. Said librarian shall at all times keep, in a convenient place in the library, a catalogue of the books belonging thereto for reference. He shall annually, by the first Monday of January, report to the said board of directors the condition of the library, and recommend such additions thereto, and improvements therein, as he may think advisable for the interests of the same.

See note preceding sec. 3954.

Annual report to be made to governor, sec. 4268.

### **3948. Who may take books from the library—Number limited.**

SEC. 3. Books may be taken from the state library by the members of the state legislature during its session, and at any time by the governor and other officers of the executive department of this state who are required to keep their offices at the seat of government, the justices of the supreme court and attorney-general; *provided*, that no person shall be permitted to have more than two volumes of miscellaneous works from said library at the same time.

### **3949. Register of books issued—How long books retained.**

SEC. 4. The librarian shall cause to be kept a register of all the books

issued and returned at the time they shall be so issued and returned, and none of the books, except the laws, journals, and reports of this state, which may be taken from the library by members of the legislature, during the session, and law books taken by the judges of the supreme court, shall be retained more than two weeks; and all the books taken by the members of the legislature shall be returned at the close of the session.

**3950. Penalty for injury or failure to return books—Three times value.**

SEC. 5. If any person materially injure or fail to return any books taken from the library within the time prescribed in the foregoing section, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value thereof, or of the set to which it belongs.

**3951. Penalties, how recoverable—Duty of librarian to bring suit.**

SEC. 6. All fines, penalties, and forfeitures accruing under and by virtue of this act, shall be recoverable by action of debt, before any justice of the peace or court having jurisdiction of the same, in the name of "The State of Nevada," for the use of the state library; and in all such trials the entries of the librarian, to be made as hereinbefore described, shall be evidence of the delivery of the book or books, and of the dates thereof, and it shall be the duty of such librarian to carry the provisions of this act into execution, and bring suit for all penalties or injuries mentioned in this act.

**3952. Fees for official commissions and all fees of office of secretary of state to go into library fund—Surplus annually distributed to general and school fund.**

SEC. 7. Each and every officer of this state, civil and military, except commissioners of deeds and notaries public, shall, at the time of the issuance of his commission, and before entering upon the duties of his office, pay to the secretary of state the sum of five dollars, which, with all fees of whatever character, by the laws now in force, or which may hereafter be provided to be charged and collected in the office of the secretary of state, shall constitute a portion of the library fund; and the secretary of state shall exhibit an account of, under oath, and pay to the state treasurer, at the end of each quarter, dating from the first day of January, all moneys collected under this act, and the same, together with such revenues as are hereinafter provided, shall be reserved, set apart, and appropriated, as a state library fund. On the thirty-first day of December, nineteen hundred and seven, and annually thereafter, the state treasurer shall take from the said library fund all moneys in excess of the sum of five thousand dollars, if there be any surplus, and transfer one-half of such moneys to the general fund of the state treasury, and the other half to the general state school fund of the state treasury. *As amended, Stats. 1907, 372.*

Fees of secretary of state to go into library fund, sec. 4260.

Commission fees of commissioners of deeds and notaries public to go into library fund, secs. 1004, 2745.

Fees of governor's private secretary to go into library fund, sec. 4191.

No fee for military commissions, sec. 3967.

**3953. Fee for admission of attorney—Library fund.**

SEC. 8. No person shall be permitted to practice as an attorney or counselor at law, or admitted as such by the supreme court, or any district court of this state, until he shall have paid to the clerk of said court the sum of ten dollars, which amount shall, at the times mentioned, and under like conditions, be paid by the clerk of such court to the state treasurer, as a part of said library fund; *provided*, that the provisions of this section shall not apply to such persons as have heretofore paid such fee into the library fund of Nevada Territory, and all moneys which have been, or may hereafter be,

collected and paid into the treasury, arising from the admission of attorneys or counselors at law, and provided as a library fund, shall become a part of the state library fund.

For fee of attorney, see also secs. 500, 2006.

[Sec. 9 was amended, Stats. 1875, 150; 1877, 166; 1881, 117; superseded, secs. 3954-3959.]

[Sec. 10 also superseded, secs. 3954-3959.]

*An Act prescribing office hours for state library, and defining the duties of lieutenant-governor as ex officio state librarian.*

Approved March 1, 1883, 101

3954. Office hours.

3955. Register kept—Books, who may take.

3956. Librarian to purchase books and contract other expenses—Examiners to approve claims—Law books have preference.

3957. State librarian to report to governor annually.

3958. Governor to approve the official bond of state librarian.

3959. Librarian to receipt to justices of the supreme court.

NOTE—By an act approved March 14, 1865, the secretary of state was made ex officio state librarian (sec. 3947); by the above-entitled act the lieutenant-governor was made ex officio state librarian; by an act approved February 20, 1893, p. 32, sec. 4110, the secretary of state was again made ex officio state librarian and is now such by virtue of this last-mentioned act. The following sections of this act are obsolete in so far as they refer to the lieutenant-governor.

**3954. Office hours.**

SECTION 1. The office hours for the state library shall be the same as the office hours prescribed for or adopted by other state officers.

**3955. Register kept—Books, who may take.**

SEC. 2. The lieutenant-governor, as ex officio state librarian, may appoint a clerk for said state library, said clerk to serve without expense to the state, except as otherwise provided by law, and constant attendance must be had in and the library kept open during the office hours prescribed in the first section of this act, and whenever the supreme court is in session. The lieutenant-governor, as ex officio state librarian, shall be responsible for the safe keeping of all the property belonging to the state library. He shall keep a register of all books, magazines, papers, pamphlets, maps, charts, and other property added to the library, and of the cost thereof, and shall stamp the same with the library seal. He shall keep a register of all books taken from the library, when taken out, by whom, and when returned. He shall not permit any person or persons, except such as are authorized by law, to take from the library any book, magazine, paper, or other property belonging thereto.

See note preceding sec. 3954.

See secs. 3947-3949.

**3956. Librarian to purchase books and contract other expenses—Examiners to approve claims—Law books have preference.**

SEC. 3. The lieutenant-governor, as ex officio state librarian, shall have power to draw from the state treasury, at any time, all money which may be therein belonging to the state library fund, and expend the same in the purchase of books, and binding of magazines, newspapers, and other documents for the state library; *provided*, that no warrant shall be drawn by the state controller for such purposes unless the bill or account presented by the lieutenant-governor, as ex officio state librarian, shall be approved and allowed by the board of examiners. In the purchase of books regard shall be had, first, for the procurement of such books on law and reports of judicial decisions as shall be deemed suitable to the wants of the supreme court.

See note preceding sec. 3954.

**3957. Librarian to report to governor.**

SEC. 4. The lieutenant-governor, as ex officio state librarian, shall, on the first Monday of January in each year, furnish to the governor, to be submitted by him to the legislature when organized, a full report of the purchase and expenditures for the preceding year and the amount of moneys drawn from the treasury, with a list of all books, magazines, newspapers and other documents missing or acquired during the year, specifying those obtained by exchange, donation or purchase, and make such recommendations as he may deem advisable in connection with the affairs of said library.

See note preceding sec. 3954.

**3958. Official bond—Governor to approve.**

SEC. 5. Before entering upon the duties of the office, the lieutenant-governor as ex officio state librarian, shall execute an official bond in the sum of one thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of his duties and delivery over to his successor of all the books and other property belonging to the state library, said bond to be deposited in the office of the secretary of state.

See note preceding sec. 3954.

See sec. 4252, bond of secretary of state filed with controller.

Cited, State ex rel. Davenport v. Laughton, 19 Nev. 202, 207, 210 (8 P. 344).

**3959. Librarian to receipt to supreme court.**

SEC. 6. Upon assuming the duties of his office the lieutenant-governor, as ex officio state librarian, shall execute a receipt and deliver the same to the justices of the supreme court for all books and other property in the state library.

See note preceding sec. 3954.

*An Act to authorize the state librarian to appoint an assistant librarian, fixing the compensation for such assistant librarian, and repealing all acts in conflict therewith.*

Approved March 23, 1909, 212

**3960. Assistant allowed—Salary.**

SECTION 1. The state librarian is hereby authorized to appoint an assistant librarian who shall perform the duties of a librarian at the state library, and who shall be allowed as a compensation therefor the sum of eighteen hundred dollars per annum. *As amended, Stats. 1911, 117.*

*An Act to provide for the disposal and sale of duplicate copies of books in the state library.*

Approved March 9, 1889, 94

**3961. Librarian authorized to sell duplicates—Justices of supreme court to approve—May transfer to university library.**

SECTION 1. The state librarian is hereby authorized and directed to sell, at such prices as he may be able to obtain, all duplicate copies of books now in the state library, as well those that may hereafter become such, that may be set apart for that purpose by the justices of the supreme court, or a majority thereof; *provided*, that whenever in the opinion of said justices any such duplicate copies will be of service other than mere pecuniary value to the library of the state university, then books thus designated shall by said librarian be reserved for such library and transferred thereto upon the application of the board of regents approved by said justices.

*An Act authorizing the employment of an engineer and a janitor for the state library building, fixing their compensation and the compensation of certain other attaches of the government of the State of Nevada.*

Approved March 26, 1907, 239

**3962. Library building janitor and engineer—Compensation.**

**SECTION 1.** The board of capitol commissioners is hereby authorized to employ a competent engineer to attend to and keep in repair the heating apparatus of the capitol and state library building. When not employed as engineer he shall act as janitor of said buildings. His compensation shall be \$1,300 per annum.

**3963. Idem.**

**SEC. 2.** The board of capitol commissioners is authorized to fix the compensation of the janitor of the capitol building at \$1,300 per annum, and the gardener of the capitol grounds at \$1,300 per annum.

**3964. Idem—Warrants.**

**SEC. 3.** The state controller is hereby directed to draw his warrants in payment of the amounts specified in this act, and the state treasurer is hereby directed to pay the same.

## STATE MILITIA

Relating to the national guard and enrolled militia, sections 3965–4020.

Relating to Nevada national guard, sections 4021.

Relative to military affairs, sections 4022, 4023.

To prohibit and punish the retention of state and company property of the national guard, sections 4024–4026.

Relating to Nevada national guard, sections 4027–4032.

Relating to Nevada national guard, sections 4033–4035.

Relating to military encampment, sections 4036, 4037.

To provide for organizing and disciplining the militia, sections 4038–4086.

### CONSTITUTIONAL PROVISIONS

Trial of offenses in, section 237.

To be subordinate to civil power, section 240.

Standing army not to be kept in time of peace, section 240.

Appropriation for standing army, period limited, section 240.

Not to be quartered in house without consent, section 241.

Imprisonment for fine forbidden, section 243.

Governor to be commander-in-chief, section 298.

Organization of, section 363.

Governor may call out, when, section 364.

*An Act relating to the national guard and the enrolled militia.*

Approved March 6, 1893, 90

3965. Name of organized militia.

3966. Enrolled militia, who constitute.

3967. Governor as commander-in-chief to issue commissions—No fee.

3968. Rank of officers—Determined.

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4000. Idem—Officers elected—Commissions.
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4019. System of drill—U. S. regulations.
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### 3965. Name of organized militia.

SECTION 1. The organized militia, or armed force of the State of Nevada, shall be called the Nevada national guard.

See Const., art. 12, sec. 363.

### 3966. Enrolled militia, who constitute.

SEC. 2. All persons subject to military duty and not members of the national guard shall constitute the enrolled militia.

### 3967. Governor as commander-in-chief to issue commissions—No fee.

SEC. 3. The governor, as commander-in-chief of the militia of the state, shall issue commissions to all officers appointed or elected therein. The commissions shall be attested by the secretary of state with the great seal, and also by the adjutant-general with the seal of his office. No fee shall be charged for military commissions.

### 3968. Rank of officers determined.

SEC. 4. All commissioned officers of the organized volunteer regiments, battalions and companies shall take rank according to the date assigned them by their commissions, and when two of the same grade be of the same date, their rank shall be determined by length of service in the militia, and if of equal service, then by their precedence in the order promulgating their appointment.

### 3969. Commission, when takes effect—Oath.

SEC. 5. A copy of the constitutional oath of office shall be indorsed on each commission, and each officer shall take said oath and transmit a certified copy of the same, made by the officer administering the oath, to the adjutant-general. The commissions shall take effect on the day of the taking of the oath; *provided*, the certified copy be forwarded.

### 3970. Consequences of failure to take oath.

SEC. 6. The failure to take the oath or to forward the certificate thereof shall not be a bar to the prosecution of any officer as such, if he shall have performed any act or function pertaining to the office, nor shall the failure

in taking or forwarding of the oath prescribed at enlistment be a bar to the prosecution of any member; but such failure on the part of either officer or other member shall be a misdemeanor, and as soon as known at headquarters, the office shall be declared vacant, or the membership void and of no effect.

### 3971. Informality in appointment.

SEC. 7. No informality in an appointment or a commission, or in the qualification thereon, shall invalidate the acts or commands of an officer performing duties in obedience to orders, but the failure to correct such informality when known shall be a misdemeanor.

### 3972. Form of oath—All members to take.

SEC. 8. All persons becoming members of the national guard of this state shall take and subscribe the following oath, which all commissioned officers thereof are authorized to administer: "I do solemnly swear that I will support the constitution of the United States and the constitution of the State of Nevada, and will maintain and defend the laws and all officers employed in administering the same." Which oath, certified by the officer administering the same, must be returned to the adjutant-general and be preserved with the roll of the companies.

See O'Meara v. Ross, 20 Nev. 61.

### 3973. Members of staff—Appointment—Qualifications.

SEC. 9. Each officer entitled to a staff shall appoint the members of his staff, unless otherwise provided by law. Each staff officer so appointed shall be an actual, and not merely constructive, resident of Nevada and of the district or military division in which he is to serve.

### 3974. Acceptance of staff appointment—Resignation—Target practice.

SEC. 10. Any officer of a regiment, battalion, or company receiving and accepting any staff appointment, except that of adjutant, shall be considered as ipso facto resigning his commission in such regiment, battalion, or company. Any officer may be permitted by the commander-in-chief to join in target practice and matches with the company of which he was a member when appointed or elected.

### 3975. Certain words defined.

SEC. 11. The word "company" shall be held to include a company of infantry, a troop of cavalry, or battery of artillery; the word "member" shall be held to include every person, whether officer or private, in the national guard; the word "militia," not qualified by other words—the words "national guard" and the words "organized militia"—shall be deemed to refer only to the Nevada national guard.

### 3976. Tenure of office.

SEC. 12. Every person appointed to an office shall hold the office either at the pleasure of the appointing officer, or until his successor shall have been appointed and qualified.

### 3977. Vacancy, how filled.

SEC. 13. When there shall be a vacancy in an elective office, unfilled by the electing power, the commander-in-chief shall have power to appoint an officer to fill the vacancy for a stated term not exceeding one year. During the term, or at the end thereof, an election may be had to fill the vacancy to occur at the end of the term.

### 3978. Who may appoint officers.

SEC. 14. The commander-in-chief shall have the power to appoint from the members of the national guard all officers that may by law be required,

and for whose appointment or election no other provision is made; but the appointment of a general officer, except the adjutant-general, shall be made by and with the advice and consent of the senate.

### 3979. Muster, by whom and when made—What to include.

SEC. 15. It shall be the duty of each and every commanding officer of any volunteer company in this state, on or before the last Mondays of March and September of each year, to muster his company and to make out in triplicate muster rolls setting forth the names and number of the members of his company, the officers in the order of their rank and the privates in alphabetical order, and stating at the foot of such muster rolls a list of all arms, accouterments, ordnance and ordnance stores and other public property in his possession, one of which muster rolls, duly certified, he shall transmit, through his commanding officer, to the adjutant-general of the state; he shall file one in the office of the county clerk of his county, and he shall keep the other as a voucher for himself. If such company shall form a part of any organized battalion or regiment, the commanding officer thereof shall transmit the same, with a muster roll of the field and staff officers of the regiment or battalion to the adjutant-general of the state through the proper channels of military correspondence.

### 3980. Muster rolls of brigades and divisions.

SEC. 16. The muster rolls of brigades and divisions shall be made by their respective commanders, in accordance with rules, orders or directions given by the adjutant-general.

### 3981. Duties of registry agents, county clerks and school census takers— Lists of persons subject to military duty.

SEC. 17. It shall be the duty of each and every registry agent, before receiving pay for his services as such, to send the county clerk of the county wherein he is serving a full and complete list of the registered voters in his precinct, with their ages and postoffice address. It shall be the duty of each person taking the school census during the year in which a general election is to be held, before receiving compensation, to send to the county clerk by mail the name, age and postoffice address of every male between the ages of eighteen and twenty-one years residing within his district. The county clerk shall file said list in his office, and shall before the first Monday in December following every general election make out from said lists a new list in duplicate by postoffice addresses of all the persons subject to military duty within the county, and shall forward one copy to the adjutant-general and retain one copy on file in his office. The retained copy may be a clear letter-press copy, or the second impression made by a typewriter. He shall exclude from said lists the members of national guard companies whose last preceding muster rolls are filed in his office.

### 3982. When and how militia may be called out.

SEC. 18. In case of war, insurrection or rebellion, or of resistance to the execution of the laws of this state, or upon the call of any officer of the United States army, commanding a division, department or district in Nevada, or upon the call of any United States marshal in Nevada, or of any mayor of any city, or chairman of the board of commissioners of any county, or of any sheriff, the commander-in-chief is authorized to call into active service any portion of the organized or enrolled militia of this state. In case of the absence of the commander-in-chief from the capital, or if it be impossible to immediately communicate with him, the civil or military officer making the requisition for troops may, if he deem the danger imminent and not admitting of delay, serve a copy of such requisition, together with a statement of

the governor's absence or the impossibility of immediately communicating with him, upon the major-general of the division. In his absence, upon the general of the brigade or commanding officer of the company or detachment, who is hereby authorized to exercise with respect to calling out the troops of his division, brigade, or command, the powers conferred in this section upon the governor; but if the call shall be disapproved by the governor, the troops called into service will be immediately disbanded.

See secs. 2835, 2839, 2840.

### 3983. Call to be responded to.

SEC. 19. Such call for any portion of the organized militia shall be made by an order issued and directed to the commanding officer of the company, battalion, regiment, brigade, or division which is so called into service, designating in such order the particular troops called, the time and place of rendezvous and the officer to whom they shall report. Such order shall immediately be communicated by the officer receiving it to the troops under his command, and he shall rendezvous and report for duty at the appointed place and time.

### 3984. Call, how made.

SEC. 20. Such call for enrolled militia may be made in such public manner as the commander-in-chief may choose. It shall be for definite numbers of men from stated localities, and shall order that they report to certain officers at stated times and places. The officers to whom they are required to report shall be known as state recruiting officers, and may be any officers of the national guard, or in the absence of all such from a county, any person named by the commander-in-chief.

### 3985. Duty of recruiting officer.

SEC. 21. Upon orders, each state recruiting officer shall go to the place of rendezvous and organize the enrolled militia there reporting, to the number called for, into companies, battalions, or regiments.

### 3986. Draft made, when and how.

SEC. 22. If there shall not be a sufficient number of volunteers to meet the call, the state recruiting officer shall make a draft by lot from the lists of enrolled militia for the county or counties from which they are called. For such purpose the county clerk of each county shall furnish him such lists upon demand. But if there be no such lists available, then said state recruiting officer shall select or cause to be selected by assistants, to appoint whom he is hereby authorized, by lot if possible, but if not so possible then otherwise, a sufficient number of persons subject to military duty to meet the requirements of the call.

### 3987. Penalty for disobedience to orders—Trial.

SEC. 23. Any member of the national guard of this state who shall neglect or refuse to rendezvous or organize when ordered out by the commander-in-chief shall be guilty of a disobedience of orders, and shall be tried and punished by a court-martial, and any person subject to military duty who shall refuse or neglect to rendezvous or organize when drafted, as provided in this act, shall be subject to a fine of not less than fifty (\$50) nor more than five hundred (\$500) dollars, to be recovered by an action to be brought by the district or prosecuting attorney, in the name of the State of Nevada, upon a certificate of the officer appointed to make the draft, before any court of competent jurisdiction in the county from which the person was drafted. Any member of the national guard guilty of a disobedience to orders, as herein specified, if not tried and punished by a court-martial, may, on the order of his commanding officer, be tried and punished in the civil courts, in like manner as any other person subject to military duty.

**3988. Officers of temporary battalions.**

SEC. 24. Temporary battalion and regimental officers of drafted troops may be named by the state recruiting officer, but permanent officers shall be named by the commander-in-chief.

**3989. Vacancies, how filled.**

SEC. 25. If not otherwise vacated or terminated, the commission of any officer called into active service shall continue until he shall be mustered out by the order of the commander-in-chief. All vacancies of officers and non-commissioned officers in active service shall be filled by appointment or promotion, the first by the commander-in-chief and the second by the commanding officer of the battalion, or of the company, in case such company forms no part of any battalion. In filling such vacancies of commissioned officers, the commander-in-chief shall, as a general rule, promote by seniority or appoint, on the recommendation of their superior officers, those in active service, and in any case of departure from this rule, the commander-in-chief shall report his reasons for such departure to the senate. The commanding officer of troops in active service may nominate to any vacancy for personal bravery or service in siege or battle, and if the governor shall commission some other person than the one so nominated, he shall report his reasons to the senate, and if the senate, in either of the foregoing cases, shall disapprove of the reasons given, the commission so given shall be regarded as vacated, and the governor shall immediately proceed, with the advice and consent of the senate, to fill such vacancy.

**3990. Substitute furnished, how.**

SEC. 26. Any private of the national guard, and any person of the enrolled militia called or drafted into service may furnish as a substitute any person fit for military duty who has not been called or drafted into service.

**3991. Adjutant-general.**

SEC. 27. The adjutant-general shall, on and after the first Monday in January, eighteen hundred and ninety-five, be appointed by the commander-in-chief.

Lieutenant-governor ex officio adjutant-general, sec. 4250.

**3992. Mileage of adjutant-general.**

SEC. 28. On and after the first Monday in January, eighteen hundred and ninety-five, the adjutant-general shall receive fifteen (15) cents per mile for each mile necessarily traveled by him in the discharge of his official duty.

**3993. Rank and duties of adjutant-general.**

SEC. 29. The adjutant-general shall be chief of the governor's staff. He shall also be quartermaster-general, chief of ordnance, commissary-general and inspector-general. He may appoint, when necessary, officers to act in his stead in the performance of his ex officio duties.

See sec. 4004.

**3994. Adjutant-general to inspect—Report.**

SEC. 30. The adjutant-general shall at least once during each year visit within its own county every company of the national guard in this state, and shall inspect the dress, arms and bearing of every soldier appearing, also every regimental, brigade and division officer and staff, and he shall report such inspection to the commander-in-chief.

**3995. Duties of the adjutant-general.**

SEC. 31. It shall be the duty of the adjutant-general to take charge of and to carefully guard and preserve and to account for all arms, accouter-

ments, ammunition, ordnance stores and other military property belonging to this state or granted to it by the Congress of the United States. He shall keep and file in his office all returns, reports and military correspondence made in accordance with this act. He shall keep an account of all moneys received and expended by him. He shall, on or before the first Monday in January of each year, make to the governor, to be by him laid before the legislature, a report of all the transactions of his department since the last annual report containing:

First—An account of all moneys received and expended, unless the same shall have been accounted for in the report of the state controller.

Second—An account of all arms, accouterments, ammunition, ordnance stores and military property of every description belonging to the state, from what source received, to whom issued, or how expended, and by whose order.

Third—A statement of the present condition of all such property under his charge, and if any such property shall not be under his charge he shall state in whose possession the same may be.

Fourth—The number, strength and condition of the national guard, and the strength of the enrolled militia of the state. He shall also make and transmit an annual return of the militia of this state, pursuant to the requirements of the act of Congress of March second, eighteen hundred and three, to the president of the United States, a copy of which, duly certified, he shall lay before the commander-in-chief of this state. He shall be the medium of military correspondence with the commander-in-chief.

### 3996. Bond of adjutant-general, how approved—Suspension.

SEC. 32. Before entering upon the duties of his office, the adjutant-general shall give bonds to the people of the State of Nevada, with good and sufficient sureties, to be approved by the governor, in the sum of ten thousand (\$10,000) dollars, conditioned that he shall faithfully perform all the duties enjoined on him by law. If at any time the governor shall deem the sureties so given to be insufficient, he shall require the adjutant-general to give new sureties, to be approved by him, and if the adjutant-general shall refuse or neglect to do so the governor shall suspend him from office, and immediately report his proceedings to the senate, if the legislature be in session, and if not, then at the beginning of the next session, and if the senate approve such suspension, it shall be regarded as a removal from office, but if the senate disapprove of the suspension the adjutant-general shall resume the duties of his office. During the time of his suspension from office he shall receive no portion of his salary, but if such suspension is disapproved he shall receive his back pay.

### 3997. Returns to United States adjutant-general.

SEC. 33. In making his returns to the adjutant-general of the United States of the enrolled militia of Nevada, the adjutant-general of this state is hereby authorized and directed to compile and report, as the enrolled militia of Nevada, sixty per cent of the voters voting at the last general election, as shown by the report of the state board of canvassers, whenever by failure of other officers to perform their duties exact lists of the enrolled militia are not on file in his office.

### 3998. Who liable to military duty.

SEC. 34. Every able-bodied male inhabitant of this state between the ages of eighteen and forty years, not exempt by law, shall be subject to military duty, and shall be organized and enrolled as herein directed.

[Sec. 35 repealed, Stats. 1899, 37.]

[Sec. 36 repealed, Stats. 1895, 109, which act is repealed, Stats. 1897, 64.]

**3999. Company organized, how.**

SEC. 37. Whenever a sufficient number of persons by the provisions of this act, citizens of any county of this state subject to military duty, shall subscribe to a call for the organization of a volunteer company, the district judge of said county, upon the application of the persons who have subscribed as above, shall appoint some suitable person, resident of the county, to open a book in which he shall enter the names of the persons so volunteering, and shall fix a time and place of meeting for the purpose of organization, by giving ten days' notice thereof by publication in some newspaper, or by posting notices in at least three public places in the county.

**4000. Idem—Officers elected—Commissions.**

SEC. 38. The person so appointed shall preside at said meeting and organize the same; he shall superintend the election of the officers of said company, which election shall be by ballot, and shall require a majority of all the voters of the company to elect an officer; he shall make out after said election shall have been determined, a list of the persons so volunteering, a certificate of each officer so elected, and transmit them to the adjutant-general of the state, together with a copy of the proceedings of said meeting and a copy of his appointment and of the notice of said meeting duly certified by him, and if it shall be found that such company has been organized and such officers elected in conformity with law, such company shall be listed in the office of the adjutant-general as a company of the organized volunteer militia of this state, and the officers so elected shall be commissioned by the commander-in-chief and shall hold their respective office for the term for which they are elected.

[Secs. 39, 40, and 42 repealed, Stats. 1899, 37.]

[Sec. 41 repealed, Stats. 1895, 109, which act is repealed, Stats. 1897, 64.]

Sec. 39: Cited, State ex rel. Pyne v. LaGrave, 23 Nev. 25, 27 (62 A. S. 764, 41 P. 1075).

Sec. 41: Cited, State ex rel. Sutherland v. Nye, 23 Nev. 99-101 (42 P. 866).

**4001. Battalion, how formed.**

SEC. 43. When a sufficient number of companies wish to form themselves into a battalion or regiment they shall give notice through their commanding officer to the brigadier-general of their brigade, or in his absence, to the adjutant-general, who shall, if upon notice the adjutant-general approve such formation, appoint some suitable officer to hold an election of the officers of such battalion or regiment, and the officers so appointed shall fix a time and place for such election, by giving ten days' notice thereof, by publication in some newspaper, or by posting at least one notice in a conspicuous place in the armory of each company affected. Such election shall be by ballot by a majority of the commissioned officers of the companies calling for the organization of the battalion or regiment. The officer so appointed to hold the election shall preside over and superintend such election, and as soon as it shall have been determined he shall make out certificates of election to the officers so elected, and a certified account of the proceedings of said meeting, with a certified copy of the notice of said meeting, all of which he shall transmit to the brigadier-general of the brigade, who shall transmit them, with a certified copy of the appointment of such officer to hold the election, to the adjutant-general of this state through the ordinary channels of military correspondence.

**4002. Commander-in-chief, powers of—Companies—Regiments.**

SEC. 44. The commander-in-chief may attach an unattached company to a battalion or regiment temporarily or permanently. He may order appropriate separate organizations to form battalions and regiments and elect officers, and may, when necessary, appoint temporary officers to command said new bodies until they shall have elected commanding officers.

**4003. Brigade, how formed.**

SEC. 45. When there are two or more regiments, the commander-in-chief may form them into a brigade, and appoint a brigadier-general, and when there are two or more brigades, he may form them into a division, and appoint a major-general; *provided*, that he may retain in office any officer serving at the time of the passage of this act, until the end of his own term of office.

**4004. Governor's staff.**

SEC. 46. The military staff of the commander-in-chief shall consist of one adjutant-general, with the rank of brigadier-general; thirty-six aides-de-camp, each with the rank of lieutenant-colonel; one chief engineer, one paymaster-general, one judge-advocate general and one surgeon-general, each with the rank of colonel; two standard bearers, and a standard guard of two, each with the rank of sergeant-major. *As amended, Stats. 1907, 63.*

See sec. 3993, adjutant-general.

**4005. Staff of major-general—Brigadier-general—Adjutant-general.**

SEC. 47. The staff of each major-general of division shall consist of one assistant adjutant-general, with the rank of lieutenant-colonel; two aides-de-camp, with the rank of major; one engineer officer, one ordnance officer, one quartermaster, one commissary, one paymaster, one division inspector, one judge advocate, and one surgeon, with the rank of lieutenant-colonel, and four staff orderlies with the rank of sergeant-major. The staff of the adjutant-general shall consist of one aide-de-camp, with the rank of captain. The staff of each general of brigade shall consist of one assistant adjutant-general, with the rank of major; one aide-de-camp, with the rank of captain; one engineer officer, one ordnance officer, one quartermaster, one commissary, one paymaster, one brigade inspector, one judge advocate, and one surgeon, with the rank of major, and two staff orderlies, with the rank of sergeant-major.

[Sec. 48 repealed, Stats. 1897, 63, 64.]

[Secs. 49 and 50 repealed, Stats. 1899, 37.]

Aide-de-camp to adjutant-general to rank as colonel, sec. 4023.

**4006. By-laws of battalion or regiment.**

SEC. 51. Regiments, battalions and companies may adopt, for the regulation of their business and the government of their members, constitutions, by-laws and rules, not in conflict with the laws of this state; *provided*, that unless a company be then under call for active service, no member shall be elected except by ballot and upon one month's notice given at a regular meeting and posted in the armory, and the rules as to the number of votes required to elect or defeat a candidate shall not be suspended.

**4007. Records, how kept.**

SEC. 52. It shall be the duty of the acting orderly sergeant of the company and sergeant-major of the battalion or regiment to keep a perfect and complete record of the constitution, by-laws, rules and regulations of his company, battalion, or regiment, which shall be signed by the captain or commander, and countersigned by the orderly sergeant or sergeant-major, and said record shall, at all times, be subject to the inspection of any member of the company, battalion, or regiment, and all military officers or persons interested therein, and if any member of such volunteer company, battalion, or regiment shall fail to comply with the provisions of such constitution, by-laws, rules and regulations, he may be expelled from such company, battalion, or regiment, and his name erased from its roll.

**4008. Rules and regulations of United States army control.**

SEC. 53. The rules of discipline and regulations of the army of the United States shall, so far as the same may be deemed practicable by the

commander-in-chief, constitute the rules of discipline and regulations of the organized militia of this state, and the rules and articles of war established by Congress for the army of the United States shall be adopted, so far as they may be applicable for the government of the militia of Nevada in active service.

#### 4009. Commander-in-chief may promulgate rules.

SEC. 54. The commander-in-chief may promulgate such directions, rules and regulations for the government and conduct of the national guard as may be necessary, but he shall not require any company to go beyond the boundaries of the county to which it belongs, except on a call for active service, or by special authority of law.

#### 4010. Term of enlistment.

SEC. 55. Persons elected to membership in a company shall enlist either for one, three, or five years.

See sec. 4015.

#### 4011. Reenlistment, when presumed.

SEC. 56. When any member shall continue in the national guard three days after the expiration of the term of his enlistment he will be deemed reenlisted for a similar term.

#### 4012. Members of militia may be discharged, when—Honorable service.

SEC. 57. Every active member of a company who shall have served on enlistment for three years shall be entitled to a certificate of service and honorable discharge; and every member of a company who shall have served for seven years shall, in addition, be entitled to a metallic bar as a designation of honorable service to the state. But no certificate or bar shall be granted unless the person to whom it is granted shall have attended at least sixty per cent of the company drills during the required time, except he be a commissioned officer above the rank of captain.

#### 4013. Past service considered.

SEC. 58. Every person at the time of the passage of this act, a member of a company, and who has been a member for not less than two years, may have the time of his past service taken into account in granting certificates or bars; *provided*, he shall after the passage of this act, and without having discontinued said service, enlist and serve for not less than one year.

#### 4014. Power of commander-in-chief to suspend requirements.

SEC. 59. The commander-in-chief shall have power to temporarily suspend the requirements regarding enlistment and allow persons to join companies for a less time than one year; *provided*, such suspension shall relate to all the companies in the state and shall be promulgated by a general order. But the time of such suspension shall not be taken into account in computing the time of service required for certificate or bar.

#### 4015. Period of enlistment.

SEC. 60. Every person joining a company shall be deemed enlisted for a period of one year from the date of his election, unless he enlists for a longer period.

See sec. 4010.

#### 4016. Exempt from jury duty, when.

SEC. 61. Every member of a company who has attended sixty per cent of the drills of his company for a year past, and who produces a certificate to that effect, signed by the officer commanding the company, and every regi-

mental officer actually performing military duty as such, shall be exempt from jury duty. Any person not properly exempt under the provisions of this section, may be punished by the court for contempt, for falsely claiming such exemption.

**4017. Duties of military auditors—Military supplies may be sold, when.**

**SEC. 62.** It shall be the duty of the board of military auditors to audit and pay all reasonable expenses incurred by volunteer companies in the service of this state under orders for active duty, and officers attached to the same, and all other claims required under the provisions of this act; to personally inspect, at least once in each year, all military supplies, stores and property belonging to the state and in possession of the adjutant-general, and to condemn such portion thereof as may be deemed worthless or unfit for safe use by the militia of this state, and cause the same to be sold or disposed of, as may be deemed for the best interest of the state; and the treasurer of the state is hereby required to pay such claims as herein provided for, and as audited by said board out of any moneys in the general or military fund not otherwise appropriated.

**4018. No compensation.**

**SEC. 63.** No member of the national guard shall be entitled to compensation for attendance at an encampment merely for drill practice or instruction.

**4019. System of drill—United States regulations.**

**SEC. 64.** The system of instruction in drill regulations prescribed for the different arms and corps in the United States army shall be followed in the military instruction and practice of the militia of this state, as far as practicable, and the use of any other system is forbidden.

[Sec. 65 repealed, Stats. 1897, 64.]

**4020. Acts and parts of acts repealed.**

**SEC. 66.** Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 16, 17, 18, 19, 20, 22, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 53, 55, 72 and 75 of "An act to provide for organizing and disciplining the militia of the State of Nevada," approved March four, eighteen hundred and sixty-five [p. 189], and all acts or parts of acts amendatory of and supplemental to said sections, and an act amendatory of and supplemental to said above-entitled act approved March one, eighteen hundred and eighty-three [p. 91], and an act amendatory of and supplementary to said above-entitled act, approved March three, eighteen hundred and eighty-seven [p. 101], and all other acts and parts of acts in so far as they conflict with the provisions of this act, are hereby repealed.

**4021.** [This section is the same as 4033, and is therefore omitted.]

*An Act relative to military affairs in this state.*

Approved March 19, 1891. 76

**4022. Militia to be called out for drill each year.**

**SECTION 1.** It shall be the duty of the governor to call out the state militia for no less than four days, and not to exceed the period of six days, during each and every year from and after the passage of this act, for the purposes of military drill.

**4023. Aide-de-camp to adjutant-general rank as colonel.**

**SEC. 2.** The aide-de-camp to the adjutant-general from and after the passage of this act shall rank as colonel.

[Sec. 3, carrying appropriation, omitted.]

*An Act to prohibit and punish the retention of state and company property, or any property in charge of the national guard, by individuals.*

Approved March 1, 1893, 62

#### 4024. Dispossession of military property.

SECTION 1. Every person, whether a member of any of the organized militia companies of this state or not, shall, upon request of the commanding officer of a company, immediately surrender to said commanding officer all company and state property (not money) received or possessed by him, and likewise all other military property in his possession.

#### 4025. Idem—Penalty for retention of unlawfully.

SEC. 2. Any person who shall illegally retain in his own possession or shall fail to surrender any article of such property shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding fifty days, or by both such fine and imprisonment.

#### 4026. Idem—Exception.

SEC. 3. Nothing contained in this act shall authorize an officer to order a member of a company, not under his command, to yield possession of property which is properly in the charge of such member under orders.

*An Act relating to the Nevada national guard.*

Approved March 6, 1899, 36

4027. National guard to consist of one bat-  
talion.

4028. Idem—Major—Qualifications.

4029. Idem—Commissioned staff to consist of.

4030. Idem—Noncommissioned staff.

4031. Company to consist of.

4032. Age of enlistment of every candidate—  
Physical examination.

#### 4027. National guard to consist of one battalion.

SECTION 1. In time of peace the Nevada national guard shall consist of one battalion of not more than five companies of infantry, to be allotted and stationed in such localities of the state as the necessity of the service, in the discretion of the commander-in-chief, may require, and he may transfer, attach, consolidate, or disband companies, and to reorganize the same as he may deem advisable.

#### 4028. Idem—Major—Qualifications.

SEC. 2. The battalion shall have one major, who shall have served not less than three months as a commissioned officer in the United States volunteers or regular army, and shall be appointed by the commander-in-chief.

#### 4029. Idem—Commissioned staff to consist of.

SEC. 3. The commissioned staff of the battalion shall consist of one adjutant, one quartermaster, one assistant surgeon and one chaplain, each with the rank of first lieutenant, and nominated by the battalion commander.

#### 4030. Idem—Noncommissioned staff.

SEC. 4. The noncommissioned staff of the battalion shall consist of one sergeant-major, one quartermaster-sergeant, one hospital steward and one principal musician, appointed by the battalion commander.

#### 4031. Company to consist of.

SEC. 5. Each company shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, five sergeants, eight corporals, one artificer, one cook, one wagoner, and two musicians, and not less than forty, and not more than eighty, privates.

**4032. Age of enlistment of every candidate—Physical examination.**

SEC. 6. Every candidate for admission to the Nevada national guard, except commissioned officers, must be between the ages of eighteen and forty-five years, and shall pass the physical examination required by the United States army, and such examination shall be certified by a regular practicing physician of this state. Said certificate must accompany the application for membership. All enlisted members of the Nevada national guard, at the date of the passage of this act, shall, within thirty days thereafter, furnish the required certificate of physical examination, or be discharged from membership.

*An Act relating to the Nevada national guard.*

Approved March 8, 1897, 63

**4033. Duty of county commissioners to provide armory—Expenses, how paid.**

SECTION 1. It shall be the duty of the board of county commissioners of any county in which public arms, accouterments, or military stores are now had, or shall hereafter be received for the use of any companies of the Nevada national guard, subject to approval by the adjutant-general, to provide a suitable and safe armory for companies of the national guard organized within such county. The expenses of procuring and maintaining such armories shall be paid out of the general fund of the county, to be paid by the county treasurer on presentation of the auditor's certificate that such allowance has been made by the board of county commissioners. The treasurer shall require duplicate receipts from the person presenting said certificate, one of which shall be forwarded to the adjutant-general, the other thereof shall be delivered to and received by the state treasurer as so much money and shall be considered and allowed for the full amount thereof in the settlement by the controller and state treasurer with the county treasurer. Such expenses shall not exceed sixty (\$60) dollars per month for any company. *As amended, Stats. 1899, 31; 1901, 70.*

**4034. Requirements for support.**

SEC. 2. No company shall be entitled to receive public money for its support unless it shall meet for drill and instruction not less than one hour, at least twice in each month, and shall practice at rifle firing twice each month during five months in each year at such ranges and targets, number and rounds under such rules and regulations as may be prescribed by the commander-in-chief.

**4035. Members responsible for equipments—Misdemeanor.**

SEC. 3. Any person who shall wear or use, except when on military duty, or by special permission of his commanding officer, any arm, equipments, uniform, or other article or portion thereof of military property belonging to the state, or the company of which he is a member, or any person who shall refuse or neglect to return to his commanding officer, any state military property aforesaid, within one day after being notified by the commanding officer to make said return or to place the same in his charge, or any person who shall wilfully or wantonly injure or destroy any state military property aforesaid and refuse or neglect to make good such injury or loss, or who shall sell or dispose of, secrete or remove the same, with intent to sell or dispose thereof, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than ten nor more than one hundred dollars, together with costs of prosecution or by imprisonment in the county jail for not less than five nor more than fifty days, or by both such fine and imprisonment at the discretion of the court, to be recovered on the complaint of the adjutant-general, or

other commissioned officer, by an action brought by the district or prosecuting attorney, in the name of the State of Nevada, before any court of competent jurisdiction, and the money so recovered shall be paid into the state treasury as a part of the military fund.

This section supersedes act of 1893, Stats. 1893, 62.

[Sec. 4 repealed, Stats. 1899, 37.]

See sec. 4025.

*An Act relating to military encampment.*

Approved March 6, 1893, 119

**4036. Duties of governor as to military encampment.**

SECTION 1. It shall be the duty of the commander-in-chief to order out the organized militia each year, or each alternate year, for not less than five days, for the purpose of military drill in camp, whenever a sufficient sum of money shall have been appropriated therefor by the legislature.

[Sec. 2 obsolete.]

**4037. Military encampment, place of holding.**

SEC. 3. In selecting a site for an encampment the officer in charge of the same shall obtain complete control for the entire time of the encampment of the whole of the grounds used and of as much adjoining land on each side as may be necessary; *provided*, that all encampments authorized by this act shall be held at, or in the immediate vicinity of, the state capital. *As amended, Stats. 1895, 87.*

*An Act to provide for organizing and disciplining the militia of the state.*

Approved March 4, 1865, 189

[Sections 1 to 9, 12, 16 to 20, 22, 29 to 45, 53, 55, 72, and 75 are repealed, Stats. 1893, 100.]

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#### 4038. Failure to attend encampment—Misdemeanor.

SEC. 4. When ordered out for camp duty, any active member of the organized militia, refusing or neglecting to comply with the order of his superior officer, shall be guilty of a misdemeanor, and shall be fined not less than twenty nor more than fifty dollars, or imprisonment not less than ten days, and may be expelled from the company, battalion, or regiment of which he is a member. Such fine or imprisonment may also be imposed by a justice's court.

#### 4039. Governor to appoint adjutant-general, when.

SEC. 10. During the suspension of the adjutant-general from office, or his absence, or inability, from any cause to perform his duties, the governor may appoint some competent person to perform the duties of the adjutant-general ad interim.

#### 4040. Adjutant-general to turn over state property to successor.

SEC. 11. On the expiration of his term of office, the adjutant-general, or the person performing his duties ad interim, will turn over to his successor, in good order, all arms, ordnance, ordnance stores and other property belonging to the state, and all the books, papers, bonds, and money in his charge, and pertaining to his office.

#### 4041. Who exempt from military duty.

SEC. 13. The following persons are exempted from military duty and enrollment: All ministers of religion, having a license or written evidence, according to the rules of their particular persuasion or organization, that they are such ministers; all civil and military officers of the United States; all officers of foreign governments; all civil officers (including members of the legislature) of the State of Nevada; all persons who have been wounded in the service of the state, or of the United States, and all persons exempted from military duty by the laws of the United States.

[Secs. 14 and 15 repealed, Stats. 1879, 66.]

#### 4042. Application for arms—Procedure—Bonds.

SEC. 21. When any volunteer company shall be organized according to law, the commanding officer thereof may apply to the commander-in-chief, through the proper military authorities, for such arms and accouterments, or stores, as may be required, such application being first submitted to the district judge, and receiving his approval, which shall be indorsed thereon. If the commander-in-chief shall approve such application, or any part thereof, he shall give an order, upon the back thereof, directing the issue by the adjutant-general, who shall immediately notify the officer making such application, and the district judge who approved it, that the arms and accouterments, or stores, mentioned in such application, or any portion thereof, are ready for issue; and thereupon it shall be the duty of such officer to give such bonds and security as may be deemed requisite by the district judge to secure the county from loss on account of use, or misapplication, of such arms or equipments, or other stores; and on due notification from such district judge that such bonds have been given to his satisfaction, and upon receiving triplicate receipts from such officer, the adjutant-general shall make the issue. He shall file one copy of such receipts in his office, and transmit the other two, one to the controller of state, and the other to the county clerk of the county to which such volunteer company belongs.

**4043. Arms to be returned, when.**

SEC. 23. The commander-in-chief shall have authority to demand and receive back from any county, or from any portion of the military force of this state, any arms, equipments, military stores, or other property, belonging to the state, which may be in possession of such counties or military force; and when such arms, equipments, military stores, or other property, shall again come into the possession of the adjutant-general, or other officer designated by the governor to receive them from such counties, or military forces, to which they have been issued, as above provided, it shall be the duty of the adjutant-general, or officer so appointed, to receipt for the same, which receipt shall be triplicate, one copy to be filed in the office of the county clerk, one in the office of the adjutant-general, and the third in the office of the controller of state.

**4044. Arms subject to inspection—Damages repaired.**

SEC. 24. All arms, equipments, and military stores issued as hereinbefore provided, shall at all times be subject to examination by the inspectors and ordnance officers of the state, and of any other officer designated by the commander-in-chief for that purpose; and if such officer shall find any of such public property out of repair, injured, or defective, he shall immediately notify the board of county commissioners of the facts, and report the same, through the proper channels to the commander-in-chief, who, if the damage shall not be repaired, and the defects or losses supplied within a reasonable time, shall order the same to be done under the direction of some officer, and the vouchers for the expense thereof shall be duly examined and audited by the state board of military auditors, and paid, on the draft of the controller of state, out of the military fund.

**4045. Controller to charge property—Counties responsible.**

SEC. 25. It shall be the duty of the controller of state to charge the value of all arms, equipments, and military stores, issued as above provided, to the counties, to the military companies, in which such public property, shall be issued; and all expenses of repairs of damage and defects, as provided in the foregoing section, and double the value of any arms, accouterments and military property, which such counties, or such military companies, shall have failed to return to the state, on the demand of the governor. At the close of each fiscal year, he shall settle the account of each county with reference to such issues and military charges, and the amount so found due shall, on the requisition of the controller of state, be assessed at the time of the next annual assessment as a part of the county taxes, and be collected in such county in the same manner as the ordinary taxes, and shall be paid into the state treasury as a part of the military fund of the state.

**4046. Transportation of arms—Expenses, how paid.**

SEC. 26. The transportation of all arms, equipments and military stores, issued to troops, or received by the state under the provisions of this act, shall be contracted for, under the direction of the commander-in-chief, by the adjutant-general, and the vouchers for such transportation, when audited by the state board of military auditors, shall be paid from the military fund, on the warrant of the controller.

**4047. When arms to be issued.**

SEC. 27. No public arms, equipments, or military stores of any kind, shall hereafter be issued to any person not a member of the organized volunteer militia, or of the enrolled militia called into active service, except in time of war, insurrection, or public danger so imminent that the commander-in-chief

shall consider that the public safety requires him to make such issue; in which case an accurate account shall be taken of such issues, and to whom they are made.

#### 4048. Bonds of officers—Penalty for unlawfully using state arms—Court-martial.

SEC. 28. Within ninety days from the passage of this act, each and every officer of volunteer companies now organized, having in his possession any arms, equipments, and military stores belonging to the state, shall give to the county in which he resides good and sufficient bonds, to be approved by the district judge, to secure the county from loss on account of the use or misapplication of the same, and the officer so giving bonds to the county shall, together with his sureties, be released from his liabilities for the same property on any bond heretofore given by him and them to the state, and the same shall be charged, as hereinbefore directed, to the said county; and after the expiration of the said ninety days, no person shall retain, or have in his possession at any time any arms, equipments, or military stores of any kind, belonging to the state, unless they have been properly issued to such person in pursuance of law, and he shall be permitted, by proper authority, to retain the same in the discharge of a public duty; and no person shall use any public arms, equipments, or military stores belonging to the state, for his private use, under penalty, in either of the above cases, of not less than five nor over fifty dollars, for each offense, to be recovered, in case of a member of the organized militia, or of the enrolled militia in active service, by sentence of a court-martial; or, in case of any other person, by suit, in the name of the State of Nevada, by the district or prosecuting attorney of the county, before any court of competent jurisdiction; and the money so recovered shall be paid into the treasury as a part of the military fund of the state.

Sec. 43, as amended by Stats. 1887, 101, was cited, *State ex rel. O'Meara v. Ross*, 20 Nev. 61, 63 (14 P. 827).

#### 4049. Courts-martial—Power and procedure.

SEC. 46. The commander-in-chief will appoint courts-martial for the trial of general officers and all officers of the staff of the commander-in-chief; the major-generals of division will appoint courts-martial for the trial of all staff officers of their divisions and brigades, and for the field and staff officers of battalions and regiments of their respective divisions, and brigadier-generals will appoint courts-martial for the trial of all captains and commissioned officers under that rank, in their respective brigades; the commanding officers of regiments and battalions will appoint courts-martial for the trial of all noncommissioned officers, musicians, artificers, and privates, of their respective regiments and battalions. The commanding officer of a single company, not forming a part of any battalion or regiment, shall have power to appoint courts-martial the same as the commanding officer of a regiment or battalion. The officer appointing a court-martial will revise the proceedings and approve or disapprove the sentences of such courts-martial and will direct the execution of such sentences, or mitigate the punishment, or pardon the person or persons convicted; but the person or persons so sentenced may apply to the commander-in-chief to revise the proceedings and to disapprove them, or pardon the offense; in which case, the officer approving the sentence will transmit the proceedings in such case to the commander-in-chief, and the execution of the sentence shall be suspended until the proceedings shall be returned, with the decision thereon. Courts-martial appointed under the provisions of this act shall be organized in like manner and be subject to the rules and regulations governing courts-martial in the United States army; they shall have the same power to compel the attendance of witnesses, when

duly summoned by the judge advocate, to preserve order in and about the court room, during their session, and to punish contempts, as the judges of the districts courts have under the laws of this state.

The provision of Const., sec. 237, ante, guarantees to a person prosecuted for an offense before a court-martial organized

under the laws of this state, the right to defend with counsel. State ex rel. Huffaker v. Crosby, 24 Nev. 115, 123 (77 A. S. 786, 50 P. 127).

#### 4050. Removal or absence from state, when deemed resignation.

SEC. 47. Any commissioned officer of a brigade or division, who shall remove his residence from the limits of his brigade or division, will be deemed to have resigned his commission, and any major-general or brigadier-general who shall absent himself from the state for more than three months, without the permission of the commander-in-chief shall be deemed to have resigned his office.

#### 4051. Pay of militia in active service.

SEC. 48. Whenever any of the militia of this state shall be called into active service for the space of more than one week, they shall receive the same pay and allowance as United States troops serving in Nevada. Any general or field officer being called into active service, such call shall be deemed to include all the officers of their respective staff. In case a division, or part of a division, is called into active service, the commander-in-chief shall be authorized to put upon active service one of his aides-de-camp, and in case more than one division shall be called into active service, one more aide for each additional division which shall be so called into active service.

#### 4052. Return of arms—Resistance—Misdemeanor.

SEC. 49. When the commander-in-chief shall order the return to the state of any arms, equipments, military stores, or other military property, belonging to the state, such arms and military property shall be immediately delivered to the officer authorized in such order to receive it, he receipting for the same, and describing their condition in such receipts; and if the property mentioned in such order shall not be promptly delivered as directed, the officer named in such order is hereby authorized to take immediate possession of the same in the name of the State of Nevada; and any person resisting such officer in the performance of his duty, shall be deemed guilty of a misdemeanor, punishable by imprisonment for not more than six months in the county jail, and shall be subject to a fine not exceeding five hundred dollars, to be recovered by an action brought by the district or prosecuting attorney, in the name of the State of Nevada, and be paid into the treasury as a part of the military fund.

#### 4053. Board of military auditors.

SEC. 50. The commander-in-chief, adjutant-general, and the controller of state shall constitute a state board of military auditors. The commander-in-chief shall be president, and the adjutant-general shall be secretary of said board.

The bills of county assessors for making the militia roll must be passed upon by the

state board of military auditors and paid out of the militia fund of the state. State ex rel. Hobart v. Ryland, 14 Nev. 46-50.

#### 4054. Idem—Seal.

SEC. 51. The board of military auditors shall have a seal, an impression of which shall be deposited by the secretary of the board in the office of the state treasurer, and be attached to all orders drawn upon the general or military fund.

See State ex rel. Hobart v. Ryland, under sec. 50 of this act.

4055. *Idem*—How money to be drawn.

SEC. 52. No money shall be paid out of the general or military fund of this state, by the state treasurer, upon the order of the board of military auditors, except as provided in the foregoing section of this act; said order shall specify on its face the objects for which such money is paid, and to whom, and the amount duly entered in a book to be kept by the secretary of said board of military auditors.

A claim against the state for expense of providing an armory, if not shown to be properly chargeable against the state, does not become a legal demand against it simply because the claim has been regularly audited

and approved by the board of military auditors. State ex rel. Pyne v. La Grave, 22 Nev. 417 (41 P. 115).

See State ex rel. Hobart v. Ryland, under sec. 50 of this act.

## 4056. Secretary of state to keep blank commissions.

SEC. 54. The secretary of state shall, under the direction of the governor, prepare and keep in his charge all blank military commissions. He will issue, from time to time, to the adjutant-general, such blank commissions as he may require for use, charging him with the same.

## 4057. Divisions and brigades.

SEC. 56. The organized and enrolled militia of this state shall be divided into such number of divisions and brigades as the commander-in-chief shall determine. The governor, as commander-in-chief, shall publicly announce the number of divisions and brigades within sixty days after the passage of this act.

National guard to consist of but one battalion, sec. 4027.

## 4058. Civil officers in certain cases may control troops—Not to fire blank cartridges—When commanding officer may use own discretion.

SEC. 57. Whenever any portion of the organized or enrolled militia shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of this state, or of the United States, it shall be competent for the commander-in-chief, or the general acting in his place, as provided in section 39, to place such troops under the temporary direction of the mayor of any city, or the chairman of the board of county commissioners of any county, or of any sheriff of any county, or of any marshal of the United States, and if, in the opinion of such civil officer, it shall become necessary that the troops so called out shall fire or charge upon a mob or body of persons assembled to break or resist the laws, such civil officer shall give a written order to that effect to the superior officer present in the command, who will at once proceed to carry out the order, and shall direct the firing and attack to cease only when such mob or unlawful assembly shall have been dispersed, or when ordered to do so by the proper civil authority. No officer, who has been called out to sustain the civil authorities, shall under any pretense or in compliance with an order, fire blank cartridge upon a mob or unlawful assemblage, under penalty of being cashiered by sentence of a court-martial; *provided*, that nothing in this section shall be construed as prohibiting any such troops from firing or charging upon such mob or assembly without the orders of such civil officers in case they shall first be attacked or fired upon, or forcibly resisted in the discharge of their duty. When the commander-in-chief, or general acting in his place, shall call troops into active service for the purposes mentioned in this section, and shall not place them under the temporary direction of any civil officer, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assemblage.

See secs. 2835, 2839, 2840, 3982.

**4059. Collection of fines imposed by court-martial—Military fund.**

SEC. 58. All fines legally imposed by a court-martial lawfully constituted after the proceedings and findings of said court in the premises have been approved as prescribed by this act, shall be and the same are hereby made collectible by law; and any person failing to pay the same shall be proceeded against by the district or prosecuting attorney, in the name of the State of Nevada, as for ordinary debts, in any court of competent jurisdiction of the county; and a copy of so much of the finding and approval as relates to the imposition and approval of such fine, certified by the officer authorized by law to approve the same, shall be received as evidence in the case; and if judgment be obtained, it shall be collected as in ordinary cases, and shall be paid into the county treasury as belonging to the military fund of the state, and to be accounted for as such.

**4060. Commander-in-chief to publish rules.**

SEC. 59. The commander-in-chief may, from time to time, make out and publish rules, regulations, and orders for the government of the militia of this state, in accordance with the provisions and spirit of this act.

**4061. Company may adopt name.**

SEC. 60. Any volunteer company may, on its organization, or thereafter, adopt a distinctive name, but shall be known by a particular letter or number in the battalion or regiment to which it belongs.

**4062. Must belong to one company—Removal—Discharge.**

SEC. 61. No person shall be a member of two companies at the same time, and any member of a company who removes beyond the limits of the county, shall be considered as having been discharged from such company.

**4063. Fines imposed on minors, who shall pay—Remission.**

SEC. 62. In the cases of military taxes and fines, assessed and charged against a minor, the parent or guardian shall be held to pay. In case of minors who are orphans, the commander-in-chief shall have power to remit any military taxes or fines.

**4064. Absence of officer—Next in command succeeds.**

SEC. 63. In the absence of any appropriate commander, the next in rank in the command of troops, where not otherwise provided in this act, shall succeed to his authority.

**4065. Authority of officers.**

SEC. 64. Every senior, in his appropriate command, shall have authority to control the actions of his junior, in accordance with the principles of military subordination under the laws and usages that govern the United States army.

**4066. Cashiered officers precluded from further commission.**

SEC. 65. Any officer cashiered by sentence of a court-martial, shall be precluded thereby from holding any commission in the military service of the state, except the sentence be remitted by the commander-in-chief.

**4067. Effect of dismissal from service.**

SEC. 66. No noncommissioned officer, artificer, musician, or private, expelled from his company, or dismissed from service, for any disgraceful cause, shall be permitted to again enter any volunteer company, except the offense be pardoned by the commander-in-chief.

**4068. Discharges, how granted.**

SEC. 67. No officer, inferior in grade to a regimental or battalion commander, shall have power to grant discharges to noncommissioned officers,

artificers, musicians, or privates, in active service; but commanders of companies of the organized militia, when not in active service, may issue certificates of service and discharges. All discharges shall be in writing, and shall set forth fully the cause of discharge, and shall be signed by the officer granting the same.

#### 4069. Resignation—Election—Commissions.

SEC. 68. Any officer resigning his commission, shall do so in writing, and transmit the same through his immediate commanding officer, who will make his endorsements thereon; and the resignation shall go into effect when accepted by the commander-in-chief, and not before. Vacancies of commissioned officers of organized companies and battalions (not in active service) caused by resignation, death, dismissals or removals, or by the expiration of the term fixed by the rules and regulations of such company or battalion, or by any other cause, shall be filled by election, in accordance with the provisions of this act. Such elections of company officers shall be presided over by an officer appointed for that purpose by the brigadier-general, and of field officers, by an officer appointed by the major-general; and such presiding officer shall report the result of such election to the officer appointing him, which report shall be transmitted to the commander-in-chief, who shall issue commissions in accordance therewith; *provided, however*, that when the same officer shall be elected no new commission shall be issued, but the officer so reelected shall continue to hold under his original commission.

#### 4070. Commissions deemed vacated, when.

SEC. 69. The commission of any staff officer whose term of office depends upon the pleasure of the officer by whom he is appointed, shall, when such officer is not in active service, be considered as vacated upon the qualification of his successor, and shall be so noted upon the proper books, or rolls, kept in the office of the adjutant-general of the state.

#### 4071. Commander-in-chief may disband any portion of the militia for cause—Effect—Misdemeanor.

SEC. 70. The commander-in-chief is authorized at any time, by issuing his orders to that effect, to disband any portion of the organized volunteer forces, or of the enrolled militia mustered into service, which may evince a mutinous, disorderly, or disobedient spirit, and to deprive them of arms; a copy of which order shall be transmitted to the clerk of the district court or courts of the county or counties in which such force was raised; after which it shall be a misdemeanor in any person so disbanded, to appear with state arms in his possession, or as any portion of the organized volunteer militia, or of the enrolled militia, in active service, until again drafted or regularly mustered into service, under the penalty of not less than ten nor more than one hundred dollars for each offense; and such person shall be proceeded against by the district or prosecuting attorney in the name of the State of Nevada, before any competent court of the county where such person may happen to be; and all fines so recovered or collected shall be paid into the treasury as a part of the military funds.

In an application for writ of mandamus to compel the county auditor to issue to the county treasurer his certificate of the allowance by the board of county commissioners of an expense bill to a militia company, it was held that, as the company had not taken the oath as required by sec. 55 of this act (now repealed), it was not entitled to

armory rent and the writ was denied. State ex rel. O'Meara v. Ross, 20 Nev. 61, 62, 64 (14 P. 827).

The oath of allegiance was intended for the benefit of the state, and a failure to take it will not relieve the members of the company from their duty under the law. Idem.

#### 4072. May adopt uniform subject to approval.

SEC. 71. Every company, battalion, or regiment of organized militia of

this state may adopt a uniform for itself, subject, however, to the approval of the commander-in-chief, on inspection and report by the proper officer. *As amended, Stats. 1867, 105; 1871, 108.*

#### 4073. Tactics of United States army to control.

SEC. 73. The systems of instruction in tactics, prescribed for the different arms and corps in the United States army, shall be followed in the military instruction and practice of the militia of this state, and the use of any other system is forbidden.

#### 4074. To furnish county clerk with list of members—False list—Penalty.

SEC. 74. The commanding officer of every organized company shall, during the months of June and December of each year, furnish the county clerk of his county with a list of the names of the bona fide members of his company, who attend regularly to appropriate duty. He shall, also, at the end of each year's service of any member of his company, who has performed duty in accordance with the regulations and by-laws of such company, during the year, issue to such member a certificate to that effect; and if such commander of a company shall make a false list of the members of his company, who have done duty as aforesaid, or a false certificate of service, he shall, on conviction by a court-martial, be cashiered from service, and shall, moreover, be subject to a fine of not less than fifty nor over five hundred dollars, to be sued for and recovered in the name of the State of Nevada, by the district or prosecuting attorney of the county of his residence, in any court of competent jurisdiction, and be paid into the treasury as a part of the military fund of the state.

#### 4075. Bands of music.

SEC. 76. When bands of music shall not have been organized for any regiment, battalion, or isolated company, in the manner provided in the regulations of the army of the United States, it shall be lawful for such regiment, battalion, or isolated company, through its commanding officer, to hire the services of any band of musicians, at their own expense, or if on duty for the state, at the state's expense; and the persons so employed shall, during the time of their engagement, be subject to the same laws and regulations that govern the military body with which they may serve.

#### 4076. Drafting for service—Substitute accepted.

SEC. 77. When any person drafted for service shall offer, at or after the time of rendezvous, a suitable substitute, of the age of twenty-one years, and such substitute shall consent in writing to subject himself to all the duties, fines, forfeitures, and punishments to which his principal would have been subject had he personally served, he shall be accepted by the officer making such draft; and the same rule shall apply to substitutes offered by members of organized volunteer companies called into active service, the commanding officer of such company being the judge of the suitability of the substitute offered; and the person whose substitute shall be so accepted shall be exempted from draft during the term of service of his substitute.

#### 4077. Idem—Members of courts-martial exemption from liability.

SEC. 78. No action shall be maintained against any member of a court-martial, or officer, or agent acting under his authority, on account of the imposition of a fine or the execution of a sentence on a person not liable to military duty, if such person shall have been duly summoned and shall have neglected to appear and show his exemption before the court.

#### 4078. Courts of inquiry—Powers—Rules governing.

SEC. 79. Courts of inquiry may be ordered by the commander-in-chief, or by any major-general or brigadier-general; such courts of inquiry shall be

governed by the same rules as similar courts in the United States army, and they shall have the same power to preserve order, punish contempts, and compel the attendance of witnesses as courts-martial have.

#### 4079. Fees of civil officers—Liabilities.

SEC. 80. For all services under this act, sheriffs, constables, and jailers shall receive like fees as for similar services in other cases, and shall be subject to the same penalties for any neglect of duty.

#### 4080. Seal of adjutant-general—Imports verity.

SEC. 81. The adjutant-general shall have a seal of office, to be approved by the commander-in-chief, and all copies of records or papers in his office, duly certified and authenticated under the said seal, shall be in evidence in all cases in like manner as if the originals were produced.

#### 4081. Hours of military duty—Exemption from arrest on civil process.

SEC. 82. On the days of military parade, appointed by the commander-in-chief, the militia so called out and doing military duty shall be considered to be under military discipline from the rising to the setting of the sun; and no officer, noncommissioned officer, musician, artificer, or private, belonging to the same during the time aforesaid, shall be subject to be arrested on any civil process.

#### 4082. Not to obstruct highways or grounds—Penalty.

SEC. 83. The commanding officer of any parade, review, or drill, and the officer in charge of any rendezvous, may cause the grounds selected for that purpose to be marked or designated in such a manner as not to obstruct the passage of travelers on any public highway; and if any person during the occupation of such ground for such military purpose shall encroach upon such bounds, and enter upon such ground, without the permission of such officer commanding or in charge, he may be put and kept under guard by the order of such commander, until the setting of the sun of the same day, and, moreover, shall be subject to arrest and punishment by any court of competent jurisdiction for a breach of the peace.

#### 4083. Penalty for insulting officer or soldier.

SEC. 84. If any person shall intercept, molest or insult, by abusive words or behavior, any officer, noncommissioned officer, or soldier, while in the performance of his military duty, he shall be immediately put under guard, and kept at the discretion of the commanding officer of the forces engaged in the performance of such military duty, until the setting of the sun of the same day on which the offense shall have been committed; and, moreover, shall be subject to arrest and punishment by any court of competent jurisdiction for a breach of the peace.

#### 4084. Disobeying orders—Insubordination—Court-martialed.

SEC. 85. Any officer, noncommissioned officer, or soldier, on military duty who shall disobey the legal orders of his superior, use any reproachful or abusive language to his superior, or misbehave or demean himself in an unofficer or unsoldierlike manner, shall be immediately arrested if an officer, and if a noncommissioned officer or soldier, shall be disarmed and put under guard, and shall be tried and punished by a court-martial, according to law and military usage.

#### 4085. Companies temporarily organized into battalions, when—Commanding officer.

SEC. 86. In case of parades, reviews, inspections, or musters, of the troops of any brigade, any companies not organized into battalions shall be tempo-

rarily organized into a battalion for the duties of the day; and the battalion so temporarily organized shall be commanded by the officer senior in rank of the companies composing it. It shall be optional with any such unattached companies to attach themselves for the day to any organized battalion or battalions, or to organize a temporary battalion; but no such temporary battalion shall be organized of less than three companies, if there be any organized battalion or battalions present on duty to which they may attach themselves without exceeding the complement fixed by this act. If such unattached companies shall not attach or organize themselves in accordance with the provisions of this section, the officer commanding the brigade for the day shall order such assignment or organization.

#### 4086. Property exempt from execution.

SEC. 87. Horses and equipments of officers of mounted companies, and all company property of uniformed companies, organized under this act, shall be exempt from execution.

The act of 1865, 389, sec. 6, since repealed, was cited in *State ex rel. Nightingill v. Storey Co.*, 1 Nev. 265, 271.

The act of 1893, 127, directing appropriations by boards of county commissioners for encampments and other public holiday celebrations, since repealed, was cited in *State ex rel. Beck v. Washoe Co.*, 22 Nev. 17 (34 P. 1057).

Act of 1895, 108, since repealed, sec. 11.

The "expenses" provided for are actual expenses incurred in procuring an armory. *State ex rel. Pyne v. La Grave*, 22 Nev. 417, 418 (41 P. 115); also, cited in *State ex rel. Sutherland v. Nye*, 23 Nev. 99, 100 (42 P. 866); *State ex rel. Pyne v. La Grave*, 23 Nev. 25, 26, 28 (62 A. S. 764, 41 P. 1075).

## STATE ORPHANS' HOME

For the erection of a state orphans' home, and to provide for the same, sections 4087, 4088.

Government and maintenance of the state orphans' home, sections 4089-4103.

Granting certain powers to the board of directors, section 4104.

Fixing the salary of the superintendent and matron, section 4105.

To provide educational facilities for children of, sections 4106-4108.

*An Act for the erection of a state orphans' home, and to provide for the same.*

Approved March 3, 1869, 111

#### 4087. Location at Carson City.

SECTION 1. There shall be established within the limits of the city of Carson, in the manner hereinafter provided for, a state orphans' home.

[Secs. 2 to 13, inclusive, superseded by following act, secs. 4089-4103.]

#### 4088. Property to be donated.

SEC. 14. Said orphans' home building to be erected on a lot in Carson City of not less than ten acres, to be donated to the state by the citizens of Ormsby County.

Cited, *State ex rel. Wright v. Dovey*, 19 Nev. 397 (12 P. 910).

*An Act for the government and maintenance of the state orphans' home.*

Approved March 1, 1873, 103

4089. Directors, who constitute—Organization.

4090. Powers and duties—Record of proceedings—Reports—Superintendent and matron—Teacher—Employees.

4091. Accounts against home examined—How paid.

4092. Orphans declared wards of the state—Services and education.

4093. Orphans, how admitted to home—Notice—Expenses.

4094. Inmates to be taught—Superintendent to notify commissioners of boys approaching age.

4095. Age of majority for purposes of act—Children over fourteen or mentally or physically deficient not admitted.
4096. Orphans escaping may be recaptured—Action to be brought—Property of wards—Guardianship.
4097. Board may discharge or apprentice orphans.
4098. Children other than orphans may be admitted—Conditions.
4099. Idem—County commissioners to send and support—Wards of state.
4100. Idem—Nonorphans released, when—Expenses.
4101. Estimates of supplies required—Where filed.
4102. Idem—Contracts for supplies advertised.
4103. Idem—Contract for supplies awarded.

#### 4089. Directors, who constitute—Organization.

SECTION 1. The administration of the state orphans' home shall be under the control of a board of three directors, to consist of the superintendent of public instruction, surveyor-general, and state treasurer. They shall elect from their number a president and vice-president. They shall be known by the name and style of the directors of the state orphans' home. *As amended, Stats. 1873, 192.*

Cited, State ex rel. Wright v. Dovey, 19 Nev. 396, 398 (12 P. 910).

#### 4090. Powers and duties—Record of proceedings—Reports—Superintendent and matron—Teacher—Employees.

SEC. 2. The directors shall have full power to manage and administer the affairs of said home, to make by-laws for their own government and the government of the home; *provided*, that they are not repugnant to the laws of the United States or of this state. They shall cause to be kept a record of their proceedings, which shall at all times be open for the inspection of a committee appointed by the legislature; they shall submit to the legislature, during the second week of each session, a biennial report, showing the amount of receipts and expenditures, the condition of the home, the number of orphans and half orphans admitted and discharged during the interval between the regular sessions of the legislature; they shall have power to erect such additions to the building occupied as the home (with the appropriations made biennially for its support) as may be necessary for the proper care and accommodation of the inmates; to appoint a superintendent and matron, who shall be man and wife, and a teacher who shall reside at the home and have charge of the educational department—said teacher to be duly qualified as is now provided under the state school law. The directors shall also have power to employ all other suitable persons necessary to conduct the affairs of the home.

Children may attend public schools, sec. 4106.

Water supply for, see secs. 4424-4426.

#### 4091. Accounts against home examined—How paid.

SEC. 3. All accounts and demands against the state orphans' home shall be examined and approved by the board of directors before going before the state board of examiners, and, when allowed by the board of examiners, the controller of state shall draw his warrant on the state orphans' home fund for that amount.

[Sec. 4 (salary) superseded, sec. 4105.]

[Sec. 5 obsolete.]

#### 4092. Orphans declared wards of the state—Services and education.

SEC. 6. It is hereby determined and declared that all orphans duly admitted to the state orphans' home thereby become the wards of the State of Nevada, and are entitled, under the provisions of this act, to the care, protection, and guardianship of the State of Nevada; and it is further determined and declared that the State of Nevada, for the care, protection, and guardianship of all such wards, is entitled to their services as herein provided, and has the right to train and educate them for useful places in

society, and that such rights of the state are superior to the claims of any and all relations or persons, resident or nonresident.

#### 4093. Orphans, how admitted to home—Notice—Expenses.

SEC. 7. Upon the application, in writing, of any citizen of the State of Nevada, in behalf of any whole orphan, to the district judge of any county, showing such orphan to be the child of parents who (or either of them), at the time of decease, were resident citizens of the State of Nevada, and that the condition of said orphan is such that it would be for his or her best interest to be admitted to the state orphans' home, and giving the name and place of residence of the nearest relation of such orphan, resident in the State of Nevada, such application being verified by the oath of the party making it, the district judge, sitting either in chambers, or as a court, shall issue a citation, to be served, respected, and enforced as are other judicial writs, commanding applicant to be and appear before him, at a time and place to be specified, not less than five days thereafter (provided said district judge may, in his discretion, shorten the time), and make proof concerning the matter in the application set forth, and a notice of the hearing shall be given in like manner to the nearest relation of the orphan, resident in the state. At the same time the judge shall cite the party having the control or custody of said orphan to bring him or her before the judge on the date of hearing. On the day of the hearing the judge or court shall examine into the matter of the application, and may hear evidence, and require witnesses to be produced before him, and shall examine said orphan separate and apart from all persons; and if the judge or court determines that it is for the best interests of such orphan and of the state that he or she shall be admitted to the privileges of the state orphans' home, he shall make an order to that effect, and direct the sheriff or some other suitable person to convey, or have conveyed, said orphan to said home, accompanied by a copy of the order of the court, and delivered to any member of the board of directors of said home. Any whole orphan, under the age of ten years, need not be brought before such judge or court on the day of hearing mentioned; but on application, in writing, as hereinbefore set forth, of the nearest relation of any such whole orphan, the notice and citation precedent to the hearing may, in the discretion of the judge, be omitted. The expenses of the proceedings herein provided for, and of the transportation of orphans to the home, shall be a county charge.

#### 4094. Inmates to be taught—Superintendent to notify commissioners of boys approaching age.

SEC. 8. All orphans and children admitted to the state orphans' home shall, under the direction of the board of directors, be taught the usual branches of an English education. The female children shall be taught the useful occupations of housewifery and such other useful occupations as the board of directors may require. When nearing the age of sixteen, it shall be the duty of the superintendent to notify the board of county commissioners of the county from which the male child is sent to the state orphans' home, of his coming to maturity, that they may find a place to teach him a useful trade, or occupation, or place him in some useful employment, and, when so placed, said boy shall at all times, be under the supervision of the board of county commissioners of said county until he arrives at the age of eighteen years. All labor and occupation shall be fitted to the capacity and best ability of the child as the board may determine. *As amended, Stats. 1909, 322.*

#### 4095. Age of majority for purposes of act—Children over fourteen or mentally or physically deficient not admitted.

SEC. 9. Upon complying with the provisions of this act, all children under

fourteen years of age, may be admitted to the state orphans' home; *provided*, no child ever shall be admitted to, or received into, said state orphans' home, who is either an insane person, an idiot, or a person so mentally or physically deformed as to be incapable of receiving the elements of an education in the usual English branches. For the purpose of this act the age of majority for all females that are, or may be, wards of the state shall be eighteen years, and all males sixteen years. *As amended, Stats. 1893, 36; 1909, 323.*

**4096. Orphans escaping may be recaptured—Action may be brought—Property of wards—Guardianship.**

SEC. 10. If during the wardship of any orphan in said home, he or she shall escape or remain absent from said home without consent of due authority, it shall be lawful and is hereby made the duty of the board of directors, and such officers as they may empower, to pursue and capture such ward and return him or her to the home; and they are hereby empowered, in the name of the State of Nevada, with the consent of the attorney-general, to bring and maintain a summary action at law, or to sue out a writ of habeas corpus to recover and detain any escaping orphan from such home. And in case any orphan in said home shall be or become possessed of property, it shall be the duty of said board of directors to appear in any court or proceeding for the purpose of having appointed a proper guardian of the estate of such orphan, and at all times to appear, answer for, and represent said orphan for the protection and care of such property.

**4097. Board may discharge or apprentice orphans.**

SEC. 11. Whenever said board shall deem it for the best interest of any orphan in said home, or of the state, they may discharge any orphan therein; and they are hereby empowered, whenever they may deem it meet and proper, to apprentice any orphan in said home to the head of any family, or to any person carrying on a useful and proper business; but in all such indentures of apprenticeship the board shall reserve the power to themselves at any time to cancel the same, and reclaim said orphan to the home whenever in their judgment the best interest of said orphan and the state shall demand.

**4098. Children other than orphans may be admitted—Conditions.**

SEC. 12. Nothing in this act shall be construed to prevent the board of directors, at their discretion, from receiving any child from its living resident parent, parents, guardian or guardians, upon a proper showing to their satisfaction of the inability of such parent, parents, guardian or guardians, to support and care for such child; and that such board may require the living parent, parents, guardian or guardians of such child, so admitted to contribute such sum to its support as said board may determine. *As amended, Stats. 1903, 62.*

**4099. Idem—County commissioners to send and support—Wards of state.**

SEC. 13. Children admitted to the state orphans' home under the provisions of section 12 of this act, as amended, are hereby declared and adjudged to be wards of the state as fully as whole orphans, subject only to such conditions of admission as may be fixed by the board of directors; *provided*, that no child shall be received by the board of directors of said orphans' home, unless they be sent by the county commissioners of the county in which the children reside; *and further provided*, that the county from which the child is sent shall agree by its county commissioners to pay for the maintenance of said child at a reasonable rate, said rate to be fixed by the board of directors of said orphans' home. *As amended, Stats. 1903, 63.*

**4100. Idem—Nonorphans released, when—Expenses.**

SEC. 14. The board, on the certificate of the district judge of the county

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from which any orphan or any child admitted under the provisions of section 12 of this act, as amended, was sent, that any parent or guardian is competent to resume the guardianship of such child, shall release such child and return him or her to such guardian, and such guardian shall be required to pay all expenses incident to the removal and return of such child to his or her guardian. *As amended, Stats. 1903, 63.*

#### 4101. Estimate of supplies required—Where filed.

SEC. 15. It shall be the duty of the superintendent and matron to furnish semiannually, in June and December of each year, to the board of directors, an estimate of all stores, supplies and fuel required for the use of the state orphans' home for the next six months. The said estimates shall state the kind, quality and amount of such stores, supplies and fuel, and shall be filed in the office of the secretary, always subject to examination. *As amended, Stats. 1887, 105.*

#### 4102. Idem—Contracts for supplies advertised.

SEC. 16. The board of directors, upon the receipt of said estimate, shall give notice by advertising in one daily paper in Ormsby County for six days that sealed proposals will be received for furnishing to the state orphans' home the amount, quality and kind of stores, supplies and fuel contained [in] the semiannual estimate now on file in the office of the secretary of the board of directors of the state orphans' home. *As amended, Stats. 1887, 105.*

#### 4103. Idem—Contract for supplies awarded.

SEC. 17. The board of directors and secretary are hereby directed to meet at the office of the secretary on the first Monday of the second week in each quarter, and then and there open all the sealed proposals. The lowest sealed proposals in price shall be accepted, and noted in the minutes of the secretary, and the secretary shall notify the person or persons of the acceptance of their proposal for furnishing the state orphans' home with stores, supplies, and fuel; *provided*, the board of directors shall have the right to reject any and all bids from persons not responsible.

See secs. 3479-3480.

*An Act granting certain powers to the board of directors of the state orphans' home.*

Approved February 27, 1879, 51

#### 4104. Gifts accepted—Donors may direct the disposal of gifts.

SECTION 1. The board of directors of the state orphans' home is hereby authorized to receive and have full control of any and all gifts, bequests or donations now made, or that may be made hereafter, to the state orphans' home, and the said board is also hereby empowered to invest or expend the principal and interest of any and all such moneys coming thus into their possession as they may deem best for the interest of said orphans' home; *provided*, that nothing in this act shall be so construed as to prevent any person or persons, company or society, from making any gift of money or property, and directing how such money or property shall be disposed of, and when; such direction shall accompany such gift. The directors of the orphans' home shall make such disposition of such gift, or money, or property, as the donor or donors may direct.

*An Act fixing the salary of the superintendent and matron of the state orphans' home.*

Approved March 11, 1907, 99

**4105. Salary of superintendent and matron.**

SECTION 1. From and after the first day of April, nineteen hundred and seven, the salary of the superintendent and matron of the state orphans' home shall be two thousand four hundred dollars (\$2,400) per annum for the services of both.

*An Act to provide educational facilities for the children in the state orphans' home and other matters properly connected therewith.*

Approved March 20, 1911, 135

**4106. Orphans' home children may attend Carson City public schools—State allowance.**

SECTION 1. The children residing at the state orphans' home shall be included in the school census of Carson City school district, and in consideration of this allowance and the further allowance of one thousand dollars paid annually out of the general fund of the state treasury, the children of the state orphans' home shall be entitled to attend and shall attend the Carson City public schools, and to receive therein the full attention, protection and instruction accorded to any other children. To this end the board of directors of the state orphans' home is hereby authorized to enter into such agreements with the board of school trustees of Carson City school district, district No. 1 of Ormsby County, as may be necessary to carry out the provisions of this section and of this act; *provided*, that the increased income to the said school district as herein provided shall be the full consideration to said district for the privilege required in this act.

**4107. Text-books to be furnished.**

SEC. 2. The board of directors of the state orphans' home shall furnish the children of the home who are attending school all text-books, supplementary books and necessary school supplies; and they shall provide a sufficient supply of proper library books for the use of said children; *provided*, that the above-mentioned books and supplies shall be purchased by the board of orphans' home directors and paid for out of the orphans' home fund.

**4108. Money paid to school trustees.**

SEC. 3. Each three months hereafter, beginning with the first day of December, 1911, and ending with the first day of June, 1912, and on the same dates each year thereafter, the board of school trustees of Carson City school district shall present a voucher against the state for one-third of the amount of money allowed in section 1 of this act. Upon approval of this claim by the board of directors of the state orphans' home and by the state board of examiners, the state controller shall draw his warrant on the state treasurer in favor of the board of trustees of Carson City school district and the state treasurer shall pay the same to the order of said board of trustees, who shall deposit the money with the county treasurer of Ormsby County to the credit of Carson City school district; and this money shall be used by said school trustees for the payment of teachers' salaries in this district.

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## STATE OFFICERS

See Officers Generally, secs. 2765-2866.

Providing for leave of absence for state employees, section 4109.

To consolidate certain state offices, section 4110.

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Defining the duties of the attorney-general, sections 4128-4134.

To authorize the attorney-general to employ deputies, sections 4135, 4136.

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To authorize the attorney-general to employ a stenographic clerk, sections 4138, 4139.

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Creating the office of mineral land commissioner, defining his duties and fixing his compensation therefor, and constituting the attorney-general ex officio mineral land commissioner, sections 4141-4147.

### AUDITOR

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### LICENSE AND BULLION TAX AGENT

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### LIEUTENANT-GOVERNOR

Concerning residence of lieutenant-governor, section 4249.

To define the duties of, when acting as an ex officio officer and fixing salary therefor, section 4250.

### SECRETARY OF STATE

Concerning the office of, sections 4251-4261.

Relating to the duties of, sections 4262, 4263.

To provide for the preservation of the manuscript laws, sections 4264, 4265.

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Relating to the preparing and printing of biennial report of, section 4268.  
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#### STATE POLICE

To provide for the creation, organization and maintenance of, prescribing the powers and duties of the officers and members, sections 4271-4293.  
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#### STATE PRINTING OFFICE

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#### SUPERINTENDENT OF PUBLIC INSTRUCTION

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#### TREASURER

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 Reducing and regulating the salaries of certain state officers, sections 4393, 4394.  
 Fixing salaries of certain deputies in state offices, sections 4395-4397.  
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 Authorizing payment of salaries of officers fixed by law, sections 4399, 4400.  
 Fixing salaries and compensation of certain attaches, section 4401.

For state engineer, see Water.  
 For justices supreme court, see Courts and Court Officers.  
 See, also, State Boards, Bureaus, and Commissions.

*An Act providing for leave of absence for all state employees, the length of time of such leave, and providing for their salary during such time.*

Approved February 21, 1911, 19

4109. Leave of absence for state employees.

SECTION 1. Each and every state employee who has been in the service

of the state for six months or more, in whatever capacity, shall be allowed, in each calendar year, a leave of absence of fifteen days, with full pay, providing the head of each department shall fix the date of such leave of absence.

*An Act to consolidate certain state offices in the State of Nevada.*

Approved February 20, 1893, 32

**4110. Secretary of state ex officio librarian.**

**SECTION 1.** The secretary of state shall be ex officio clerk of the supreme court and ex officio state librarian. The governor's private secretary shall be ex officio adjutant-general, and as such officers and ex officio officers they shall severally perform the duties required by law.

Lieutenant-governor adjutant-general, sec. 4250.

Cited, State ex rel. Cutting v. La Grave, 23 Nev. 123 (43 P. 470).

The office of secretary of state, of ex officio clerk of the supreme court, and of reporter of decisions of the supreme court, are separate and distinct offices, and their being vested in the same person does not change their nature in this respect. State ex rel. Howell v. La Grave, 23 Nev. 373, 374, 378, 379, 386 (48 P. 674).

The office of clerk of the supreme court was not abolished by its omission from the amendment of 1889 to art. 4, sec. 32, of the state constitution, ante, 290, and the failure of the legislature to reestablish it, but continued as a constitutional office under the

provision made pursuant to the original constitution. *Idem.*

This act, while sufficient to confer color of authority on the secretary of state acting as ex officio clerk of the supreme court, is without force as an amendment or repeal by implication of section 2765, providing for the election of a clerk of the supreme court in the same manner as other state officers are elected. State ex rel. Josephs v. Douglass, 33 Nev. — (110 P. 177, 181).

Act of 1865, 368, providing offices for certain state officers was cited, Owen v. Nye Co., 10 Nev. 344, for which citation see under sec. 1508, p. 438, ante.

**LEGISLATURE**

*An Act reapportioning senators and assemblymen of the several counties to the legislature of the State of Nevada.*

Approved March 17, 1911, 117

**4111. Apportionment of senators and assemblymen.**

**SECTION 1.** The apportionment of senators and assemblymen in the several counties of this state shall be as follows:

Churchill County, one senator and two assemblymen;  
 Clark County, one senator and two assemblymen;  
 Douglas County, one senator and two assemblymen;  
 Elko County, two senators and five assemblymen;  
 Esmeralda County, two senators and five assemblymen;  
 Eureka County, one senator and two assemblymen;  
 Humboldt County, two senators and five assemblymen;  
 Lander County, one senator and two assemblymen;  
 Lincoln County, one senator and two assemblymen;  
 Lyon County, one senator and two assemblymen;  
 Mineral County, one senator and two assemblymen;  
 Nye County, two senators and five assemblymen;  
 Ormsby County, one senator and two assemblymen;  
 Storey County, one senator and two assemblymen;  
 Washoe County, two senators and nine assemblymen;  
 White Pine County, two senators and four assemblymen.

See sec. 2780, election of senators.

Salaries of senators and assemblymen, sec. 4392.

See Const., art. 4, legislative department, secs. 259-293; also, art. 5, secs. 302-304.

Governor to make certain reports to, sec. 303, 1588.

Controller to furnish information to, sec. 4167.

Veterinarian to report to, sec. 4389.

Number of members limited, sec. 374.

Furnishing board to report to, sec. 4472.

Stationery, how issued, sec. 4474.

Bribery of legislator, penalty, secs. 6318, 6319.

Disturbing legislature, or intimidating members, penalty, sec. 6333.

Refusal of witness to attend or testify before legislature or committee, penalty, sec. 6334.

*An Act to provide for the organization of the assembly at the commencement of each session.*

Approved February 6, 1867, 47

**4112. Secretary of state to make out roll of members of the assembly—  
Roll controls in organization.**

**SECTION 1.** It is hereby made the duty of the secretary of state to make out, prior to the meeting of the assembly of each session thereof, a roll of the members elect, as shall appear by the returns on file in his office; and only such members whose names shall appear upon such roll shall be allowed to participate in the organization of the assembly.

**4113. Secretary of state to call the assembly to order.**

**SEC. 2.** On the first day of each session of the legislature, at 12 o'clock m., the secretary of state shall call the assembly to order, and shall preside over the same until a presiding officer shall be elected.

See secs. 2779, 2780, 2786, 2788.

*An Act fixing the number of officers and attaches of the legislature of the State of Nevada, and to define their duties and specify their pay, and repealing all acts in conflict therewith.*

Approved January 27, 1909, 3

4114. Officers and attaches of senate.

4116. Salaries of officers and attaches.

4115. Officers and attaches of assembly.

4117. Warrants to be drawn and paid.

**4114. Officers and attaches of senate.**

**SECTION 1.** The officers and attaches of the senate shall consist of one secretary, one assistant secretary, one sergeant-at-arms, one assistant sergeant-at-arms, one minute clerk, one assistant minute clerk, one journal clerk, one assistant journal clerk, one engrossing clerk, one assistant engrossing clerk, one enrolling clerk, one assistant enrolling clerk, one copying clerk, one assistant copying clerk, one bill clerk, five committee clerks, one stenographer, one messenger, two pages and one porter. *As amended, Stats. 1911, 5.*

See sec. 4125.

Senate may elect president, when, sec. 2809.

The provisions of Const., art 4, sec. 18 (ante, 276), are mandatory and must be complied with. *State ex rel. Cardwell v. Glenn.* 18 Nev. 34 (1 P. 186).

The signature of the assistant secretary of the senate is a substantial compliance with the provisions of said section. *Idem.*

**4115. Officers and attaches of assembly.**

**SEC. 2.** The officers and attaches of the assembly shall consist of one chief clerk, one assistant clerk, one sergeant-at-arms, one assistant sergeant-at-arms, one minute clerk, one assistant minute clerk, one journal clerk, one assistant journal clerk, one engrossing clerk, one assistant engrossing clerk, one enrolling clerk, one assistant enrolling clerk, one copying clerk, one assistant copying clerk, one bill clerk, six committee clerks, one stenographer, one messenger, two pages, one porter, and one assistant porter.

See sec. 4125.

**4116. Salaries of officers and attaches.**

**SEC. 3.** There shall be paid to the several officers and attaches named in

this act, for all services rendered by them under the provisions of this act, the following sums of money and no more:

The secretary of the senate and chief clerk of the assembly shall each receive seven dollars per day; the assistant secretary of the senate and the assistant clerk of the assembly shall each receive six dollars per day; the minute clerk, the assistant minute clerk, the journal clerk, the assistant journal clerk, the engrossing clerk, the assistant engrossing clerk, the enrolling clerk, the assistant enrolling clerk of the senate and assembly shall each receive six dollars per day; the sergeant-at-arms of the senate and of the assembly shall each receive six dollars per day; the assistant sergeant-at-arms, the copying clerk, the assistant copying clerk of the senate and assembly, the committee clerks of the senate and assembly, the bill clerk and stenographer shall each receive six dollars per day; the messenger of the senate and of the assembly shall each receive five dollars per day; the pages of the senate and assembly shall each receive two dollars per day; the porter of the senate and of the assembly, and assistant porter of the assembly shall each receive three dollars per day; *provided, however*, that in case either the senate or the assembly shall organize or act with a less number of attaches than herein provided, such organization or action shall be legal; *and, provided further*, that either the senate or the assembly may, by resolution, increase or diminish the number of its attaches any time during the session, within the limits hereinbefore provided. *As amended, Stats. 1911, 6.*

#### 4117. Warrants to be drawn and paid.

SEC. 4. The state controller is hereby directed to draw his warrants in favor of the persons above named for the several amounts specified in this act, and the state treasurer is hereby directed to pay the same.

*An Act to provide chaplains for the legislature of the State of Nevada.*

Approved February 1, 1911, 4

#### 4118. Chaplains for legislature.

SECTION 1. The senate and assembly of the State of Nevada may invite ministers of the different religious denominations to officiate alternately as chaplains of their respective houses, at a compensation of five dollars per day, to be paid out of the legislative fund at the same time and in the same manner as other payment for services to said houses are made.

#### 4119. Idem—Warrants to be drawn and paid.

SEC. 2. The state controller is hereby authorized to draw his warrant for the payment of the compensation provided herein, and the state treasurer is hereby authorized and directed to pay the same.

*An Act providing for the printing of legislative bills and resolutions, and other matters relating thereto.*

Approved March 14, 1911, 60

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| 4120. Bills and resolutions printed—Printer authorized to correct palpable errors. | 4122. Idem—Printed bill becomes official copy, when.          |
| 4121. Introduced in triplicate—Duties of engrossing committee.                     | 4123. Bills reprinted for engrossment.                        |
|  | 4124. Printed for enrollment, when—Style of printing uniform. |

#### 4120. Bills and resolutions printed—Printer authorized to correct palpable errors.

SECTION 1. The state printer shall print as many copies of every bill and resolution introduced in either house in the state legislature as shall be authorized by resolution of the branch of the legislature in which said bill or

resolution is introduced, and in printing such bills and resolutions the state printer is hereby authorized to correct in said printed copies, all errors in spelling, punctuation and grammatical construction as may appear in the original copy thereof, and to supply the enacting clause, if omitted; *provided*, that no change shall be made which shall in any way, vary the apparent meaning of said bill or resolution.

#### 4121. Introduced in triplicate—Duties of engrossing committee.

SEC. 2. All bills and resolutions shall be introduced in triplicate, and one copy of each bill or resolution shall be marked "original"; one shall be marked "duplicate"; one shall be marked "triplicate." The copy marked "duplicate" shall be sent to the state printer for the purpose of printing and the copy marked "triplicate" shall be referred to the engrossing committee of the house in which such bill or resolution was introduced.

#### 4122. *Idem*—Printed bill becomes official copy, when.

SEC. 3. The engrossing committee of the house in which any bill or resolution originates shall immediately after the printing of said bill, carefully compare a printed copy thereof with a triplicate copy of said bill, and if said printed bill is found to be in all respects correct save such errors in spelling and punctuation as shall have been corrected by the printer as in this act provided, said engrossing committee shall cause a printed copy of said bill to be securely bound with a substantial cover on which the further history of said bill may be endorsed; the chairman of the engrossing committee of the house in which said bill or resolution originated, shall then certify to the correctness of said bound copy and deliver same to the chief clerk of the assembly or secretary of the senate, as the case may be; whereupon said bound copy so compared and certified to, shall be substituted for the original and official copy as introduced and thereafter be deemed the official copy of said bill or resolution.

#### 4123. Bills reprinted for engrossment.

SEC. 4. When any bill or resolution is ordered engrossed the house ordering such engrossment, may as a part of such resolution, if deemed advisable, order such bill or resolution to be reprinted for engrossment as amended before being transmitted to the other house:

#### 4124. Printed for enrollment, when—Style of printing uniform.

SEC. 5. Hereafter, either house, may, by resolution, if it be deemed advisable order that any bill or resolution, originating in such house, and which has passed both houses shall be printed for enrollment; *provided*, all bills and resolutions which shall be printed for enrollment, shall be securely bound with a substantial flexible cover; on the last page shall be printed a blank form and space for the signatures of the proper officers of the senate and assembly and for the approval and signature of the governor; *provided, further*, that in other respects, the style, dimensions of the printed matter and type used in the printing of bills and resolutions for enrollment shall be as decided by the state printer and shall be uniform throughout the session.

*An Act providing for copying, engrossing and enrolling in the senate and assembly.*

Approved March 6, 1893. 105

#### 4125. May employ additional clerks, when.

SECTION 1. Whenever the copying, engrossing or enrolling clerks of the senate or assembly shall, by reason of an extraordinary accumulation of work in their offices, be unable, without assistance, to perform the whole of said

work, the committee having charge of such work shall have authority to employ additional clerks temporarily; *provided*, they shall first have made a written report showing the necessity, and the house for which the labor is to be performed shall have adopted a resolution granting authority to that effect to the committee.

**4126. Price per folio for copying and engrossing.**

SEC. 2. The prices to be paid shall not exceed ten cents per folio for copying and comparing, fifteen cents per folio for engrossing and comparing, and twenty cents per folio for enrolling and comparing.

*An Act fixing the time when laws and joint resolutions shall take effect.*

Approved January 10, 1865, 90

**4127. Laws and resolutions, when to take effect—Exception.**

SECTION 1. Every law and joint resolution hereafter passed by the legislature of the State of Nevada shall take effect and be in force from and after its passage, unless such law or joint resolution shall prescribe a different time.

The act of 1865, 97, was cited in connection with the following: The legislature passed an act in favor of relator for payment for his services as president pro tem. of the senate in addition to his regular pay as a senator. It was held that this was in effect an attempt to increase his compensation as a senator and hence unconstitutional (ante, sec. 291). State ex rel. King v. Hallock, 16 Nev. 154.

No money can be drawn from the treasury as compensation to an officer of the legislature except when the compensation has been fixed by law in force prior to the election of such officer (ante, sec. 286). Idem.

Also cited, State ex rel. Davis v. Eggers.

29 Nev. 475, 16 L. R. A. (N. S.) 630, 91 P. 819.

The act of 1865, 101, cited, State ex rel. Ash v. Parkinson, 5 Nev. 22.

The act of 1873, 155, sec. 5, cited, State ex rel. George v. Swift, 10 Nev. 181.

The acts of 1881, 115, 1891, 23, 1899, 121, all relating to reapportionment cited in connection with the following:

The constitution contains no restrictive or mandatory provisions as to the time when, or how often, the legislature may make the representative apportionment. It, therefore, may make such apportionments as often as it so wills. State ex rel. Winnie v. Stoddard, 25 Nev. 452 (62 P. 237).

**ATTORNEY-GENERAL**

How chosen, term and eligibility of, section 312.

Member board of prison commissioners, section 314.

Member board of examiners, section 314.

Duties of, section 314.

Perform other duties as required by law, section 315.

*An Act defining the duties of the attorney-general of the State of Nevada.*

Approved March 11, 1867, 106

4128. Residence and office of attorney-general—Oath—Bond—Absence—Commission.

4129. Attend on supreme court—To prosecute and defend certain causes—To account for moneys—Impeachments.

4130. To give written opinions to certain officers.

4131. To keep docket of causes.

4132. To report annually to the governor.

4133. May commence or defend action to protect state's interest on own motion or direction of governor.

4134. Refusal to perform duty a misdemeanor.

**4128. Residence and office of attorney-general—Absence—Oath—Bond—Commission.**

SECTION 1. The attorney-general shall reside and keep his office at the seat of government, and shall not absent himself from the state exceeding sixty consecutive days without leave of absence from the legislature. He shall be commissioned by the governor, and shall take the oath prescribed by the constitution, and shall give bond with security, to be approved by the board of state examiners, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office.

See secs. 312, 2765, 2774, 4120, 4133.

Ex officio mineral land commissioner, secs. 4141-4447.

Member of board of examiners, secs. 314, 4455-4475.

Member of board of prison commissioners, secs. 314, 7560.

Member of board of irrigation, sec. 4706.

Member of board of pardons and parole, secs. 307, 7622-7633.

Member of board of revenue, secs. 3809, 3828.

Member of railroad board, sec. 4549.

Mining corporations to file annual statements with, secs. 1330-1340.

Duty to act as chairman of board of county assessors in absence of governor, sec. 3798.

Duty to approve articles of incorporation of bonding or surety companies, sec. 1243.

Mutual fire insurance companies, secs. 1290, 1298.

Duty of, in case of excessive town or city tax, see secs. 976, 977, 981.

#### 4129. Attend on supreme court—To prosecute and defend certain causes— To account for moneys—Impeachments.

SEC. 2. The attorney-general shall attend each of the terms of the supreme court, and there prosecute or defend, as the case may be, on the part of the state, all causes to which the state may be a party; also, all causes to which any officer of the state, in his official capacity, may be a party; also, all causes to which any county may be a party, other than those in which the interest of the county may be adverse to the state, or any officer of the state, acting in his official capacity; and, after judgment obtained in any such cause, he shall direct such proceedings, and sue out such process as may be required to carry the same into execution. He shall account for and pay over to the proper officer, without delay, all moneys which may come into his hands belonging to the state or any county. It shall be his duty to assist in all impeachments which may be tried before the senate.

Duty to institute proceedings to restrain mutual insurance companies from doing business at request of controller, sec. 1320.

Duty to prosecute foreign corporations for violation of law, secs. 1350, 1354.

Duty to prosecute district attorneys for failure to enforce act requiring mining companies to file annual statements, sec. 1340.

Controller may direct to institute suits for recovery of money due state, sec. 3685, 4160, 4162.

See secs. 4128, 4133, 4140.

The state board of examiners has no defense of actions for the collection of public revenues. State ex rel. Coffin v. Horton, 21 Nev. 466, 468 (34 P. 316).

#### 4130. To give written opinions to certain officers.

SEC. 3. When required, the attorney-general shall give his opinion, in writing, upon any question of law, to the governor, the secretary of state, controller, treasurer, surveyor-general, the trustees, commissioners, or warden of state prison, hospital, or asylum, or the officers of any state institution whatever, and to any district attorney, upon any question of law relating to their respective offices; and for no duty required of him by law shall he be entitled to receive any fee whatever.

Duty to advise district school superintendents, sec. 3355.

#### 4131. To keep docket of causes.

SEC. 4. The attorney-general shall keep a docket of all causes to which the state, or any officer of the state, in his official capacity, or any county, may be a party; which docket shall at all times, in business hours, be open to the inspection of the public, and shall set forth the county, district, and court in which said causes shall have been instituted, tried, and adjudged, and whether civil or criminal causes; if civil causes, the nature of the demand, the stage of the proceedings, and when prosecuted to judgment, a memorandum of the judgment, of the process, if any issued thereon, and whether satisfied or not, and if not satisfied, the return of the sheriff or other officer on said process; and if criminal causes, the nature of the crime, the mode of prosecution, the style of the proceedings, and when prosecuted to sentence, a memorandum of the sentence.

#### 4132. To report annually to the governor.

SEC. 5. The attorney-general shall, also, on the first day of January, annually, report to the governor the condition of the affairs of his department, and in such report make such suggestions as shall appear to him calculated to improve the laws of the state. He shall communicate to the governor, or either branch of the legislature, when requested, any information concerning his office.

District attorneys to report to attorney-general, secs. 1608, 1609.

#### 4133. May commence or defend action to protect state's interest on own motion or direction of governor.

SEC. 6. Whenever the governor shall direct, or in the opinion of the attorney-general, to protect and secure the interest of the state; it is necessary that a suit be commenced or defended in any court, it is hereby made the duty of the attorney-general to commence such action, or make such defense; and such actions may be instituted in any district court in the state, or in any justice's court of the proper county.

Duty to aid bank examiner, sec. 669.

Duty in relation to escheats, secs. 1625, 6130-6131.

May instruct district attorney to bring action to remove commissioner for violation of county revenue act, secs. 3830, 3834.

Duty to prosecute actions for money due state at request of controller, sec. 4162.

The attorney-general is authorized to bring suit for the collection of taxes due the state. *State v. C. P. R. R. Co.*, 10 Nev. 48, 78.

The attorney-general has control of all tax suits in the supreme court on the part of

the state. If nothing to the contrary is shown, the court will always presume that an attorney appearing for the state in such suits is authorized by him to act in the case. *State v. Cal. M. Co.*, 13 Nev. 210.

#### 4134. Refusal to perform duty a misdemeanor.

SEC. 7. If the attorney-general shall neglect or refuse to perform any of the duties required of him by law, he shall be deemed guilty of misdemeanor, or shall be subject to removal from office; and he shall be responsible upon his official bond for all carelessness, negligence, or malfeasance in office.

[Sec. 8 relating to salary of attorney-general, superseded by sec. 4394.]

*An Act to authorize the attorney-general to appoint deputies, and defining their powers and duties.*

Approved February 8, 1908, 31

#### 4135. Attorney-general may appoint deputies.

SECTION 1. The attorney-general is hereby authorized to appoint as many deputies as he may deem necessary to fully perform the duties of his office. All deputies so appointed shall have the power to perform all duties now required by the attorney-general.

Salary of one deputy, see sec. 4395.

#### 4136. Oath of deputies.

SEC. 2. Before entering upon the discharge of his duties, each deputy so appointed shall take and subscribe to the constitutional oath of office, which shall be filed in the office of the secretary of state.

*An Act to further define the powers and duties of the attorney-general of the State of Nevada.*

Approved January 31, 1908, 25

#### 4137. May appear before grand juries—Supervisory powers over district attorneys—May take charge of any criminal prosecution—Issue subpoenas for witnesses.

SECTION 1. In addition to the duties now conferred by law upon the attorney-general, he shall have the power:

(a) To appear before any grand jury, when in his opinion it is necessary, and present evidence of the commission of a crime or violation of any law of this state; to examine witnesses before the grand jury, and to draw indictments or presentments for such grand jury.

(b) To exercise supervisory powers over all district attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge.

(c) To appear in and to take exclusive charge of and to conduct any prosecution in any court of this state for a violation of any law of this state, when in his opinion it is necessary, or when requested to do so by the governor.

(d) To 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 it, upon any investigation pending before it; and he may, in like manner, issue subpoenas, subscribed by him, for witnesses within the state, in support of an indictment, to appear before the court before which it is to be tried.

*An Act to authorize the attorney-general to employ a stenographic clerk and fixing of compensation.*

Approved February 9, 1905, 19

#### 4138. Authorized to employ stenographer.

SECTION 1. The attorney-general of Nevada is hereby authorized to employ a stenographic clerk, whose compensation shall be seventy-five dollars per month.

Salary provision superseded by sec. 4398.

#### 4139. *Idem*—Compensation, how paid.

SEC. 2. The controller of state shall, at the end of each month, draw his warrant upon the state treasury in favor of such clerk for the amount of his compensation then due, and the state treasurer shall pay the same out of any moneys in the state treasury not otherwise specially appropriated.

*An Act relating to the flow of water in the Truckee river.*

Approved March 10, 1879, 125

#### 4140. Attorney-general and Washoe County commissioners to commence suits—Truckee river.

SECTION 1. The attorney-general of this state and the county commissioners of Washoe County are hereby authorized and empowered to commence suits or take such other action as may be necessary, to maintain a regular or natural flow of water in the Truckee river; and in all suits so instituted, if necessary, to use the name of "The State of Nevada."

*An Act creating the office of mineral land commissioner, defining his duties and fixing his compensation therefor, and constituting the attorney-general ex officio mineral land commissioner.*

Approved February 26, 1907, 39

4141. Office created.

4145. May appoint deputies—Salary of commissioner—No fees allowed.

4142. Duties of office.

4146. Attorney-general ex officio commissioner.

4143. Person who may lodge information—Duty of commissioner to contest.

4147. State mineralogist, if appointed, to furnish information.

4144. Record of contests kept—Report to governor.

#### 4141. Office created.

SECTION 1. The office of mineral land commissioner is hereby created.

**4142. Duties of office.**

SEC. 2. It shall be the duty of the mineral land commissioner to examine all applications for patents of the public lands of this state or of the United States, except mining claims, and to make an abstract of such application which shall contain the name of the applicant, the location of the land applied for to be patented, by legal subdivisions, with the section, township, and range, the date of entry of the applicant, and the character of such entry. After obtaining the above information, the mineral land commissioner shall immediately commence an inquiry, or cause an inquiry to be commenced; to ascertain:

First—If any of the land for which a patent is applied is located within any mining district or known mineral belt.

Second—If the same, or any portion thereof, has at any time been held, used, claimed or worked for minerals of any kind or character, and for these purposes he may make application to any state or county officer of this state, who shall proceed forthwith to furnish such information to said commissioner, and he shall publish a notice of such application in some newspaper nearest the land applied for.

Third—It shall be ascertained, or if the mineral land commissioner has reason to believe that the said land so applied for is mineral in character, or contains mineral sufficient to support a bona fide mining location, then it shall be the duty of the mineral land commissioner to appear in the state land office, or in the United States land office, as the case may be, and contest such application, and for this purpose he shall have power to produce witnesses, and offer evidence in support of the contest, showing that the land applied for is more valuable for mineral than for any other purpose.

**4143. Persons who may lodge information—Duty of commissioner to contest.**

SEC. 3. Any person having knowledge of the existence of minerals on any portion of the public domain belonging to the state or to the United States for which a patent is applied, may lodge such information before the mineral land commissioner, with the request that said commissioner appear as the attorney for such person and contest the application for such patent, either in his own name or in the name of any person who may request to be entered as a contestant for such application, and it shall be the duty of the said commissioner to appear and act as such attorney and contest such application.

**4144. Record of contests kept—Report to governor.**

SEC. 4. The mineral land commissioner shall keep a record of all actions or contests so instituted, either in his own name, or as the attorney for any other person, and shall carefully preserve and file copies of all evidence, data, plats, and other information, and shall on or before the first day of January of each year make and submit his report to the governor, showing the number of applications contested by him, where the land is located, and the character of the minerals alleged to be contained therein, with such other and further information as he may deem necessary.

**4145. May appoint deputies—Salary of commissioner—No fees allowed.**

SEC. 5. The mineral land commissioner may appoint as many deputies as he may deem necessary for the carrying out of the provisions of this act. All fees or charges of such deputies shall be paid out of the salary herein provided for the mineral land commissioner. The mineral land commissioner shall receive a salary of twenty-five hundred dollars per annum, payable in equal monthly installments, the same as the salaries of other officers of the state are paid, and the state controller is hereby authorized to draw his warrant and the state treasurer is hereby directed to pay the same out of any

money not otherwise then especially appropriated. The state mineral land commissioner shall make no charge nor shall he receive any other fees than the salary herein provided.

4146. Attorney-general ex officio commissioner.

SEC. 6. The attorney-general of this state is hereby made ex officio mineral land commissioner.

4147. State mineralogist, if appointed, to furnish information.

SEC. 7. In the event of the lawful appointment of a state mineralogist, it shall be the duty of said state mineralogist to furnish to the mineral land commissioner, upon his written request therefor, the information and data specified in section 2 of this act, and if necessary, or desired, any such other information relative thereto that said state mineralogist may, by diligent search and inquiry, be able to ascertain.

#### AUDITOR

*An Act to provide for the appointment of a state auditor, fix his compensation and prescribe his duties.*

Approved March 26, 1907, 240

4148. Governor may appoint state auditor—  
Term of office.

4149. Salary, payment of.

4150. Shall be thorough accountant.

4151. Duty to examine books of county officers—May install uniform system for state and counties—Report to district attorney and clerk.

4152. May administer oaths—Refusal to permit inspection misdemeanor.

4153. To keep record of investigations—Open to inspection—Office at capitol—Records with controller, when.

4148. Governor may appoint state auditor—Term of office.

SECTION 1. The governor is hereby authorized and empowered in his discretion, and at such times as he may deem necessary, to appoint a competent person to the position herein created to be known as "State Auditor," for the term of two years, unless sooner removed, said person so appointed to be subject to removal at the pleasure of the governor. *As amended, Stats. 1909, 50.*

4149. Salary, payment of.

SEC. 2. The salary of the state auditor is hereby fixed at two hundred dollars per calendar month, same to be paid out of the general fund of the state, together with such actual traveling expenses as may be necessary in the performance of his official duties, said salary and expenses to be a claim against the state to be duly presented to and allowed by the state board of examiners, and the state controller is hereby authorized and directed to draw his warrant on the state treasurer in payment of such claims so allowed, and the state treasurer is hereby required to pay the same. *As amended, Stats. 1909, 50.*

4150. Shall be thorough accountant.

SEC. 3. The state auditor shall be a person duly qualified for the position. He shall be thoroughly versed in the science of bookkeeping and accounts, single and double-entry, combination, loose-leaf and other systems in common use, also in the approved methods of filing vouchers, records, reports and documents necessary in the conduct of the business of the several counties and in the transactions between the respective county and state officials.

4151. Duty to examine books of county officers—May install uniform system for state and counties—Report to district attorney and clerk.

SEC. 4. It shall be the duty of the state auditor, at such times as the gov-

ernor shall direct, to examine the books and accounts of all county officials who are required by law to have and keep their offices at the county-seats of the several counties in this state, and of all state institutions supported by, or receiving aid from the state, and of all state officers required by law to keep books or accounts showing the receipt or payment of money by, for, or on account of the state, and report the result of such examination to the governor forthwith; copies of such reports relating to the accounts of the officers of any county shall be furnished by the state auditor to the district attorney and to the clerk of the board of county commissioners of such county. The state auditor shall, in so far as he may deem practicable and advisable, and avoiding the possibilities of confusion in the business details, install in the several counties, state institutions and state offices a uniform or improved system of accounts. *As amended, Stats. 1909, 51.*

#### 4152. May administer oaths—Refusal to permit inspection misdemeanor.

SEC. 5. The state auditor shall be, and he hereby is, authorized to administer oaths and to examine under oath, when he shall deem it necessary, any state or county official, or officer of any state institution in relation to or concerning his books and accounts, and any such officer refusing to allow the state auditor an inspection of his books, or of the accounts therein contained, or of any records or data pertaining to the conduct of his office, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than one hundred dollars nor more than three hundred dollars, or be imprisoned in the county jail for a period not to exceed six months, or be punished by both such fine and imprisonment. *As amended, Stats. 1909, 51.*

#### 4153. To keep record of investigations—Open to inspection—Office at capitol—Records with controller, when.

SEC. 6. The state auditor shall be required to keep a record of his investigations, together with a general summary of the detail and data of the affairs of the respective counties, and shall be provided with office room in the state capitol building. The room herein specified shall be open to the public at any reasonable office hour, and in the absence of the state auditor from the state capitol while in the performance of his official duty, said record shall be left with the state controller for such public inspection.

#### CONTROLLER

How chosen, term of office, eligibility, sections 312, 370, 371.

Duties of, section 315.

To keep office at seat of government, section 380.

#### *An Act defining the duties of state controller.*

Approved February 24, 1866, 96

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4167. To give information to either house of legislature—Other duties.
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4173. Settlement and payment of accounts—Orders for payment to treasurer—Treasurer charged with amount—Debtor, how discharged.
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4175. How money drawn from the treasury—Receipt, form of.
4176. Duty respecting orders on the treasury, and receipts—Number and year to correspond.
4177. To furnish assessors and collectors with blanks and books.
4178. Office hours.

#### 4154. Controller, how commissioned—Office at capital—Leave of absence.

SECTION 1. The controller shall be commissioned by the governor, and shall keep his office at the seat of government. He shall not absent himself from the state for a longer period than ninety days, without leave of absence obtained from the legislature.

See secs. 312, 380, 2765, 2774.

Salary, see sec. 4394.

Ex officio insurance commissioner, duties in relation to insurance companies, see secs. 1270, et seq.

Surety companies to appoint as attorney upon whom process may be served, sec. 696.

Member of board of printing commissioners, sec. 4328.

Member board of capitol commissioners, sec. 4411.

Member board of commissioners for care of insane, sec. 2198.

See note to sec. 4156.

#### 4155. To give official bond—Conditions.

SEC. 2. Before entering upon the duties of his office, he shall execute his official bond to the State of Nevada, with such sureties as shall be approved by the governor, in the penal sum of fifteen thousand dollars, conditioned for the true and faithful performance of the duties enjoined by law, and for the safe delivery to his successor in office of all books, papers, documents, maps, vouchers, and other effects, belonging or appertaining to the office of controller, or to the State of Nevada.

#### 4156. To report annually to the governor financial condition of state—Recommend plans for support of credit and improvement of fiscal affairs.

SEC. 3. He shall digest, prepare, and report to the governor, on the first day of January, or within twenty-five days thereafter, annually, to be laid before the legislature at each regular session, a complete statement of the condition of the revenues, taxable funds, resources, incomes, and property of the state, and the amount of the expenditures for the preceding fiscal year; a full and detailed statement of the public debt; estimate of the revenues and expenditures for the succeeding fiscal year, specifying therein each object of expenditure, and distinguishing between each object of expenditure, and between such as are provided for by permanent or temporary appropriation, and such as require to be provided for by law. Also, a tabular statement showing separately the whole amount of each appropriation of money made by law; the amount paid under the same, and the balance unexpended; a tabular statement showing the amount of revenue chargeable to each county for the preceding year; the aggregate amount of each object of taxation, together with the tax due upon the same; and shall recommend such plans as he may deem expedient for the support of the public credit, for promoting frugality and economy in the public offices, for lessening the public expenses, and, generally, for the better management and more perfect understanding of the fiscal affairs of the state.

Duty to publish in annual report statement of county revenues, sec. 3835; abstract of annual statements of insurance companies, sec. 1329.

County auditors to furnish financial statements, sec. 1584; aggregate assessment of county property, sec. 3806.

City auditors to report to, relative to city finances, sec. 982.

Duty to furnish school officials with financial statements, secs. 3382-3387.

Duties in relation to liquor licenses, secs. 3778, 3781, 3782.

Duty to notify assessors and auditors of state tax rate, sec. 3804.

Auditors to furnish statements to, relative to tax on mines, sec. 3697; license collections, sec. 3746; county finances, sec. 3750.

Foreign building and loan associations to pay license to and file annual statements with, secs. 1356, 1357; to examine into affairs of, sec. 1359.

Duty to charge counties with military property, sec. 4045.

The general appropriation acts passed at each biennial session of the legislature are confined to the purposes of carrying on the state government for two years, and are limited to that time, and to the liabilities incurred during these years. The unexpended balances against which no warrants have been drawn are considered as having lapsed

and are carried to the general fund of the treasury. The controller therefore properly refused to settle a liability incurred during the twenty-second fiscal year from a fund appropriated for the support of the government during the twenty-third and twenty-fourth fiscal years. *State ex rel. Wilkins v. Hallock*, 20 Nev. 73, 74 (15 P. 472).

#### 4157. Controller to keep accounts and receive revenue—Examine and settle accounts with county treasurers—Certify amounts to state treasurer.

SEC. 4. He shall keep and state all accounts between the State of Nevada and the United States, or any state or territory, or any individual, corporation, or public officer of this state, indebted to the state, or intrusted with the collection, disbursement, or management of any moneys, funds or interests, arising therefrom, belonging to the state, of every character and description whatsoever, where the same are derivable from or payable into the state treasury. He shall examine and settle the accounts of all county treasurers, and other collectors and receivers of all state revenues, taxes, tolls, and incomes, levied or collected by any act of the legislature and payable into the state treasury, and certify the amount or balance to the state treasurer. He shall keep fair, clear, distinct, and separate accounts of all the revenues and incomes of the state, and also, all the expenditures, disbursements, and investments thereof, showing the particulars of every expenditure, disbursement, and investment.

Treasurer to report to controller monthly, sec. 4365.

This office is one of public trust, and is conferred upon the individual for the benefit of the public. *State ex rel. Drake v. Hobart*, 12 Nev. 412.

If the acts which the controller refuses to perform concern the public interests and are such as the law requires to be performed by him, the writ of mandamus should issue to compel the performance of such duty. *Idem*.

#### 4158. Authorized to audit and allow claims—May examine witnesses and documentary evidence—Draw warrants on treasurer.

SEC. 5. He shall audit all claims against the state, for the payment of which an appropriation has been made, but of which the amount has not been definitely fixed by law, and which shall have been examined and passed upon by the board of examiners, or which shall have been presented to said board, and not examined and passed upon by them within thirty days from their presentation; and he shall allow of said last-mentioned claims (not passed upon by the board of examiners within said thirty days after presentation), the whole, or such portion thereof as he shall deem just and legal, and of claims examined and passed upon by the board of examiners, such an amount as he shall decree just and legal, not exceeding the amount allowed by said board. And no claim for services rendered or advances made to the state or any officer thereof, shall be audited or allowed unless such services or advancement shall have been specially authorized by law, and an appro-

priation made for its payment. For the purpose of satisfying himself of the justness and legality of any claim, he shall be allowed to examine witnesses under oath and to receive and consider documentary evidence in addition to that furnished him by the board of examiners. He shall draw warrants on the treasurer for such amounts as he shall allow of claims of the character above described, and also for all claims of which the amount has been definitely fixed by law, and for the payment of which an appropriation shall have been made. *As amended, Stats. 1869, 158.*

See sec. 4459.

Duty in relation to deficiency claims, sec. 4467.

Constitutional duties of controller. The official name of "State Controller," as used in the constitution, implies recognized duties appurtenant thereto, and means a supervising officer of revenue—among whose duties is the final auditing and settling of all claims against the state. *State ex rel. Lewis v. Doron, 5 Nev. 399.*

Concurrence of examiners and controller. So far as the examination of claims against the state is concerned, the board of examiners assist the controller, acting concurrently; but they do not deprive him of his constitutional power or any portion of it. Each moves in a designated sphere—all tending to the desired result: the protection of the revenues of the state. *Idem.*

See sec. 312.

See *State ex rel. Drake v. Hobart*, under sec. 4 of this act.

It is the duty of the controller to refuse to draw his warrant for any money that is to be used for unconstitutional purposes. *State ex rel. Nevada Orphan Asylum v. Hallock, 16 Nev. 373.*

Where a sum has been appropriated by the legislature providing for the payment to the

lieutenant-governor of a salary in solido as ex officio adjutant-general and state librarian and another is appointed, controller is justified in refusing to audit a compensation allowed such substituted official by the board of examiners, as the appropriation has become inoperative. *State ex rel. Gallup v. Hallock, 19 Nev. 372-375 (12 P. 488).*

A claim for services rendered, not authorized by law and allowed by the board of examiners, cannot be paid out of the contingent expense fund, which is an appropriation for particular purposes designated in the act making the appropriation, and the payment of such claim is forbidden by this section. *State ex rel. Coffin v. Horton, 21 Nev. 466, 468 (34 P. 316).*

*Cited, State ex rel. Cutting v. La Grave, 23 Nev. 92 (42 P. 797).*

The mere fact that money is appropriated for an officer's salary does not of itself make that money payable to any particular person. There must still be some authority to justify the controller in drawing a warrant for it, or the treasurer in paying it out. *State ex rel. Cutting v. La Grave, 23 Nev. 120, 126 (43 P. 470).*

#### 4159. To draw all warrants—Particular fund to express—Must be unexhausted appropriation—Keep accounts with all appropriations.

SEC. 6. He shall draw all warrants upon the treasury for money, and each warrant shall express, in the body thereof, the particular fund out of which the same is to be paid, and no warrant shall be drawn on the treasury except there be an unexhausted specific appropriation, by law, to meet the same. The controller shall keep an account of all warrants by him drawn on the treasury, and a separate account under the head of each specific appropriation, in such form and manner as at all times to show the unexpended balance of each appropriation.

See sec. 4370.

See *State ex rel. Drake v. Hobart*, under sec. 4 of this act.

See *State ex rel. Gallup v. Hallock*, under sec. 5 of this act.

To constitute an appropriation of state moneys by legislative act, there must be money placed in the fund applicable to the designated purpose. An appropriation means the setting apart of a portion of the public funds for a specific public purpose. No particular form of words is necessary if

the intention to appropriate is plainly manifest. *State ex rel. Pyne v. La Grave, 23 Nev. 27, 28 (62 A. S. 764, 41 P. 1075).*

*Cited, State ex rel. Davis v. Eggers, 29 Nev. 486, 16 L. R. A. (N. S.) 630, 91 P. 819; State ex rel. Fowler v. Eggers, 33 Nev. — (112 P. 701).*

#### 4160. To direct the prosecution of suits for money due state—Superintendent collections.

SEC. 7. He shall direct the attorney-general to institute and prosecute in the name of the state, all proper suits for the recovery of any debts, moneys,

or property of the state, or for the ascertainment of any right or liability concerning the same. He shall direct and superintend the collection of all moneys due to the state.

See secs. 4162, 4172.

Has control of certain suits against county auditors, sec. 3685.

See State ex rel. Coffin v. Horton, under sec. 5 of this act.

The controller alone has authority to institute and prosecute actions for the collection of public revenues, and to direct and superintend the collection of all moneys due to the state. State ex rel. Coffin v. Horton, 21 Nev. 466 (34 P. 316).

#### 4161. To state accounts against persons failing to settle—Damages and interest added.

SEC. 8. Whenever any officer, or other person or persons, or corporation, has received moneys belonging to the state, or has been intrusted with the collection, management or disbursement of any moneys, bonds, or interest, accruing therefrom, belonging in a like manner to, or held in trust by, the state, and shall fail to render an account thereof to, and make settlement with the controller, within the time prescribed by law, or where no particular time is prescribed, shall fail to render such account and make settlement, upon being required to do so by the controller, within ten days after such requisition, the controller shall state an account against such officer or person, charging twenty-five per cent damages, and interest at the rate of two per cent per month, from the time of failing to render an account and settle, as aforesaid.

This section declared unconstitutional, see State v. Hoadley, 20 Nev. 317, under sec. 275, ante.

#### 4162. To direct the prosecution of suits for indebtedness to state—Attorney-general to bring.

SEC. 9. Whenever any officer, or other person or persons, or corporation, shall be indebted to the state, and fail or refuse to make settlement with the controller, as in this act required, and shall fail to pay over to the treasurer, on the printed or written order of the controller, according to the provisions of this act, the amount or balance to be paid by such officer, or other person or persons, or corporation, into the treasury, or to such person or persons entitled by law to receive the same, within the time prescribed by law, or if no time be prescribed by law, then within the time specified by such controller, the controller, upon being notified by such treasurer, or otherwise, of such failure, shall direct the attorney-general to institute suit for the recovery of the amount due and unpaid, with damages and interest thereon, against such officer, or other person or persons, or corporation.

See sec. 4172.

Suits against county auditors, sec. 3685.

See State ex rel. Drake v. Hobart, under sec. 4 of this act.

#### 4163. Idem—Copy of account prima facie evidence.

SEC. 10. A copy of the account, in such case, made out and certified by the controller, with his official seal affixed thereto, shall be sufficient evidence to support an action in any court of competent jurisdiction, for the amount or balance stated therein to be due, without proof of the signature or official character of such controller, subject, however, to the right of the defendant to plead and give in evidence, as in other actions, all such matters as shall be legal and proper for his defense or discharge.

#### 4164. Idem—Party subject to costs, when—Deceased debtor.

SEC. 11. The party thus sued shall be subject to the costs and charges of suit, whether the ultimate decision be against him or in his favor, except in cases in which he shall have rendered a true account, and shall also have paid the full amount to the proper person authorized by law to receive the

same, before the commencement of said suit, or where the suit is brought to recover against a deceased debtor to the state, before the expiration of the time prescribed by law, within which representatives are allowed by law to administer upon estates.

**4165. Idem—Person subject to costs, when—Failure to inform controller.**

SEC. 12. If any defendant in any suit prosecuted at the instance of the controller, under the provisions of this act, shall, at the trial, give any evidence which existed prior to the time, and within the knowledge of the defendant at the time of such adjustment and settlement of his accounts, and which was not produced to said controller at the time of said settlement, such defendant shall be subject to the costs and charges of said suit, whether the ultimate decision be against him or in his favor.

**4166. Duty to keep and preserve books, records and other property of his office or of the state.**

SEC. 13. It shall be the duty of the controller to keep and preserve all public books, records, papers, documents, vouchers, and all conveyances, leases, mortgages, bonds, and all securities for debts, moneys, or property, and accounts and property of any description belonging or appertaining to his office, and also to the state, where no other provision is made by law for the safe keeping of the same.

**4167. To give information to either house of legislature—Other duties.**

SEC. 14. He shall give information to either house of the legislature, whenever required, upon any subject relating to the fiscal affairs of the state, or touching any duty of his office; and shall perform all such other duties, not enumerated in this act, as may be required by law.

See State ex rel. Drake v. Hobart, under sec. 4 of this act.

**4168. Books, papers, to be open to inspection of persons authorized by law.**

SEC. 15. All the books, papers, files, letters, and transactions, pertaining to the office of controller, shall be open to the inspection of the governor, to the inspection of committees and members of the legislature, or either branch thereof, or that of any other person authorized by law.

See State ex rel. Drake v. Hobart, under sec. 4 of this act.

**4169. Vacancy filled by governor—Bond of appointee—Salary.**

SEC. 16. In case of the death, absence from the state for a period longer than ninety days without leave, removal from office, or impeachment of the controller, the governor shall make an appointment of some suitable person to perform the duties of the office of controller for the remainder of the term for which the controller was elected; and such person shall take the oath and give the bond required of the controller, and shall receive the same compensation as is by law allowed to the controller, in proportion to the time he shall be employed in such service.

**4170. Wilful neglect of duty or misfeasance a misdemeanor in office.**

SEC. 17. If the controller shall wilfully neglect or refuse to perform any duty enjoined by law, or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is authorized by law, he shall be deemed guilty of a misdemeanor in office.

**4171. Seal of office—Secretary of state to procure—Drafts, warrants and papers to authenticate.**

SEC. 18. The secretary of state shall procure and deliver to the controller a seal of office, with some suitable device, and having engraved around the margin thereof the words "Controller's office of the State of Nevada," an

impression of which seal shall be retained in the office of the secretary of state as a record. Said seal shall be used for the authentication of all drafts and warrants drawn by the controller, and of all copies of papers issued from his office.

**4172. Controller to keep indexed accounts with all debtors of the state—Enforce payment by suit.**

SEC. 19. The controller shall charge and enter in a proper book or books, to be provided for that purpose, under distinct heads for each debtor, or disburser, or holder of public moneys, or dues to the state, of all and every description whatever, with a suitable index arranged in alphabetical order, of all such persons, corporations, states, or the United States, as soon as such liabilities or indebtedness shall come officially to his knowledge, charging such officer, person, or persons, corporations, states, or the United States, with the amount or amounts of such liabilities, stating whether such dues be in money, property, or securities of any kind; and particularly of all collectors of the public revenues of the state, and all dues to the state, whether money, property, securities, or other things, from any and all sources whatever, as soon as the same is due by law; or if no time be stipulated or fixed by law, then as soon after twenty days' notice as said controller shall require the same to be paid, said controller shall audit and state and require payment thereof; and if not paid, to proceed as directed by this act, by suit, for the collection of the same.

**4173. Settlement and payment of accounts—Orders for payment to treasurer—Treasurer charged with amount—Debtor, how discharged.**

SEC. 20. Whenever any such debtor or debtors to the state have any such dues to the state ready to pay over, it shall be the duty of such debtor or debtors to call on the controller for settlement of his or their account; and, after such settlement, it shall be the duty of the controller to issue his written or printed order, beginning with the number one and running in numerical order until the end of the fiscal year, and directed to the treasurer, to receive from such person making such payment, stating in such written or printed order the amount of money to be paid, in such form as he may prescribe, and hand said written or printed order to said debtor or person offering to pay money, who shall take the same to the treasurer, and pay over to him the amount specified in said written or printed order, and take from the treasurer a receipt for the said amount; and on delivery of said receipt to the controller, it shall be his duty to give to said debtor a discharge for the said amount; and the controller shall immediately charge the treasurer with the same, and in no case shall a discharge be granted to any debtor but on the delivery to the controller of the treasurer's receipt, predicated on a previous and corresponding written or printed order, to pay such amount into the treasury, in the manner prescribed in this act.

**4174. To keep account with treasurer—How treasurer charged.**

SEC. 21. It shall be the duty of the controller to open and keep in a suitable book or books, to be provided for that purpose, an account with the treasurer, charging him in the manner hereinbefore prescribed, with all the moneys for which the treasurer may grant receipts, and with no other.

**4175. How money drawn from the treasury—Receipt, form of.**

SEC. 22. Whenever any person is entitled to draw or to receive any money from the treasury, the controller shall draw a warrant in his favor on the treasurer, and deliver the same to the person entitled thereto, taking his receipt for the same, in a book of receipts to be provided for that purpose, numbering the receipt the same as the warrant, and shall give the treasurer

credit for all such warrants, in the order in which he issues the same, in such manner as to show the date thereof, in whose favor it was drawn, the nature of the claim upon which it is founded, with a reference to the law under which it is drawn.

See sec. 4370.

**4176. Duty respecting orders on the treasury, and receipts—Number and year to correspond.**

**SEC. 23.** It shall be the duty of the controller to number all the written or printed orders he issues to the treasurer to receive money, beginning with number one at the beginning of each fiscal year, and running in numerical order until the end of the fiscal year. The present fractional year to constitute the first fiscal year. It shall likewise be the duty of the controller to see, before filing the treasurer's receipt, that they are numbered with the corresponding numbers of the written or printed order on which the receipt was predicated, and to number on the back of each receipt the number thereof, and for what fiscal year, and carefully file away and preserve the same.

**4177. To furnish assessors and collectors with blanks and books.**

**SEC. 24.** It shall be the duty of the controller to provide suitable forms of blanks and books, and furnish the assessors and collectors of each county with the same, in such form and manner as will best effect the object of the statutes providing for the assessment and collection of the public revenues of the state.

See secs. 3682, 3683, 3710.

Auditor to return unused blanks, sec. 3686.

**4178. Office hours.**

**SEC. 25.** The office of controller shall be open for the transaction of business from 10 o'clock a. m. till 4 o'clock p. m. of every day of the year, Sundays and public holidays excepted.

General appropriation act construed—Duty of controller. *Wilkins v. Hallock*, 20 Nev. 73.

*An Act to provide for the appointment of a deputy state controller, and to fix his compensation.*

Approved February 21, 1865, 164

**4179. Controller authorized to appoint deputy—Powers—Cannot sign warrants.**

**SECTION 1.** The controller of state is hereby authorized to appoint a deputy, who shall have power, in the absence of the controller, to do all acts devolving upon, and now necessary to be performed by the controller, except the signing of state warrants and bonds.

Salary of deputy, sec. 4397.

*An Act to create a fund in the state treasury of the State of Nevada to be known as the fire insurance fund, and other matters pertaining thereto.*

Approved March 6, 1897, 46

**4180. Fire insurance fund in treasury—Money from fire insurance paid into.**

**SECTION 1.** There is hereby created in the state treasury of the State of Nevada, a fund to be known as the fire insurance fund, in which said fund all moneys received from insurance companies in payment of losses incurred upon buildings or other property belonging to the state, shall be placed.

See sec. 1360.

4181. Idem—Money used for repair of destroyed property—Who may expend—Limitation.

SEC. 2. Whenever any building or other property of the state, upon which there is any insurance, shall be injured or destroyed by fire, the insurance, if any, which shall be collected on account of such injury or destruction shall be paid into the fire insurance fund created by section 1 of this act and may thereafter be paid out and expended by the board, commission, or officer of the State of Nevada, having control or management of the building, or other property injured or destroyed, in repairing or replacing the same, in the manner following: The board, commission, or officer having in charge the care and supervision of the property destroyed or injured by fire, may repair, replace or supply the same from the fund created by section 1 of this act; *provided*, that no greater sum shall be drawn from said fund by any board of commissioners, board of directors or board of regents, than the actual amount paid into the fund on the property or premises about to be repaired, replaced or supplied.

4182. Idem—Claims audited as other claims.

SEC. 3. All claims and demands created under the provisions of this act, shall be audited and paid as other claims against the state.

*An Act authorizing the canceling of old unpaid warrants.*

Approved March 7, 1873, 179

4183. Old unpaid warrants canceled—Renewal of claim—Legislature to allow as deficiency.

SECTION 1. After the expiration of three years from the date of issuance by the state controller, all warrants that have been, or may hereafter be issued, if not presented to and paid by the treasurer on or before the expiration of three years from the issuance thereof, whether outstanding or remaining in the office of the controller, uncalled for, shall become void; *provided, however*, that the person or persons in whose favor such warrant or warrants may have been drawn shall be permitted to renew his or her or their claim against the state to the amount of such warrant or warrants canceled, by the presentation of the same to any succeeding legislature, to be acted upon in the same manner as deficiency claims.

See sec. 2845.

4184. Idem—Canceled warrants filed and certified to treasurer—Noted on register—Treasurer not to pay.

SEC. 2. The state controller is hereby authorized and directed to cancel and file as vouchers all such warrants as he may find remaining in his office uncalled for. He shall, at the time of canceling such warrants, make a note to that effect upon the margin of his warrant register, opposite where such warrant or warrants are registered; and warrants that are still outstanding, and which become void under this act, he shall note the same upon the margin of his warrant register as above, giving the date such warrant or warrants become void. He shall at the time that such warrants become void, certify the same to the state treasurer, who shall thereupon make similar notes upon the margin of his warrant register, and he shall thereafter refuse to pay such warrants if presented.

4185. Idem—Treasurer to transfer funds—Renewed claims, how paid.

SEC. 3. Whenever the controller shall certify to the treasurer, as directed in section 2 of this act, he shall at the same time direct the treasurer to transfer from the fund or funds upon which such warrant or warrants were drawn to the general fund an amount equivalent to such warrant or warrants,

as the case may be; and whenever said person or persons in favor of whom such warrant or warrants were drawn shall renew his, her, or their claim against the state, the same shall be paid out of the general fund.

*An Act making it unlawful for any public officer to accept relief from the state for loss of tax receipts unless affidavits in regard thereto have been filed previously with the state controller, and providing certain penalties for a violation thereof.*

Approved March 15, 1909, 110

#### 4186. Loss of receipts—Relief from state—Affidavits to be furnished.

SECTION 1. Whenever any blank receipts for the collection of poll taxes, or license taxes, or other taxes are delivered to any officer by the state controller, or by and through any other officer provided for by law, and a loss of said blank receipts is afterwards claimed by any officer who has received the same, it shall be unlawful for any such officer who has received, but claims to have lost, said receipts, to accept any relief from the state unless there has been filed previously with the state controller an affidavit of the officer claiming said relief, and also an affidavit of the person losing said receipts, reciting seriatim the numbers of said receipts, the particulars of said loss, and the condition of said receipts at the time the loss occurred. The affidavit of the officer having charge of said receipts, when the loss has been occasioned through a deputy or other person, may be made upon information and belief, but the affidavit of the person actually losing the same must be positive and direct.

#### 4187. False affidavit perjury.

SEC. 2. If any person, in the affidavit mentioned in section 1 of this act, shall swear falsely to a material fact, the same shall constitute the crime of perjury and shall be punished as such.

*An Act to authorize the controller of state and ex officio commissioner of insurance to employ a stenographic clerk and fixing the compensation.*

Approved March 9, 1905, 78

#### 4188. May employ clerk.

SECTION 1. The controller of state and ex officio commissioner of insurance is hereby authorized to employ a typewriting clerk whose compensation shall be seventy-five dollars per month.

For compensation, see sec. 4397.

#### 4189. Idem—Compensation, how paid.

SEC. 2. The controller of state shall, at the end of each month, draw his warrant upon the state treasury in favor of such clerk for the amount of compensation due, and the state treasurer shall pay the same out of any moneys in the state treasury not otherwise specifically appropriated.

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*An Act authorizing the governor of the state to appoint a private secretary, defining his duties, and fixing his compensation.*

Approved March 10, 1865, 354

#### 4190. Governor may appoint private secretary—Duties—Term.

SECTION 1. The governor of the state is hereby authorized to appoint a private secretary, who shall perform such services as may be required of him by the governor, and as authorized by law. He shall hold his office at the pleasure of the governor.

[Sec. 2 (salary) superseded by sec. 4192.]

See sec. 4392.

#### 4191. Fees to go into library fund—Paid to treasurer—Controller not to pay salary until verified statement filed.

SEC. 3. The governor's private secretary shall demand and collect all fees which by law he is authorized to do for any service in connection with his office, and at the end of each and every month shall pay the same into the state treasury, for the use of the state library fund, taking the treasurer's receipt therefor, which he shall file with the state controller. Before the controller shall draw his warrant in favor of such private secretary, he shall require such private secretary to file his written statement, under oath, that he has paid over to the treasurer all fees collected by him for services as herein provided for; *provided*, that no warrant shall be issued to the present private secretary until he shall have paid over to the state treasurer the amount of fees already collected by him in the performance of his duties as such private secretary, and shall have certified the fact thereof to the controller in the manner above specified.

*An Act fixing the salary of the private secretary to the governor, and making an appropriation therefor.*

Approved March 22, 1909, 167

#### 4192. Salary of private secretary and as clerk of certain boards and commissions.

SECTION 1. From and after the passage of this act the salary of the private secretary to the governor shall be two thousand four hundred dollars

per annum, payable out of the general fund; *provided*, that the said secretary shall not receive any additional compensation for services as clerk of the board of pardons, clerk of the board of capitol commissioners, clerk of the board of assessors, or as clerk or secretary of any other board or commission.

See sec. 4392.

Cited, State ex rel. Fowler v. Eggers, 33 Nev. — (112 P. 700).

#### 4193. *Idem*—How paid.

SEC. 2. The state controller is hereby directed to draw his warrant for the salary named in section 1 of this act and the state treasurer to pay the same each month.

*An Act authorizing the governor, secretary of state and state treasurer to employ clerks and typists, and fixing their compensation.*

Approved March 6, 1907. 92

#### 4194. Governor may employ clerk—Compensation.

SECTION 1. The governor of the State of Nevada is hereby authorized to employ a clerk, whose compensation shall be twelve hundred dollars per annum.

#### 4195. Secretary of state may employ clerk and two typists—Compensation.

SEC. 2. The secretary of state is hereby authorized to employ a clerk, whose compensation shall be two thousand dollars per annum, and two typists, whose compensation shall be twelve hundred dollars per annum each.

See secs. 4269, 4270.

#### 4196. State treasurer may employ clerk—Compensation.

SEC. 3. The state treasurer is hereby authorized to employ a clerk, whose compensation shall be twelve hundred dollars per annum.

#### 4197. Compensation, how paid.

SEC. 4. The controller shall at the end of each month draw his warrant upon the state treasury in favor of such clerks and typists for the amount of compensation due, and the state treasurer shall pay the same out of any money in the state treasury not otherwise specifically appropriated.

### INSPECTOR OF MINES

*An Act creating the office of inspector of mines; fixing his duties and powers; providing for the appointment of a deputy and fixing the compensation of both; requiring certain reports and notices of accidents to be made to said inspector, and defining the duties of the attorney-general and district attorneys in relation to suits instituted by the inspector of mines.*

Approved March 24, 1909, 218

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#### 4198. Office of inspector of mines created.

SECTION 1. The office of inspector of mines for the State of Nevada is hereby created.

#### 4199. Idem—Salary—Expenses, how paid—Term—Bond.

SEC. 2. The inspector of mines shall receive as full compensation for his services a salary of thirty-six hundred dollars (\$3,600) per annum and his necessary traveling expenses when traveling in the discharge of his official duties, not to exceed eighteen hundred (\$1,800) dollars per annum, and all necessary expenses for clerk hire, postage, stationery, printing and other office expenses, not to exceed twelve hundred (\$1,200) dollars per annum; and such compensation and expenses shall be paid as the salary and expenses of other state officers are paid. He shall hold his office for the term of two years, or until his successor is selected and qualified. Before entering upon the discharge of his duties, as such inspector of mines, he shall file an official bond in the sum of ten thousand (\$10,000) dollars, conditioned for the faithful performance of the duties of his office, in form and manner as other official bonds of state officers.

Term extended to four years, sec. 4239.

#### 4200. Qualifications of inspector and deputies—Must devote entire time to duties—Special oath—Reports.

SEC. 3. The inspector of mines shall not at the time of his appointment, or at any time during the term of his office, be an officer, director or employee in or of any mining corporation in this state, or in or of any milling corporation in the state engaged in the business of smelting or reducing ores, and each inspector and deputies shall, and each of them, have had at least seven years' actual experience in underground workings, and shall make his affidavit before a proper officer to that effect before he shall be qualified to act as such inspector, or deputy inspector, as herein provided. And such inspector shall devote his whole time to the duties of his office, and shall take and subscribe to the following oath:

State of Nevada, County of \_\_\_\_\_, ss.

I, \_\_\_\_\_, of \_\_\_\_\_ County, do solemnly swear that I will

perform each and every duty required of me as inspector of mines for the State of Nevada; that I will at all times while acting in my official capacity fulfil the duties of such office according to the law and to the best of my skill and understanding; that I will never at any time while holding the office of inspector of mines disclose to any one, directly or indirectly, under any circumstances any information relative to ore bodies, shoots or deposits of ore or the location, course or character of underground workings, or give my opinion founded on any examination made in the performance of my official duties relative to the value of any mine or mining property, unless by permission of the person or persons in charge of the same. To all of which I pledge my sacred honor. So help me God.

Nothing in said oath, however, shall be construed to prevent such mining inspector from making full and complete statistical reports as required by law.

**4201. Duty to visit and examine mines—Collect statistics and exhibits—Specimens to furnish to school of mines—Establish uniform code of signals.**

SEC. 4. It shall be the duty of the inspector of mines at least once a year, to visit in person each mining county in the State of Nevada and examine all such mines therein as, in his judgment, may require the examination for the purpose of determining the condition of such mines as to safety, and to collect information and statistics relative to mines and mining and the mineral resources of the state, and to collect, arrange and classify mineral and geological specimens found in this state and to forward the same to the state school of mines, and it shall be the duty of the inspector of mines to establish a uniform code of signals.

**4202. Inspector has full power to make investigations.**

SEC. 5. Said state inspector of mines shall have full power and authority at all hours, to enter and examine any and all mines in this state, and shall have the right to enter into any and all mine stopes, levels, winzes, tunnels, shafts, drifts, crosscuts, working and machinery for the purpose of such examination; and the owner, lessor, lessee, agent, manager or other person in charge of such mine or mines shall render the inspector such assistance as may be required by the inspector to enable him to make full, thorough and complete examination of each and every part of such mine or mines, and whenever as the result of the examination of any mine (whether such examination is made in consequence of a complaint, as hereinafter provided, or otherwise) the inspector shall find the same to be in an unsafe condition, he shall at once serve or cause to be served, a written notice upon the owner, lessor, lessee, agent, manager, or other person in charge of such mine, stating in detail in what particular the mine is dangerous or insecure, and shall require all necessary changes to be made, without delay, for the purpose of making said mine safe for the employees therein, and in the case of any criminal or civil proceedings at law against the party or parties so notified, on account of the loss of life or bodily injury sustained by an employee subsequent to the service of such notice, and in consequence of a neglect or refusal to obey the inspector's requirements, a certified copy served by the inspector shall be prima facie evidence of the culpable negligence of the party or parties so notified. *As amended, Stats. 1911, 402.*

**4203. Office to be provided—Records to be preserved—Mine owners to report.**

SEC. 6. The inspector of mines shall be provided with a properly furnished office at the state house in Carson City, Nevada, in which he shall carefully keep a complete record of all mines examined, showing the date of examination, the conditions in which the mines were found, the manner and method

of working, the extent to which the laws are obeyed, and what recommendations, if any, were ordered by the inspector. It is hereby made the duty of the owner, lessor, lessee, agent, manager or other person in charge of each and every mine, of whatever kind or character, within the state, to forward to the inspector of mines at his office, not later than the first day of June in each year, a detailed report showing the character of the mine, the number of men then employed and the estimated maximum number of men to be employed therein during the ensuing year, the method of working such mine and the general condition thereof, and such owner, lessor, lessee, agent, manager, or other person in charge of any mine within the state must furnish whatever information relative to such mine as the inspector of mines may from time to time require for his guidance in the proper discharge of his official duties.

**4204. Complaints to be investigated—Copy to be served on owner—Complainant not to be divulged, when—May close workings.**

SEC. 7. Whenever the inspector of mines shall receive a formal complaint in writing, signed by one or more persons, setting forth that the mine in which he is employed is dangerous in any respect, he shall, in person, visit and examine such mine; *provided*, every such formal complaint shall in all cases specifically set forth the nature of the danger existing at the mine, and shall describe with as much certainty as possible the conditions rendering such mine dangerous, and shall set forth the time when such danger was first observed, and shall distinctly set forth whether or not any notice of such defect or danger has been given by the complainants or any one else to their knowledge to the superintendent or other person in charge of such mine, and if no such complaint has been made to such superintendent or other person in charge, the reason why it has not been made. After such complaint shall have been received by the inspector of mines, it shall be the duty of such inspector to serve a certified copy thereof, upon the owner, lessor, lessee, agent, manager, or other person in charge, and, as soon as possible, after receiving such complaint, to visit and examine such mine; and if from such examination he shall find such complaint to be just, he shall give notice in writing of the danger existing, to the owner, lessor, lessee, agent, manager, or other person in charge thereof, and in such notice may, in his discretion, order such mine or workings in which danger exists, closed until danger has been removed. The names of the complainants complaining as in this section provided, shall not, under any circumstances, be divulged to any person by said inspector except such action be necessary in the administration of justice in the courts of the state.

**4205. To notify attorney-general of neglect of mine owner—Action commenced—Penalty recovered—Paid into school fund.**

SEC. 8. It shall be the duty of the inspector of mines upon the neglect or refusal of any owner, lessor, lessee, agent, manager, or other person in charge of any mine or working, notified of the unsafe or dangerous condition of his mine, promptly to comply with the requirements of the notice served upon him, to at once notify the attorney-general of such neglect or refusal, and the attorney-general or the district attorney of the county in which said mine is situated, at the instigation of the attorney-general, must thereupon immediately commence action in the name of the state against the party so notified for the enforcement of the penalty mentioned in section 5, in any court of competent jurisdiction. And it shall be the duty of the inspector of mines upon the neglect or refusal of any owner, lessor, lessee, agent, manager or other person in charge of any mine or working, notified of the unsafe or dangerous condition of his mine, promptly to comply with the requirements of the notice served upon him, to at once notify the attorney-general of such

neglect or refusal, and the attorney-general must thereupon immediately commence action in the name of the state against the party so notified for the recovery of the penalty mentioned in section 5, in any court of competent jurisdiction, and the amount so recovered shall be paid into the general school fund of the state and constitute a part thereof.

#### 4206. May appoint deputy—Salary.

SEC. 9. The inspector of mines shall appoint a deputy inspector who shall receive a salary not to exceed two hundred dollars per month as full compensation for all services, and traveling expenses while in the discharge of his duty.

#### 4207. Mine owner to notify inspector of accidents—Investigation—Attend inquests—Statements to be furnished—Deputy to make report.

SEC. 10. Whenever a serious or fatal accident shall occur in any mine in the State of Nevada, it shall be the duty of the owner, lessor, lessee, agent, manager or other person in charge thereof immediately and by the quickest means, to notify the inspector of mines, or his deputy, as may be most convenient, of such accident; and the inspector or his deputy, or both, shall at once repair to the place of accident and investigate fully the cause of such accident; and the inspector, or his deputy, shall be present at any coroner's inquest held over the remains of any person or persons killed in any such accident, and shall have power at such inquest to examine and cross-examine witnesses, and may have process to compel the attendance of necessary witnesses at such inquest. If the inspector or deputy inspector cannot be immediately present in case of a fatal or serious accident occurring, it shall be the duty of the owner, lessor, lessee, agent, manager, or person in charge of the mine in which such accident has occurred, to have statements made and verified by those witnessing such accident; in case of no persons being present at the time of the accident, then the statement of those first present thereafter shall be taken, which statement shall be verified, and such verified statements shall be placed in the hands of the inspector, or deputy inspector, upon the demand of such officer. Whenever any deputy inspector is present at any coroner's inquest and assists in the examination, he shall, at the conclusion thereof, at once prepare and forward to the inspector a full and detailed report of the accident, giving all information obtainable regarding the same.

#### 4208. Duty to report to governor—Contents.

SEC. 11. The inspector of mines shall, on the first Monday of December of each year, file with the governor of the state a printed report giving:

First—A list of all accidents that have occurred during the year, the nature and cause of the same, together with the persons killed and injured.

Second—The number of mines visited or examined during the year, the number of mines in operation, and the number of mines idle, the number of men employed, the wages paid and the nationality of the employees.

Third—The name and location of each mine in the state which has been examined and from which the inspector has received a report as provided in section 6 of this act, and all data possible in regard to the manner of working the same, whether by shaft, tunnel, incline, or otherwise; the condition of the hoisting machinery, boilers, whims, engines, cars, buckets, ropes and chains used in the mines; also the appliances used for the extinguishing of fires; the manner and method of working and timbering the shafts, drifts, inclines, stopes, winzes, tunnels and upraises through which persons pass to and fro while engaged in their daily labor; the character of the exits from the mine, and the methods of ventilation and the system of signals used in the mine.

Fourth—The number and character of notices served, together with sug-

gestions and recommendations made; the manner in which such suggestions and recommendations were complied with.

Fifth—The number of complaints received and the actions therein.

Sixth—The number of prosecutions for neglect or refusal to comply with notices.

Seventh—A summary of the reports received from mine owners and deputy inspector.

Eighth—A full statement containing all available statistical and other information calculated to exhibit the mineral resources of the state and to promote the development of the same.

Ninth—Generally, such other information and suggestions as may be deemed advisable.

#### 4209. Act not applicable to certain mines.

SEC. 12. This act shall not apply to any mine which is worked exclusively by the owners, or lessees of the owners, and where no men are employed working in said mine for wages.

#### 4210. Inspector to be elected—Warrants, how paid.

SEC. 13. Within twenty days from and after the passage of this act, the governor shall appoint said mining inspector, who shall hold office until December 31, 1910, and at the next general election held in this state, and every two years thereafter, the office of inspector of mines mentioned in this act shall be filled by election by the qualified electors of the State of Nevada, as other state officers are now elected, and the state controller is hereby authorized and directed to draw his warrants for the several amounts specified in this act, and the state treasurer is hereby directed to pay the same.

Term of office extended to four years, sec. 4239.

#### 4211. Regulations as to use of explosives.

SEC. 14. No blasting powder or any high explosive containing nitro-glycerine shall be stored in any mine; *provided*, that nothing in this section shall be construed to prevent the operator of any mine from keeping sufficient blasting powder or other high explosive within such mine to meet the estimated requirements of such mine during the succeeding twenty-four hours; *and provided further*, that such temporary supply shall not be kept in any place within such mine, where its accidental discharge would cut off the escape of miners working therein. All blasting powder, or other high explosives, in excess of the temporary supply required in such mine shall be stored in a magazine not less than three hundred feet distant from any shaft, adit, habitation, public highway or public railway.

#### 4212. Idem—Wooden tamping bars must be used—Misdemeanor.

SEC. 15. Companies shall at all times furnish the miners with wooden tamping bars to be used in loading or charging holes, and any one using a steel or metal tamping bar shall be guilty of a misdemeanor, and upon conviction in a competent court shall be fined not less than five dollars nor more than fifty dollars for each and every offense.

#### 4213. Dead timber must be taken away.

SEC. 16. All timber removed shall, as soon as practicable, be taken from the mine and shall not be piled up and permitted to decay underground.

#### 4214. Hoisting machinery—Indicator must be used—How placed.

SEC. 17. All hoisting machinery using steam, electricity, gasoline or hydraulic motive power, for the purpose of hoisting or lowering into metal-liferous mines, employees and material, shall be equipped with an indicator to be placed in plain view of engineer.

**4215. Regulations as to riding on loaded cages or buckets—Special signals.**

SEC. 18. All persons shall be prohibited from riding upon the cage, skip or bucket loaded with tools, timber, powder or other material, except for the purpose of assisting in passing same through shaft or incline, and then only on special signal.

**4216. Shafts to have two compartments, when—Regulations as to ladders and landings.**

SEC. 19. All shafts shall be equipped with ladders, and shafts more than 200 feet in depth inclined more than 45 degrees from the horizontal equipped with hoisting machinery shall be divided into at least two compartments; one compartment to be partitioned off and set aside for a ladderway. The ladders shall be sufficiently strong for the purpose demanded and landings shall be constructed not more than thirty feet apart; said landing to be closely covered except an opening large enough to permit the passage of a man. A landing shall be constructed in manway at all working levels.

Ladders in upraises and winzes shall be provided and kept in repair, but where winzes or raises connecting levels are used only for ventilation and exit, only one such on each level need be equipped.

**4217. Single shaft, bulkhead or trap door near collar of—Exit from below—How equipped.**

SEC. 20. In every mine within this state, if more than 200 feet in depth, where a single shaft affords the only means of egress to persons employed underground and the ladderway compartment is covered by a nonfireproof building, it shall be the duty of the operator of said mine to cause said ladderway to be securely bulkheaded or a trap door placed over same at a point at least twenty-five feet below the collar of the shaft, and if a trap door is used it must be kept closed or so arranged that it can be closed from a point outside of the building by the releasing of a rope, and below this bulkhead or trap door, if the shaft is situated upon a side hill, a drift shall be driven to the surface, and if the shaft containing said ladderway may be otherwise situated, this drift shall be driven on a level to a safe distance, but in no case less than thirty feet beyond the walls of the building covering the main shaft and from such a point a raise shall be made to the surface. The said raise shall be equipped with a ladderway, and it, together with the drift connecting with the main shaft, shall be kept in good repair and shall afford an easy exit in the event of fire.

**4218. Exit—Signboards, when.**

SEC. 21. Whenever the exit or outlet from a mine is not in a direct or continuous course signboards plainly marked showing the direction to be taken must be placed at each departure from the continuous course.

**4219. No gasoline underground.**

SEC. 22. Use of gasoline underground is forbidden.

**4220. Exit—Precautions in sinking shaft.**

SEC. 23. Employees engaged in sinking shaft or incline shall at all times be provided with chain or other kind of ladder so arranged as to insure safe means of exit.

**4221. Guard rails at stations and winzes.**

SEC. 24. At all shaft stations a guard rail or rails shall be provided and kept in place across the shaft, in front of the level, so arranged that it will prevent persons from walking, falling or pushing a car or other conveyance into the shaft.

All winzes and all mill holes shall be covered or surrounded with guard rails to prevent persons from stepping or falling into the same.

**4222. Cages to be encased, and have other safety appliances.**

SEC. 25. The cage or cages in all shafts over 350 feet in depth shall be provided with sheet-iron or steel casing, not less than  $\frac{1}{8}$  inch thick, or with a netting composed of wire not less than  $\frac{1}{8}$  inch in diameter and with doors made of the same material as the side casing, either hung on hinges or working in slides. These doors shall extend at least four feet above the bottom of the cage and must be closed when lowering or hoisting men, except timbermen riding on the cage to attend to timbers that are being lowered or hoisted; *provided*, that when such cage is used for sinking only, it need not be equipped with such doors as are hereinbefore provided for. Every cage must have overhead bars of such arrangement as to give every man on the cage an easy and secure handhold.

**4223. Shaft protected—Stopping prohibited near shaft.**

SEC. 26. A pillar of ground shall be left standing on each side of the shaft of sufficient dimensions to protect and secure the same, and in no case shall stoping be permitted up to or within such close proximity to the shaft as to render the same insecure, until such time as the shaft is to be abandoned and the pillar withdrawn.

**4224. Shaft to be of noninflammable material—Inflammable material kept thirty feet from walls.**

SEC. 27. It shall be unlawful for the operator of any mine within this state to erect any structure over the shaft of any mine, except head frames necessary for hoisting from such shaft or outlet, and the hatch or door necessary for closing such shaft or outlet; *provided, however*, it shall be lawful to erect a housing of noninflammable and fireproof material over such shaft or adit to protect the men working at such point. In the case of existing houses covering the mouths of shafts or adits, it shall be the duty of the superintendent of the mine to cause the immediate removal of all inflammable material stored therein and it shall be the further duty of such superintendent to prohibit the storage of any inflammable material thirty feet from the exterior walls of any housing hereinafter built.

**4225. Buildings at mouths of tunnels—Door provided—Exit to surface.**

SEC. 28. It shall be the duty of every operator to provide every tunnel or adit level, the mouth of which is covered by a house or building of any kind, with a door near the mouth of the same, that can be closed from the outside of the building by a pull wire or cable in the event of fire; inside of door a raise shall be run to connect with surface, thus affording a means of exit in case of fire.

**4226. Hoisting ropes must be of iron or steel, when—Factor of safety established.**

SEC. 29. It shall be unlawful to use in any mine, any rope or cable for hoisting or lowering either men or material when such hoisting or lowering is done by any means other than human or animal power, unless such rope or cable shall be composed of iron or steel wires, with a factor of safety determined as hereinafter set forth; *provided*, that such iron or steel wires may be laid around a hemp center.

The factor of safety of all ropes or cables shall in no case be less than five, and shall be calculated by dividing the breaking strength of the rope as given in the manufacturer's published tables, by the sum of the maximum load to be hoisted, plus the total weight of the rope in the shaft when fully let out,

plus ten per cent of such values, to take account of shock at starting and stopping.

**4227. Further regulations regarding hoisting ropes or cables.**

SEC. 30. It shall be unlawful to use any rope or cable for the raising or lowering of men, either when the number of breaks in any running foot of said rope exceeds 10 per cent of the total number of wires composing the rope, or when the wires on the crown of the strands are worn down to less than one-half their original diameter, or when it shows marked signs of corrosion.

**4228. Boilers must be regularly examined—Examination reported.**

SEC. 31. All boilers used for generating steam in and about mines shall be kept in good order and the owner, operator or superintendent shall have them examined and inspected by a qualified person as often as once in six months, and oftener if the inspector or his deputy shall deem it necessary. The result of such examination shall be certified in writing to the inspector within thirty (30) days thereafter.

[Sec. 32 not in original.]

**4229. Hoisting prohibited during repairs—Exception.**

SEC. 33. No hoisting shall be done in any compartment of a shaft while repairs are being made in that compartment, excepting such hoisting as is necessary in order to make such repairs.

**4230. Wages not paid in liquor houses.**

SEC. 34. Wages shall not be paid on any premises used for the sale of intoxicating liquors.

**4231. Proper ventilation must be maintained.**

SEC. 35. The operator of every mine, whether operated by shaft, stope or drift, shall provide and maintain for every such mine a good and sufficient amount of ventilation for such men and animals as may be employed therein and shall cause an adequate amount of pure air to circulate through and into all shafts, winzes, levels and all working places of such mine.

**4232. Solitary employment regulated.**

SEC. 36. That no man be allowed to work in a stope at such a distance from another that his cries, in case of need, cannot be heard.

**4233. Engineer must be on duty.**

SEC. 37. That at all times when men are in a mine, worked through a shaft, equipped with hoisting machinery, an engineer shall be kept on duty to answer signals.

**4234. Riding on cable or bail unlawful.**

SEC. 38. It shall be unlawful for any person to ride upon the bail or cable of a hoisting bucket, cage or skip.

**4235. Notice of maximum number permitted on cage must be posted—Overloading cage punished.**

SEC. 39. Notice of the maximum number of men permitted to ride upon or in the cage, skip or bucket, at one time, shall be posted at the collar of the shaft and each level. All men or employees riding upon or in an overloaded cage, skip or bucket as provided in notice so posted, shall be guilty of a misdemeanor, and upon conviction in a competent court, shall be fined not less than five dollars nor more than fifty dollars for each and every offense.

**4236. Official code of bell signals—Code of signals—Additional signals not conflicting may be used—Code to be posted.**

**SEC. 40.** At all mines where hoisting apparatus is used in the State of Nevada, the following code of bell signals shall hereafter be adopted and used:

1 Bell—Hoist; 1 bell—Stop (if in motion).

2 Bells—Lower.

3 Bells—Men on, run slow.

When men are to be hoisted or lowered, give the signal for "men on, run slow" (3 bells). Men must then get on cage or bucket, then give the signal to hoist or lower (1 or 2 bells).

4 Bells—Blasting signal; engineer must answer by raising bucket a few feet and letting it back slowly; then 1 bell—hoist men away from blast.

9 Bells—Danger signal (in case of fire or other danger) then ring number of station where danger exists; engineer must slow up when passing stations when men are on the cage.

**STATION BELLS**

2 Bells, Pause,	1 Bell,	Station No. 1
2 Bells, Pause,	2 Bells,	Station No. 2
2 Bells, Pause,	3 Bells,	Station No. 3
2 Bells, Pause,	4 Bells,	Station No. 4
2 Bells, Pause,	5 Bells,	Station No. 5
3 Bells, Pause,	2 Bells,	Station No. 6
3 Bells, Pause,	3 Bells,	Station No. 7
3 Bells, Pause,	4 Bells,	Station No. 8
3 Bells, Pause,	5 Bells,	Station No. 9
4 Bells, Pause,	1 Bell,	Station No. 10
4 Bells, Pause,	2 Bells,	Station No. 11
4 Bells, Pause,	3 Bells,	Station No. 12
4 Bells, Pause,	4 Bells,	Station No. 13
4 Bells, Pause,	5 Bells,	Station No. 14
5 Bells, Pause,	1 Bell,	Station No. 15

Where electric bells are used in connection with other bells:

If cage is wanted, ring station signal. Station tender will answer 1 bell.

Reply 1 bell to go up.

Reply 2 bells to go below.

If station is full of ore and station tender is wanted, ring station signal and do not answer back.

2-1-2 bells are rung, engineer or station tender does not understand, repeat signal.

In case of danger or accident, ring station signal, station tender will reply 1 bell; ring 9 bells.

Signals not in conflict with the above code may be used to meet local conditions, but the same must be posted in connection with the above code.

One copy of this code should be posted on the gallows frame, one before the engineer, and one at each station.

**4237. Approved smoke helmets to be maintained—Inspection of.**

**SEC. 41.** At every mine in this state employing forty or more men underground, there shall be kept on hand at all times in good working condition at least two smoke helmets of a design to be approved by the state mining inspector, and which helmets shall at all times be subject to his inspection. For every additional fifty men so employed an additional smoke helmet shall be provided.

**4238. Penalties for noncompliance with this act.**

**SEC. 42.** Any owner, agent, manager or lessee, whether individual part-

nership or corporation operating a mine in this state who fails to comply with the provisions herein set forth, or either or any thereof, shall be deemed guilty of a misdemeanor and when not otherwise provided shall be liable to a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the county jail for a period of not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. For each provision not complied with and each day after conviction of failure to comply with any provision thereof shall be deemed a separate offense and punished accordingly.

Secs. 14 to 42, inclusive, added by Stats. 1911, 403, et seq.

*An Act to extend the tenure of office of inspector of mines for the State of Nevada to conform with other state officers.*

Approved February 20, 1911, 17

#### 4239. Term of office four years.

SECTION 1. That the term of office of inspector of mines for the State of Nevada, that would expire on the first Monday of January, 1913, be and the same is hereby extended to the first Monday of January, 1915, and that said officer be elected every four years thereafter, as are other officers of the executive department of the state.

#### STATE LICENSE AND BULLION TAX AGENT

*An Act to provide for the appointment of a state license and bullion tax agent of the State of Nevada, fixing his compensation and prescribing his duties.*

Approved March 15, 1905, 226

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| 4240. Governor to appoint state license and bullion tax agent—Salary and expenses. | 4244. May investigate mining companies and inspect their books and records—Report to assessor and controller. |
| 4241. Duties of office—Reports to sheriff—District attorney and commissioners.     | 4245. Misdemeanor for assessor to refuse inspection of books and records.                                     |
| 4242. May visit all counties and demand books of state and county officers.        | 4246. Misdemeanor for mine owners to refuse inspection of books and records or furnish information.           |
| 4243. Misdemeanor to refuse inspection of books—Penalty.                           | 4247. Expenses, amount of—How paid.   |
|  | 4248. Oath and bond—Examiners to approve.   |

#### 4240. Governor to appoint state license and bullion tax agent—Salary and expenses.

SECTION 1. The governor is hereby authorized, empowered and directed, within thirty days after the approval of this act, to appoint some person, a resident of the State of Nevada, a state license and bullion tax agent, whose term of office shall be for two years or during the pleasure of the governor, and whose salary shall be twenty-five hundred dollars per year and such expenses as authorized by section 8 of this act, both salary and expenses to be paid from the general fund of the state out of any moneys not otherwise appropriated. *As amended, Stats. 1909, 14.*

#### 4241. Duties of office—Reports to sheriff, district attorney and commissioners.

SEC. 2. It shall be the duty of said state license and bullion tax agent to inquire into and report in writing every three months, or as often as the conditions in any county show the necessity of a report, to the sheriff, district attorney, and board of county commissioners of each county in this state the names of each person or persons, company, corporation, or association carrying on, conducting or managing any business in their respective counties, subject to the payment of state or county licenses as required by the laws of this

state, and to see that the same are collected and paid into the state and counties as the law directs.

See sec. 3783, liquor license.

**4242. May visit all counties and demand books of state and county officers.**

**SEC. 3.** Said state license and bullion tax agent shall, if in his judgment deemed necessary, visit any of the counties of this state for the purpose of examining into the collections of licenses for state and county purposes and may demand from any state or county officer having in charge the collection of state and county revenue their books or records wherein the transaction of such collections are recorded.

**4243. Misdemeanor to refuse inspection of books—Penalty.**

**SEC. 4.** Any state or county officer refusing an inspection of his books or records, when demanded by the said state license and bullion tax agent, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in the sum of three hundred dollars or imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment, for each and every offense.

**4244. May investigate mining companies and inspect their books and records—Report to assessor and controller.**

**SEC. 5.** It shall be the further duty of said state license and bullion tax agent to examine into and report to the state controller and the assessors of their respective counties the condition of the various mines and mining companies producing the ores and metals in this state, in so far as the product of the same is subject to taxation for state and county purposes, and the amount of revenue derived therefrom, and to this end is hereby authorized to demand an inspection of the books or records of any person or persons, company, corporation, or association carrying on, conducting, or managing, any mine, mining claim, or mining property in this state, the object of this section being to ascertain the actual cost of mining, transportation and reduction of ores taken from the mines of this state and the amount of taxes paid or payable thereon.

**4245. Misdemeanor for assessor to refuse inspection of books and records.**

**SEC. 6.** Any county assessor refusing an inspection of his books or records when demanded by the state license and bullion tax agent shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of three hundred dollars, or imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment, for each and every offense.

**4246. Misdemeanor for mine owners to refuse inspection of books and records or furnish information.**

**SEC. 7.** Any person or persons, company, corporation or association, or the superintendent or managing agent of any person or persons, company, corporation or association engaged in mining such ores and precious metals in this state, and who, upon demand of said state license and bullion tax agent shall refuse an inspection of their books or records, or shall refuse to give such information as may be demanded by the said state license and bullion tax agent, relating to the expense of mining, transportation and reduction of ores, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in the sum of three hundred dollars, or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment for each and every offense.

**4247. Expenses, amount of, how paid.**

**SEC. 8.** The expenses of said state license and bullion tax agent shall be

a claim against the state, to be approved by the state board of examiners, and paid as provided in section 1 of this act, said expenses not to exceed the sum of fifteen hundred dollars (\$1,500) for any one year. *As amended, Stats. 1909, 14.*

#### 4248. Oath and bond—Examiners to approve.

SEC. 9. Before entering upon his duties as state license and bullion tax agent he shall take the oath of office required by state officers, and enter into a bond of ten thousand dollars, to be approved by the state board of examiners and conditioned for the faithful discharge of his duties.

#### LIEUTENANT-GOVERNOR

When and how elected, section 310.  
 President of the senate, section 310.  
 Eligibility and term of office, section 310.  
 Powers and duties of, section 310.  
 To act as governor, when, section 311.

#### *An Act concerning the residence of the lieutenant-governor.*

Approved March 5, 1895, 30

#### 4249. Need not reside at state capital.

SECTION 1. The lieutenant-governor shall not be required to reside at the seat of state government.

#### *An Act to define the duties of the lieutenant-governor, when acting as an ex officio officer and fixing his salary therefor.*

Approved March 7, 1899, 51

#### 4250. Lieutenant-governor ex officio adjutant-general—Salary for all offices held.

SECTION 1. The lieutenant-governor shall be ex officio adjutant-general of the state, and for the services he shall render as such, and while acting as governor during the sickness or absence of the governor from the state, and while acting as president of the senate during the session of the legislature, he shall receive an annual salary of eighteen hundred dollars, to be paid at the same time and in the same manner as other state officers are paid.

Member of board of capitol commissioners, sec. 4411.

Ex officio commissary of state police, secs. 4295-4298.

Constitutional powers and duties, see secs. 310, 311.

The act of 1866, 205, was cited in connection with the following:

The legislature having invested certain duties upon a public officer, and allowed him a salary for his services, may take those duties and the salary away from him before the expiration of his term of office and confer them upon another. *Denver v. Hobart*, 10 Nev. 28, 31.

The legislature did not intend by sec. 23 of Stats. 1873, 181, to give relator a salary as lieutenant-governor and also a salary as ex officio warden. *Idem*.

Act of 1866, 205, cited, *State ex rel. Davis*

*v. Eggers*, 29 Nev. 476, 16 L. R. A. (N. S.) 630, 91 P. 819.

The offices of ex officio state librarian and lieutenant-governor, though held by the same person under this act, are separate and distinct. *State ex rel. Davenport v. Laughton*, 19 Nev. 203, 204 (8 P. 344).

See *State ex rel. Gallup v. Hallock*, 19 Nev. 371, under State Controller.

Upon the death of the governor, the lieutenant-governor becomes acting governor and is entitled to receive the salary attached to that office. *State ex rel. Sadler v. La Grave*, 23 Nev. 216, 224, 225 (35 L. R. A. 233, 45 P. 243).

#### SECRETARY OF STATE

Who eligible to office of, section 312.

When elected, and term of office, section 312.

Powers and duties of, section 313.

To be member of board of examiners, section 314.

Member board of prison commissioners, section 314.  
 Liable to impeachment, section 335.  
 To keep office at seat of government, section 380.  
 Not to receive fees or perquisites to own use, section 389.

*An Act concerning the office of secretary of state.*

Approved February 14, 1865, 149

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| 4251. Official bond.   | 4257. Secretary of state to superintend printing of laws and journals—Who to receive laws and journals—For official use only—Receipts to take. |
| 4252. Governor to approve of bond—Where deposited.   | 4258. Extra clerks may employ, when—Compensation.  |
| 4253. Office kept at capitol—Business hours.   | 4259. Expenses, how paid.  |
| 4254. Duties of office—Records to preserve—Not to be removed from office.  | 4260. Fees of the secretary of state—No charge to members of legislature or state officers for official services—Fees to go into library fund. |
| 4255. Duty in reference to official acts of governor—Furnish information to legislature and governor—Surrender office to successor—General duties. | 4261. Power to appoint deputy—May require bond of deputy.  |
| 4256. Certified copies of records, to furnish.   |  |

**4251. Official bond.**

**SECTION 1.** The secretary of state, before entering upon any of the duties of his office, shall make and execute his bond to the State of Nevada, in the penal sum of ten thousand dollars, with at least two sufficient sureties, conditioned for the faithful performance of the several duties imposed upon him by the constitution and laws of this state.

See secs. 312, 313, 2765, 2774.

Ex officio state librarian, sections 3947, 4110.

Member of board of printing commissioners, section 4328.

Member of board of capitol commissioners, section 4411.

Member of board of examiners, sections 314, 4455–4475.

Member of board of prison commissioners, sections 314, 7560.

Member of furnishing board, supplies to keep, sections 4468–4475.

To issue certificates of authority to surety company, sections 697–701.

Duty of, relative to commissioners of deeds, section 1003.

Must issue certificates of incorporation, sections 1109, 1142, 1145, 1151, 1243.

Corporation must report election of officers and resident agents to, section 1136.

Duties of, in case of dissolution of corporation, sections 1189–1191.

Compile and publish biennial list of corporations, section 1204.

Certificate of, for renewal of corporation, sections 1208, 1209.

Articles of incorporation under act of 1865 to be filed with, sections 1220, 1238.

Cooperative associations to file articles with, sections 1251, 1255.

Foreign corporations to file copy of articles with, section 1348.

Telegraph companies to file certain certificate with, section 4625.

To report to governor failure of foreign corporations to comply with law, section 1350.

Incorporation of hospitals or asylums, articles filed with, section 1390.

Clerk to certify election appointments to, section 2795.

Duty in case of removal or vacancy, section 2801.

Railroad corporation to file articles with, section 3513.

To keep blank military commissions, section 4056.

To make roll of assembly and call to order, section 4113.

To furnish state printer with copy for session laws and journals, sections 4337, 4338.

State seal, to have access to, section 4404.

**4252. Governor to approve bond—Where deposited.**

**SEC. 2.** Said bond shall be approved by the governor, recorded in the office of the secretary of state, and then deposited with the state controller.

**4253. Office kept at capitol—Business hours.**

**SEC. 3.** The secretary of state shall keep his office at the capitol of the state, and shall keep the same open in person, or by his deputy, on all days on which business is usually transacted, from the hours of 10 o'clock in the forenoon until 4 o'clock in the afternoon.

See sec. 380.

**4254. Duties of office—Records to preserve—Not to be removed from office.**

SEC. 4. The secretary of state shall have the custody of, and shall carefully preserve the enrolled copy of, the constitution of the State of Nevada, the description of the state seal, and other seals of which a description may be required to be deposited in his office; the proceedings and all papers of the two constitutional conventions heretofore held for the purpose of framing a constitution of this state; the manuscripts containing the enrolled acts and joint resolutions and journals of the legislature of this state and the Territory of Nevada; the records, papers, and documents of Carson County, Utah Territory, and all other books, records, and documents which, by the laws of the Territory of Nevada, were required to be deposited and kept in the office of the secretary of said Territory of Nevada; and all the books; records, parchments, maps, registers, and papers, that may be required to be deposited in his office or kept therein; all deeds and conveyances belonging to the state; all official bonds approved by the governor, except the bond of said secretary; and all written contracts to which the state is a party, unless required to be deposited elsewhere. Said deeds, conveyances, and official bonds shall be recorded in well-bound books, and the original papers (except the bond of the secretary of state) shall not be permitted to be taken out of the office on any pretense whatever, unless in the possession of the secretary of state or his deputy.

See note to sec. 4251.

**4255. Duty in reference to official acts of governor—Furnish information to legislature and governor—Surrender office to successor—General duties.**

SEC. 5. It shall be the duty of the secretary of state to keep a fair register, and also attest all the official acts and proceedings of the governor, and affix the seal of the state, with proper attestations, to all commissions, pardons, and other public instruments to which the signature of the governor is required; to lay all papers, minutes, and vouchers relative to the official acts and proceedings of the governor before either house of the legislature when required by such house; to permit all the books, bonds, deeds, registers, papers, and transactions of his office to be open at all times to the inspection and examination of any committee of either branch of the legislature; to furnish information, in writing, upon any subject relating to the duties of his office to the governor, whenever required; to deliver up, in good order and condition, to his successor, all records, books, papers, and other things, belonging to his office; and to perform all such other duties as may be enjoined upon him by the constitution and laws of this state.

See sec. 313.

**4256—Certified copies of records, to furnish.**

SEC. 6. The secretary of state shall furnish, on demand, to any person paying the proper legal fees therefor, a duly certified copy of all or any part of any law, act, record, or other instrument of writing on file or deposited in his office, and of which a copy may be properly given.

**4257. Secretary of state to superintend printing of laws and journals—Who to receive laws and journals—For official use only—Receipts to take.**

SEC. 7. It shall be the duty of the secretary of state to superintend the printing, and have corrected a proof sheet of the acts, joint resolutions, and journals, required by law to be printed, by carefully comparing them with the enrolled bills and original journals on file in his office, and to distribute the laws and journals as soon as printed, in the following manner: To each

department of the government at Washington, one copy; to the library of Congress, two copies; to each of the states and organized territories, two copies; to each of our members of Congress, to each of the judges of the supreme and district courts, one copy; every person who was a member of the legislature of the session when the laws and journals were adopted, and every elective officer of the senate and assembly, and every appointee of the secretary and sergeant-at-arms of the senate of such session shall be entitled to one copy of each. Of the laws, alone, he shall furnish to the county clerk, in the cheapest and most expeditious manner, to be by the county clerk distributed, upon application to him, as follows: One copy for the board of commissioners, when such board exists, and one copy to each county officer and each justice of the peace; and of the journals, he shall furnish two copies of each house to each county clerk, for the use of the county; he shall also distribute the laws and journals to such literary and scientific institutions, publishers, and authors, as in his opinion may secure an interchange of works, which may properly be placed in the state library; and he shall also, through the county clerk, distribute one copy thereof to each public library in the state. All laws and journals distributed to state or other officers of this state, except to members of the legislature, shall be for the use of the office, and to be by the person receiving them turned over to his successor in office; and the secretary of state shall take proper receipts for such books, and file the same in his office; and he shall also direct the county clerks as to the form and disposition of the receipts to be taken by them from distributees. *As amended, Stats. 1867, 97.*

The provisions of Const., sec. 383, ante, are complied with by the publication of the proposed amendments in the statutes issued and distributed sixteen to eighteen months prior to the election, especially when this

mode of publication has been sanctioned by the legislature and followed. *State ex rel. Torreyson v. Grey*, 21 Nev. 378, 383 (19 L. R. A. 134, 32 P. 190).

#### 4258. Extra clerks—May employ, when—Compensation.

SEC. 8. For the purpose of facilitating the printing of the laws, joint resolutions and other documents, copies of which may be required to be furnished by the secretary of state, he is authorized to employ any number of clerks which may be necessary to the expeditious copying of same (at a rate not to exceed fifteen cents per folio of one hundred words).

[Sec. 9 (salary) superseded, sec. 4393.]

[Secs. 10 and 11 are repealed, Stats. 1899, 80.]

[Sec. 10, making this officer ex officio superintendent of public buildings, is superseded by sec. 4411, et seq.]

[Sec. 11, relative to supplies for legislature, is superseded by sec. 4472.]

#### 4259. Expenses, how paid.

SEC. 12. Any expense which may be necessarily incurred by the secretary of state in carrying out the provisions of this act, when certified by him, and approved by the board of examiners, shall be audited by the controller, and paid by the treasurer of state out of any moneys in the state treasury not otherwise specifically appropriated.

#### 4260. Fees of the secretary of state—No charge to members of legislature or state officers for official services—Fees to go into library fund.

SEC. 13. The fees chargeable by the secretary of state shall be as follows: For a certified copy of any law, joint resolution, transcript of record, or other paper on file or of record in his office, forty cents per folio; for certificate and use of state seal, five dollars for each impression; for filing each certificate of incorporation, five dollars; for recording such certificate, forty cents per folio; for filing and recording each official bond, five dollars; for filing

an authenticated certificate of the appointment of agent of incorporations, upon whom service may be had, five dollars; for attesting extradition papers, five dollars for each time the state seal is necessarily used; for filing and recording trade marks and names, five dollars; for each passport or other document signed by the governor and attested by the secretary of state, five dollars; for each commission as notary public, ten dollars; for each commission as commissioner of deeds, ten dollars; for each commission signed by the governor and attested by the secretary of state, other than notaries public and commissioner of deeds, five dollars; all commissions issued by the governor to staff or line officers of the militia of the State of Nevada shall be without charge; all commissions issued to directors of the Nevada state agricultural society, or to any agricultural society now organized, or that may be hereafter organized, shall be free; for searching records and archives of the state, and other records and documents kept in his office, he shall charge a reasonable fee. No member of the legislature, or any state officer shall be charged for any search or other service which relates to matters appertaining to official duties. All fees collected in the office of the secretary of state shall be paid into the state treasury for the use and benefit of the library fund. *As amended, Stats. 1893, 80.*

Fees for filing articles of incorporation, secs. 1203, 1349.

Cited, *Philips v. Eureka Co.*, 19 Nev. 351 (11 P. 32).

#### 4261. Power to appoint deputy—May require bond of deputy.

SEC. 14. The secretary of state shall have power under his hand and seal to appoint a deputy, who may, during the absence of the secretary of state from the office, perform all the duties of a ministerial nature belonging to the office; and for his own security the secretary of state may require such deputy to give him a bond, in such sum and with such sureties as he may deem sufficient; *provided*, that the salary of such deputy shall not exceed two hundred dollars per month.

Salary of deputy, see sec. 4395.

A service of process upon a deputy secretary of state is not a compliance with the law of 1889, 47 (secs. 5024, 5025), and the court acquired no jurisdiction by such attempted service. *Lonkey v. Keyes S. M. Co.*, 21 Nev. 312, 316 (17 L. R. A. 351, 31 P. 57).

Under act of 1893, 32, the secretary of state was made ex officio clerk of the supreme court.

In *State ex rel. Josephs v. Douglass*, 33 Nev. — (110 P. 177), it was held that this being a constitutional office, it could not be abolished by the legislature.

#### *An Act relating to the duties of the secretary of state.*

Approved March 7, 1873, 177

#### 4262. Biennial report to governor—What to include.

SECTION 1. The secretary of state of the state of Nevada shall, hereafter, prepare and render a biennial report to the governor of Nevada, in like manner as the state controller and treasurer, in which report shall be included an exhibit, showing in detail all expenditures made by him or under his direction; all moneys received by him, from whatever source, and the disposition made of the same. Said report shall also include all matters relating to the general business of the office of secretary of state during the period embraced in said report. He shall, also, in said report, give an itemized account of all statutes and Nevada reports distributed by him under the provisions of law, stating to whom such distribution is made and the amount of money received from the sale of any such statutes and reports, and the number of each year's issue remaining on hand.

See secs. 1204, 1350, 4268.

#### 4263. Board of examiners to audit expenditures.

SEC. 2. All expenditures made by or under the directions of the secretary

of state shall be audited by the state board of examiners, and no warrant shall be issued by the state controller for payment of such expenditures unless the same shall have been approved and allowed by said board of examiners.

*An Act to provide for the preservation of the manuscript laws.*

Approved March 2, 1871, 106

[Section 1 is obsolete.]

**4264.** To have enrolled bills and resolutions bound—Personal supervision.

SEC. 2. It shall be the duty of the secretary of state, after the final adjournment of each session of the legislature, and after all the laws, joint and concurrent resolutions, and memorials have been printed, as required by law, to cause all the enrolled bills of such laws, joint and concurrent resolutions, and memorials, to be bound in a suitable book, in junk board, marbled, with leather backs and corners. It shall be his duty to personally superintend such work, and at all times have immediate control thereof.

**4265.** *Idem*—Expenses, how paid.

SEC. 3. The expense incurred in such work shall be paid by the state in such manner as may be directed by the state board of examiners.

*An Act to provide for the recording of all contracts and agreements entered into by and between the State of Nevada and any person, persons, company or corporation.*

Approved March 8, 1879, 109

**4266.** Contracts on behalf of state filed with secretary of state.

SECTION 1. From and after the passage of this act it shall be the duty of any officer, person or persons, authorized by law to enter into any agreement or contract on behalf of this state, to have the same reduced to writing, and after the signing of the same by the contracting parties, to deliver the said agreement or contract so reduced to writing, signed by the contracting parties, to the secretary of state.

**4267.** *Idem*—Recording and filing—"Agreement and contract book" to keep.

SEC. 2. It shall be the duty of the secretary of state, immediately upon receiving said agreements or contracts mentioned in section 1 of this act, to file and record the same in a book to be kept for that purpose, to be known as the agreement and contract book.

*An Act relating to the preparing and printing of the biennial report of the secretary of state, clerk of the supreme court and state librarian.*

Approved March 19, 1901, 83

**4268.** Biennial report—What to include—Number—Printing.

SECTION 1. It shall be the duty of the secretary of state to prepare his biennial report, embracing a report of the office of the secretary of state, of the clerk of the supreme court, and of the state library, in one and the same cover, and the board of examiners shall order printed not less than two thousand nor more than three thousand copies, and the copy of said report shall be prepared and in the hands of the state printer on or before the second day of January of every odd year, and the state printer shall at once proceed to print the same, and when printed place the same in the hands of the secretary of state for distribution.

See secs. 1204, 1350, 4262.

Act making secretary of state ex officio clerk of supreme court unconstitutional, *Josephs v. Douglass*, 33 Nev. — .

*An Act to authorize the secretary of state of Nevada to employ a typist, and fixing the compensation.*

Approved March 13, 1909, 98

#### 4269. May employ typist—Salary.

SECTION 1. The secretary of state of the State of Nevada is hereby authorized to employ a typist, whose compensation shall be twelve hundred (\$1,200) dollars per annum, payable out of the general fund of the State of Nevada.

See secs. 4195, 4270.

*An Act to authorize the secretary of state to employ a stenographer and fixing the compensation.*

Approved February 21, 1905, 29

#### 4270. May employ stenographer—Salary.

SECTION 1. The secretary of state of the State of Nevada is hereby authorized to employ a stenographer, whose compensation shall be nine hundred (\$900) dollars per annum, payable out of the general fund of the State of Nevada.

See secs. 4195, 4269.

### STATE POLICE

*An Act to provide for the creation, organization and maintenance of the Nevada state police, prescribing the powers and duties of the officers and members thereof in maintaining peace, order and quiet in the State of Nevada, fixing their compensation, providing certain penalties, and other matters relating thereto, making an appropriation therefor, and repealing all acts or parts of acts in conflict therewith.*

Approved January 29, 1908, 20

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| 4271. State police created.   | 4282. Army regulations to prevail, when—<br>Martial law.                              |
| 4272. How composed.   | 4283. Office at Carson City.  |
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| 4281. Superintendent to make rules and<br>regulations—Penalties for violation<br>—Not to participate in party poli-<br>tics—Complaints investigated by<br>governor, attorney-general and<br>adjutant-general. | 4292. Falsely representing police, punish-<br>ment for.                               |
|   | 4293. Insubordination, how punished—Unbe-<br>coming conduct—Court-martialed,<br>when. |

#### 4271. State police created.

SECTION 1. There is hereby created a state police force to be known as and called the "Nevada State Police."

#### 4272. How composed.

SEC. 2. The said "Nevada State Police" shall consist of a superintendent of police, to be appointed by the governor, one inspector, four sergeants, twenty-five subordinate police officers, and two hundred and fifty reserves.

#### 4273. Appointments.

SEC. 3. The superintendent of police shall, subject to the approval of the

governor, appoint all officers and members of the said "Nevada State Police," and may remove any such officer or member without notice.

#### 4274. Qualifications and rank of superintendent.

SEC. 4. The superintendent of police shall be over the age of thirty years. He shall be the ranking officer in the field, subject only to the governor, and shall be removed by the governor at any time, without previous notice. The said superintendent of police shall have the rank of captain.

#### 4275. Qualifications of all members.

SEC. 5. All officers and other members of the "Nevada State Police," appointed by the superintendent of police, shall be citizens of the United States and residents of the State of Nevada for a period of at least six months, of good moral character, and who have never been convicted of a felony or other infamous crime, and shall pass such examinations as to their qualifications, mental and physical, as may be prescribed by the said superintendent of police and approved by the governor. The inspector shall be a competent military instructor.

#### 4276. Duties and powers of members.

SEC. 6. The officers and members of the Nevada state police shall have the power, when executing the orders of the governor, or when called into active service for the preservation of order, the protection of life or property, or the maintenance of peace:

(a) To make arrests, with or without warrant, of any and all persons charged with crime, or of violating any law of this state, or of the United States; to arrest and detain all persons suspected of the commission of any felony, and shall bring such prisoners as may be apprehended forthwith before the proper tribunal for examination and trial in the county where such offense was committed;

(b) To suppress all riots, routs, affrays, or disturbances of any kind within this state, and to arrest any and all persons engaged or abetting therein, and for this purpose shall have the power to command the assistance of all peace officers and other citizens of this state;

(c) To serve any criminal process within this state, issued by any court of this state;

(d) To cooperate with local authorities in detecting crime, and in apprehending any person or persons engaged in or suspected of the commission of a crime;

(e) To do and perform all duties required of any peace officer by the laws of this state, except in the service of any civil process. *As amended Stats. 1909, 142.*

#### 4277. Failure to receive prisoners; penalty for refusal.

SEC. 7. It is hereby made the duty of all officers or jailers having charge or custody of any jail or place of detention to receive all prisoners arrested by any member of the "Nevada State Police" and to detain them in custody until ordered to be released by a court of competent jurisdiction. Any officer, jailer or person having custody of any jail or place of detention, who shall refuse to so receive and detain such prisoners, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed five hundred (\$500) dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment, and in addition thereto shall forfeit his office. *As amended, Stats. 1909, 143.*

#### 4278. Martial law—Powers of police.

SEC. 8. Whenever the governor shall declare martial law within any county or counties in this state, or when he shall declare any county or

counties in this state to be in a state of insurrection, after the date of such declaration, and until the same shall have been revoked, the said "Nevada State Police" shall have full and absolute power to take any and all steps necessary and proper for the preservation of life and property and the restoration of peace and order.

4279. Reserve force organized—May be called into active service.

SEC. 9. The superintendent of police shall also organize a reserve force of the "Nevada State Police," and shall, subject to the approval of the governor, appoint such numbers of officers and men for the same as he may deem necessary, not to exceed two hundred and fifty, and shall prescribe such rules and regulations as may be necessary to properly discipline the said reserve force. In times of emergency, and when so directed by the governor, the superintendent of police shall call into active service from such reserve force as many men as he may deem necessary to preserve peace and order, and to protect life and property in any community of this state.

4280. Arms and uniforms; duties of adjutant-general.

SEC. 10. The superintendent of the "Nevada State Police" shall also designate the kind and character of the arms, equipment and accouterments to be carried or used by the members of the said "Nevada State Police," and shall also prescribe the kind of uniforms and badges of office to be used by the members of the said "Nevada State Police." It shall be the duty of the adjutant-general of the State of Nevada, to provide the members of the said "Nevada State Police" with such arms, at cost, the price of which shall be deducted from the first money due such member of said "Nevada State Police." The sum so paid for arms shall be returned to such member upon delivering up such arms in good condition to the adjutant-general. The adjutant-general shall also furnish the officers and members of the "Nevada State Police," except the superintendent and inspector, the badges and uniform designated by the superintendent, also all equipments, accouterments and ammunition required. When martial law has been declared by the governor, the adjutant-general shall also furnish all rations, subsistence for men and horses, camp equipage, transportation and such horses as the superintendent of police may deem necessary to fully perform all duties that may be required of such police.

4281. Superintendent to make rules and regulations—Penalties for violation—Not to participate in party politics—Complaints investigated by governor, attorney-general and adjutant-general.

SEC. 11. The superintendent of police, subject to the approval of the governor, shall promulgate such directions, rules, and regulations for the government, conduct and discipline of the "Nevada State Police" as may be necessary, and shall provide penalties for the violation of said rules and regulations, and shall enforce all such rules and regulations. No officer or member of the Nevada state police shall participate in any party caucus, committee, primary, convention, nor in any general or special election except to cast his ballot. If complaint shall be made to the governor of a violation of this section by any officer or member of the "Nevada State Police," it shall be his duty to cause said complaint to be investigated forthwith, and by summary process, by a board consisting of the governor, attorney-general, and the adjutant-general, and if said board shall find such officer or member has violated the provisions of this section, he shall be dismissed from the service. *As amended, Stats. 1909, 143.*

4282. Army regulations to prevail, when—Martial law.

SEC. 12. When martial law is declared by the governor, or whenever any county or counties in this state is declared to be in a state of insurrection,

and the "Nevada State Police" is called upon to suppress any riot, insurrection or rebellion, the rules of discipline and regulations of the army of the United States shall, so far as the same may be deemed practicable by the governor, constitute the rules of discipline and regulations of the "Nevada State Police," and the rules and articles of war established by Congress for the army of the United States shall be adopted, so far as they may be applicable, for the government of the "Nevada State Police" while engaged in suppressing such riot, insurrection or rebellion, and shall remain in force until peace be restored.

#### 4283. Office at Carson City.

SEC. 13. The state board of capitol commissioners shall provide necessary offices at Carson City, Nevada, with such accommodations, furniture and office supplies as may be necessary.

#### 4284. Salaries of active and reserve force.

SEC. 14. The superintendent of police shall receive a salary of thirty-six hundred dollars per annum.

The inspector of police shall receive a salary of twenty-four hundred dollars per annum.

Each sergeant shall receive a salary of eighteen hundred dollars per annum.

All other members, except the reserve force, shall receive a salary of fifteen hundred dollars per annum.

All salaries herein provided for shall be paid in equal monthly installments, the same as the salaries of other state officers are paid.

Each member of the reserve force shall receive twenty dollars per month when not engaged in active service, and shall be paid the same as the salaries of other state officers are paid. They shall receive the sum of five dollars per day while engaged in active service. All claims for salaries for services rendered in active service shall be examined and audited by the superintendent of police and the adjutant-general, and shall be examined, audited and allowed by the state board of examiners, and shall be paid as other claims against the state are paid. *As amended, Stats. 1911, 99.*

#### 4285. Term of service—Removal—Absence without leave, misdemeanor.

SEC. 15. Members of the "Nevada State Police" shall be required to serve for a period of not less than one year, unless dismissed or discharged, and no officer or member, after entering into such employment, shall be permitted to resign therefrom, except with the consent and approval of the governor, but nothing in this section shall be construed as preventing the superintendent of police from removing any officer or member of the "Nevada State Police." Any officer or member of the "Nevada State Police" who absents himself from his post without authority, or who, having tendered his resignation, quits his post or proper duties without leave and with intent to remain absent therefrom, prior to due notice of the acceptance of his resignation by the governor, shall be deemed guilty of a misdemeanor, and shall be punished as is now provided by law. *As amended, Stats. 1909, 143.*

#### 4286. Bond and oath of superintendent and members.

SEC. 16. Before entering upon the discharge of his duties the superintendent of the "Nevada State Police" shall take and subscribe to the constitutional oath of office, and shall execute a bond to the State of Nevada in the sum of five thousand (\$5,000) dollars, with two or more sufficient sureties, to be approved by the governor, and conditioned that he will faithfully perform all of the duties required of him by law. The bond, oath and appointment of the superintendent of police shall be filed in the office of the secretary of state. All other members of the "Nevada State Police," before entering upon the discharge of their duties, shall take and subscribe to the constitu-

tional oath of office. The appointment, with the oath of office, shall be filed in the office of the superintendent of police.

**4287. Expenses, how paid—Governor to order traveling expenses.**

SEC. 17. All necessary expenses, including meals, lodging, and traveling expenses, incurred by the members of the "Nevada State Police" while absent from the seat of government in the discharge of their duties, shall be first approved by said superintendent of police, and shall be examined, approved and allowed by the state board of examiners, and shall be paid as other claims against the state are paid. No member of the "Nevada State Police" shall incur any expenses whatever unless ordered to do so by the superintendent of police; *provided*, that no member of the "Nevada State Police" shall incur any traveling expenses whatever except by order of the governor. *As amended, Stats. 1909, 144.*

**4288. Peace officers not absolved.**

SEC. 18. Nothing in this act shall be construed as relieving any peace officer of any duty required of him by any law of this state.

**4289. Railroad officials to transport—Claims, how paid.**

SEC. 19. Whenever any member of the "Nevada State Police" shall exhibit a copy of his commission or a certificate of his appointment to any railroad conductor, manager or officer of any corporation or person engaged in the business of transporting passengers, such conductor, manager or officer shall transport such member of the "Nevada State Police" and all prisoners in his charge or custody. All claims for such transportation shall be a claim against the state, and shall be presented, examined, audited and allowed, and shall be paid as other claims against the state are paid.

**4290. Refusal to aid police—Penalty.**

SEC. 20. Any person refusing to aid or assist any member of the "Nevada State Police" in the discharge of his duties, when called upon, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed five hundred (\$500) dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

**4291. Molestation of, how punished.**

SEC. 21. If any person shall intercept, molest or insult, by abusive words or behavior, any member of the "Nevada State Police" while in the discharge of his duties, he shall be immediately arrested, and shall be punished by any court of competent jurisdiction for a breach of the peace.

**4292. Falsely representing police, punishment for.**

SEC. 22. Any person who shall falsely represent himself to be a member of said "Nevada State Police," or who shall wear the uniform, badge or other insignia adopted and used by said "Nevada State Police," shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred (\$500) dollars, or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment.

**4293. Insubordination, how punished — Unbecoming conduct — Court-martialed, when.**

SEC. 23. Any member of the "Nevada State Police," who shall disobey the orders of his superior, or use any reproachful or abusive language to his superior, or misbehave or demean himself in a manner tending to bring the "Nevada State Police" into ill-repute or subject it to reproach, shall be

immediately arrested, and shall be disarmed and put under guard, and shall be punished in accordance with the rules and the regulations, and if he be acting in a community under martial law, he shall be tried and punished by a court-martial according to law and military usage.

*An Act creating the office of commissary of the Nevada state police, prescribing his duties, fixing his compensation, and other matters relating thereto.*

Approved February 8, 1908, 37

4294. Commissary of state police.

4297. Bills, how audited and paid.

4295. Adjutant-general ex officio commissary.

4298. Salary and expenses of commissary—

4296. Duty of commissary.

How paid.

**4294. Commissary of state police.**

SECTION 1. The office of commissary of the Nevada state police is hereby created.

**4295. Adjutant-general ex officio commissary.**

SEC. 2. The adjutant-general of this state is hereby made ex officio commissary of the Nevada state police.

**4296. Duty of commissary.**

SEC. 3. It shall be the duty of the commissary of the Nevada state police to purchase all arms, ammunition, equipment, provisions, uniforms, badges, and all other necessary supplies required to be furnished to said Nevada state police, and no supplies of any kind shall be furnished to, nor purchased for the use of, the Nevada state police, except upon requisition therefor issued by the commissary, and approved by the governor. *As amended, Stats. 1909, 217.*

**4297. Bills, how audited and paid.**

SEC. 4. All bids (bills) for supplies purchased in accordance with section 3 hereof shall be presented to the state board of examiners, to be audited, examined and allowed, and shall be paid out of any funds now or hereafter appropriated for the maintenance of the said Nevada state police.

**4298. Salary and expenses of commissary, how paid.**

SEC. 5. The commissary of said Nevada state police shall receive a salary of twelve hundred (\$1,200) dollars per annum, payable in equal monthly installments, in the same manner as other state officers are paid; he shall also be allowed his necessary expenses, when traveling upon business connected with the duties of his office; said salary and expenses shall be paid out of any fund which may now or hereafter be appropriated for the maintenance of the said Nevada state police.

*An Act to authorize the appointment of state detectives.*

Approved March 5, 1885, 66

4299. Governor may appoint five state detectives—Petition for—Term.

4302. Delivery to sheriff—Complaint to enter.

4300. Detectives to give bond.

4303. Governor may revoke appointments.

4301. Shall have power of a peace officer—Arrest without warrant—Duty.

4304. Detectives to receive no fees from state or counties—May receive reward.

**4299. Governor may appoint five state detectives—Petition for—Term.**

SECTION 1. Upon the petition of five or more qualified electors of the State of Nevada and the execution of bonds as hereinafter provided, the governor may appoint state detectives for any term not exceeding two years, the appointment to be made in writing and signed by the governor; *provided*, that at no time shall said detectives exceed five in number.

**4300. Detectives to give bond.**

SEC. 2. Each detective appointed under this act shall, before receiving his appointment, execute to the State of Nevada and deliver to the governor, for the benefit of the State of Nevada and the persons who may become interested therein, a bond in the sum of five thousand (\$5,000) dollars with sureties to be approved by the governor, which bond shall be conditional for the faithful performance of the duties of the detective named therein, and for the payment of any damages which may be sustained by any persons by reason of any malicious, unlawful arrest or imprisonment.

**4301. Shall have power of a peace officer—Arrest without warrant—Duty.**

SEC. 3. Any detective appointed under this act shall have the powers of a peace officer, and may arrest any person or persons accused or suspected of violating any of the criminal laws of this state; but when such arrest is made without a warrant the detective making the same shall, without unnecessary delay, enter a charge against the person or persons so arrested before a magistrate having jurisdiction of the offense, and secure process for his detention, or release the defendant from custody.

**4302. Delivery to sheriff—Complaint to enter.**

SEC. 4. It shall be the duty of any detective arresting any person to deliver such person as soon as distance and circumstances will permit to the sheriff of the county wherein the crime was committed or is triable; and, unless previously done, to make and enter a criminal complaint accusing such person of the crime for which the arrest was made.

**4303. Governor may revoke appointments.**

SEC. 5. The governor may at any time revoke any appointments made by virtue of this act, and make other appointments as hereinbefore provided.

**4304. Detectives to receive no fees from state or counties—May receive reward.**

SEC. 6. No detective appointed under this act shall receive any fees or compensation from the State of Nevada, or any county of the state; but nothing herein shall deny such detective the right to receive any reward offered for the apprehension of criminals.

**SUPERINTENDENT OF STATE PRINTING**

*An Act fixing the salary of the superintendent of state printing.*

Approved March 11, 1909, 87

**4305. Salary of state printer.**

SECTION 1. From and after the passage and approval of this act the superintendent of state printing shall receive the annual salary of three thousand (\$3,000) dollars, payable in twelve equal monthly installments.

*An Act in relation to the message of the governor and the reports of certain state officers.*

Approved March 3, 1881, 117

**4306. Governor and other state officers to furnish duplicate copies of messages and reports to state printer.**

SECTION 1. It shall be the official duty of the governor to prepare and deliver to the superintendent of state printing a duplicate copy of his biennial message to the legislature, without extra compensation; and it shall be

the official duty of all state officers that are now, or may hereafter be, required by law to make either annual or biennial reports to the governor or to the legislature, to prepare and deliver to the superintendent of state printing duplicate copies of the same, without extra compensation.

See sec. 4315.

*An Act authorizing the state printer to copyright all state publications.*

Approved March 29, 1907, 434

#### 4307. State printer may copyright publications.

SECTION 1. The state printer of the State of Nevada is hereby authorized to have all publications issued by the State of Nevada copyrighted under the laws of the United States, the copyright to be issued in the name of the state printer of the State of Nevada.

#### 4308. Idem—Charge against state library fund.

SEC. 2. All costs and charges incurred in copyrighting such publications to be charged against the state library fund, and to be paid in the same way as other charges are paid by the state.

*An Act to authorize the use of the union label on all public printing.*

Approved March 13, 1895, 58

#### 4309. Union label to be affixed to public printing.

SECTION 1. On after the passage of this act the state printer shall cause to be affixed to all public printing the union label recognized by the organization known as the International Typographical Union.

#### 4310. Idem—Cuts purchased.

SEC. 2. The state printer is hereby authorized to purchase such cuts for that purpose as in his discretion are necessary.

*An Act authorizing the superintendent of state printing to employ a bookkeeper and typist, and fixing compensation therefor.*

Approved March 20, 1909, 130

#### 4311. May employ bookkeeper and typist—Compensation.

SECTION 1. The superintendent of state printing of the State of Nevada is hereby authorized to employ a bookkeeper and typist, whose compensation shall be twelve hundred dollars per annum.

#### 4312. Idem—Compensation, how paid.

SEC. 2. The controller shall, at the end of each month, draw his warrant upon the state treasury in favor of such bookkeeper and typist for the amount of such compensation due, and the state treasurer shall pay the same out of any money in the state treasury not otherwise specifically appropriated.

*An Act to designate and authorize the work to be done in the state printing office.*

Approved March 5, 1909, 66

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| 4313. What printing and binding may be done.  | 4317. Forms, blanks, letterheads and envelopes to be printed.   |
| 4314. Idem—Pamphlets and leaflets.  | 4318. Idem—Duty to have printing done.  |
| 4315. When original drafts of reports must be sent to governor.                                       | 4319. Idem—Work subject to capacity of printing office.   |
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4321. What not state printing.  
 4322. Irrelevant matter not to be included in reports—Exception.  
 4323. Superintendent may submit matter to board of examiners for approval before printing.  
 4324. Controller not to draw warrant for unauthorized printing.  
 4325. Transportation of finished work—Expenses, how paid.  
 4326. Idem—Blank stationery furnished to printer.

#### 4313. What printing and binding may be done.

SECTION 1. The printing and binding which may be done in the state printing office at the expense of the state, other than that specially authorized by legislative action, shall be as follows:

The statutes passed by the legislature, the journals of the senate and assembly, the appendix of the journals of the senate and assembly, the biennial message of the governor, the annual reports of the treasurer, controller, board of control of the agricultural experiment station, insurance commissioner, and board of dental examiners, and the biennial reports of the secretary of state, surveyor-general, attorney-general, adjutant-general, superintendent of public instruction, superintendent of state printing, warden of the state prison, superintendent of state police, commissioners for the care of the insane, board of directors of the state orphans' home, regents of the University of Nevada, state engineer, state railroad commission, state publicity commission, historical society, Nevada state fair association, state mine inspector, state license and bullion tax agent, state bank examiner, sheep commission, state board of health, state board of medical examiners, state board of pharmacy, fish commissioners, and reports of the supreme court.

See sec. 4333.

#### 4314. Idem—Pamphlets and leaflets.

SEC. 2. Unless otherwise specially authorized by legislative action, the following pamphlets, bulletins and leaflets shall be printed: Annual register of the University of Nevada, annual catalogue of the Nevada state fair association, Nevada mining laws, Nevada land laws, Nevada election laws, Nevada official election returns, general corporation laws, foreign corporation laws, minutes of meetings of state board of assessors, state school laws, university high school register, monthly bulletin of the state weather service, fish and game law, the pharmacy law, list of registered physicians, insurance laws, ruled work for insurance commissioner, and necessary briefs, transcripts and other legal work for the railroad commission.

#### 4315. When original drafts of reports must be sent to governor.

SEC. 3. All officers, boards of officers, commissioners, trustees, superintendents, regents and directors required by law to make reports to the governor or legislature, except the state controller, state treasurer, insurance commissioner, board of control of the agricultural experiment station, and board of dental examiners, must send the original drafts of such reports to the governor on or before the third day of January in the year 1911, and in every second year thereafter. The state controller must send his report to the governor before the second Monday in January in the year 1910, and in every year thereafter, and the state treasurer on or before the tenth day of January, 1910, and in every year thereafter.

See sec. 4306.

#### 4316. Idem—Submitted to board of examiners—Revision—Matter not to be duplicated—Number to be printed.

SEC. 4. The governor shall, upon receipt of such reports, submit the same to the state board of examiners, who shall carefully examine, edit and revise each of said reports, eliminate all superfluous matter and all subjects not strictly appertaining thereto, and shall order such a number of each of said reports, or part or parts of each of said reports, printed as in their judgment

will meet the requirements of law; *provided*, that in no case shall a less number of copies than fifty, nor a greater number of copies than fifteen hundred, be printed. The board shall especially see that no matter be printed in more than one report, unless of great public interest.

**4317. Forms, blanks, letterheads and envelopes to be printed.**

SEC. 5. In addition to the work now required by law to be done in the state printing office for the various state officers, the superintendent of state printing is hereby authorized, and it shall be his duty, to print all forms, blanks, letterheads, and envelopes required in and for the various state institutions and commissions enumerated in section 1 of this act.

**4318. Idem—Duty to have printing done.**

SEC. 6. All officers, boards of officers, commissioners, trustees, superintendents, regents and directors are hereby required and directed to have all forms, blanks, envelopes and letterheads necessary for the successful working of the various departments, institutions and offices, printed at the expense of the state printing office, and the superintendent of state printing is hereby directed to accept all such work, execute and deliver it as promptly as possible.

**4319. Idem—Work subject to capacity of printing office.**

SEC. 7. Nothing in this act shall be construed to mean that the superintendent of state printing is required or expected to perform any work other than the type, machinery and other printing and binding appliances now in use in the state printing office will permit.

**4320. What work may be done outside of printing office—Board of examiners to determine—Contingent fund.**

SEC. 8. Should any state officer, commissioner, trustee, or superintendent consider that the requirements of his office, department or institution demand stationery, blanks, forms or work of any character which cannot be performed in the state printing office, he shall submit the same to the state board of examiners, who shall summons the superintendent of state printing, or his representative, before them, and if it appear that, through lack of necessary machinery or appliances, the work cannot be satisfactorily done in the state printing office, they shall authorize said state officer, commissioner, trustee, or superintendent to have the work performed in a commercial printing office, the cost of same to be paid out of the contingent fund provided for the expenses of state officers or out of the fund provided for the support of the commission or institution requiring the work, as the case may be.

**4321. What not state printing.**

SEC. 9. Invitations, tickets of admission, programs, menus or like matter for any state institution or school are not to be considered state printing, and the superintendent is directed not to accept the same.

**4322. Irrelevant matter not to be included in reports—Exception.**

SEC. 10. No state officer, board of officers, commissioner, superintendent, director, or trustee shall incorporate any matter in his report other than that required by law, unless it shall appear to the board of examiners that it is a matter of great public interest and benefit.

**4323. Superintendent may submit matter to board of examiners for approval before printing.**

SEC. 11. The superintendent of state printing shall be privileged at all times to submit to the state board of examiners work of any description which, in his judgment, is trivial, unnecessary, or a useless expense to the state, and if the state board of examiners shall find such to be the case, it

shall be their duty to order the superintendent of state printing not to execute the same.

#### 4324. Controller not to draw warrant for unauthorized printing.

SEC. 12. The state controller is hereby authorized and directed not to draw his warrant in payment for any printed matter except such as is authorized by section 8 this act.

#### 4325. Transportation of finished work—Expenses, how paid.

SEC. 13. When it is necessary to ship finished work outside of Carson, the institution or commission ordering same shall pay all transportation charges.

#### 4326. Idem—Certain blank stationery to be furnished printer.

SEC. 14. All officers, boards of officers, commissioners, trustees, superintendents, regents, and directors, entitled under the provisions of this act to have printing done at the state printing office, are hereby required to furnish the superintendent with the blank letterheads, noteheads, and envelopes desired by them, and they shall prepay transportation charges on same.

### STATE PRINTING OFFICE

*An Act to establish a state printing office, and to create the office of superintendent of state printing.*

Approved March 11, 1879, 138

4327. Office of superintendent of state printing created—Duties.

4328. Board of printing commissioners—Superintendent of state printing elected.

4329. Duty to give bond—Where filed.

4330. General official duties—Only state work to be done—Limitations as to number and compensation of employees—Report to governor.

4331. Superintendent not to be interested in contracts.

4332. Supplies, how furnished—May be advertised for.

4333. Printing authorized to be done in the state printing office.

4334. Legislative session laws to be printed—Number thereof—Constitutions and treasurer's report included.

4335. Legislative journals and appendix to be printed—Number—Distribution.

4336. Documents ordered printed by the legislature—Number of bills printed.

4337. Secretary of state to furnish copy of session laws—Resolutions and memorials with marginal notes and index—Printing and distribution.

4338. Idem—Journals of senate and assembly.

4339. Style of public printing—Paper.

4340. Binding—When printing commissioners may make contracts—Cost.

#### 4327. Office of superintendent of state printing created—Duties.

SECTION 1. The office of superintendent of state printing is hereby created, and after the first day of January, eighteen hundred and eighty-one, all printing (except advertising) shall be done under his superintendence, in an office hereafter provided for.

[Sec. 2 repealed, Stats. 1891, 32.]

#### 4328. Board of printing commissioners—Superintendent elected.

SEC. 3. The secretary of state, state controller and state treasurer, shall be known as the "State Board of Printing Commissioners," who shall, thirty days prior to the convening of the next session of the legislature, appoint a superintendent of state printing. Said superintendent to hold office for two years, and thereafter said officer shall be elected by the people, in accordance with proclamation by the governor, as provided in the case of all other state officers.

See secs. 2765, 2774.

#### 4329. Duty to give bond—Where filed.

SEC. 4. The superintendent of state printing, before entering upon the discharge of the duties of his office, shall give a good and sufficient bond to

the people of the State of Nevada, in the sum of ten thousand dollars, with two or more sureties, to be approved by the board designated in section 3 of this act, for the faithful performance of his duties, which bond shall be filed in the office of the secretary of state.

**4330. General official duties—Only state work to be done—Limitations as to number and compensation of employees—Report to governor.**

SEC. 5. The duties of the superintendent of state printing shall be as follows: He shall have the entire charge and superintendence of the state printing, and all matters pertaining to his office. He shall take charge of and be responsible for all manuscripts or other matter which may be placed in his hands to be printed, and shall cause the same to be promptly executed. He shall receive from the senate or assembly all matter ordered by either house to be printed and bound, or either printed or bound, and shall keep a record of the same, and of the order in which it may be received, and when the work shall have been executed he shall deliver the finished sheets, or volumes, to the sergeant-at-arms of either house, as the case may be, or any department authorized to receive them. He shall receive and promptly execute all orders for printing required to be done by the various state officers. He shall employ such compositors, pressmen, or assistants, as the exigency of the work may from time to time require, and may at any time discharge such employees; *provided*, that at no time shall he pay said compositors, pressmen, or assistants, a higher rate of wages than is recognized by the employing printers of the State of Nevada. He shall at no time employ more compositors, pressmen, or assistants, than the necessities of the state printing may require, and he shall not permit any other than state work to be done in the state printing office. The superintendent of state printing shall, on the first day of December of each year, make a report in writing, to the governor, embracing a record of the complete transactions of his office.

**4331. Superintendent not to be interested in contracts.**

SEC. 6. He shall not, during his continuance in office, have any interest, direct or indirect, in any contract for furnishing paper, or other printing stock, or material connected with the state printing.

See secs. 2827-2830, 6331.

**4332. Supplies, how furnished—May be advertised for.**

SEC. 7. The state board of printing commissioners are hereby authorized and instructed, when in their judgment they may deem it necessary to advertise for a period of twenty days for bids for furnishing paper and other stationery requisite for the public printing, and said board shall award the contract to the lowest responsible bidder. No bid shall be considered unless it is accompanied by a bond, with two or more sureties in the sum of five thousand dollars, conditioned that if the bidder receives the award of the contract he will, within thirty days, enter into bonds in the sum of five thousand dollars, with two or more sureties, to be approved by the governor, that he will faithfully perform the conditions of the contract.

[Secs. 8, 9, 10, 11 and 12 obsolete.]

The following sections were added to the original act by an act approved March 4, 1881, 146:

**4333. Printing authorized to be done in the state printing office.**

SEC. 13. The printing and binding which may be done at the expense of the state, other than that specially authorized by legislative action, shall be as follows: The statutes passed by the legislature, the journals of the senate and assembly, the appendix to the journals of the senate and assembly, the biennial message of the governor, the annual reports of the treasurer and controller, and biennial reports of the surveyor-general, the warden of the

state prison, the commissioners for the care of the indigent insane, the board of directors of the state orphans' home, the superintendent of public instruction, the biennial report of the secretary of state, all forms and blanks required in and for the various state offices, and such orders and proclamations as may be required to facilitate, support, or give legitimate expression to the government of the state and the successful working and needful exhibit of its various departments and offices.

Supplies for state board of assessors, sec. 3811.

Printing for state land office, secs. 4356-4359.

See secs. 4313-4326.

#### 4334. Legislative session laws to be printed—Number thereof—Constitutions and treasurer's report included.

SEC. 14. There shall be printed of the statutes of each legislature sixteen hundred copies. Eight hundred copies shall be bound in calf, and eight hundred copies shall remain unbound until such time as they may be needed. The bound volumes shall contain the laws, resolutions and memorials passed at each legislative session, the report of the state treasurer, the constitution of the United States, and the constitution of the State of Nevada. No other report or thing whatever shall be bound therewith. *As amended, Stats. 1893, 31; 1907, 415.*

#### 4335. Legislative journals and appendix to be printed—Number and distribution.

SEC. 15. The journals and appendix of the two houses of the legislature shall be printed, and there shall be two hundred and twenty-five copies thereof, bound in the same style as those of the eighth session; and each member of the legislature of which such journals are the record shall be entitled to one copy of the same, that is to say, each senator shall have a copy of the senate and assembly journal, and each assemblyman shall have a copy of the senate and assembly journal; and the journal of each house shall be bound separately.

[Sec. 16 repealed, Stats. 1893, 24.]

#### 4336. Documents ordered printed by the legislature—Number of bills printed.

SEC. 17. Whenever any message, report, or other document in pamphlet form, is ordered printed by the legislature, two hundred and twenty-five copies of the same, supplemental to the number so ordered, shall be struck off by the superintendent of state printing, and he shall retain the same for binding with the journals of the senate and assembly. When any bill introduced into either house of the legislature is ordered printed, that is to say, where the "usual number" is so ordered, the number so ordered shall be considered to be two hundred and twenty-five copies of such bill.

#### 4337. Secretary of state to furnish copy of session laws, resolutions and memorials with marginal notes and index—Printing and distribution—Duty of state printer.

SEC. 18. The secretary of state shall furnish to the superintendent of state printing, as soon as may be, and within three days from the time he receives the same from the governor, after approval, a copy of all acts, joint and concurrent resolutions and memorials, with marginal notes to the same, passed at such session, and the superintendent of state printing shall, within ten days thereafter, print the number of copies as herein provided, and furnish printed sheets thereof to the secretary of state, who shall, immediately upon the close of such session, make out and deliver to the superintendent

of state printing an index of the same, and the superintendent of state printing shall, immediately upon the close of such session, print the said index and bind it in connection with the laws. The superintendent of state printing shall also furnish to each member of the senate and assembly, for distribution among their constituents, fifteen copies of the printed sheets of each act as printed, or if more than one act is printed at one time, then copies of the printed sheets of such series of acts. He shall also distribute one copy of said act or acts to each county clerk, county auditor, district judge, district attorney, and justice of the peace in the state. *As amended, Stats. 1889, 80; 1891, 16; 1895, 50.*

#### 4338. *Idem*—Journals of senate and assembly.

SEC. 19. The secretary of state shall, within sixty days after the adjournment of each session of the legislature, furnish to the superintendent of state printing full copies of the journals of both houses. The superintendent of state printing shall, within sixty days thereafter, print the same and deliver proof sheets for correction to the secretary of state, and whenever corrected proof will complete a form, shall deliver the same in form to the secretary of state for indexing, who shall, within ten days thereafter, make out and deliver to the superintendent of state printing an index to each journal; and the superintendent of state printing shall, within thirty days thereafter, print and deliver to the secretary of state such number of copies of the journals aforesaid, bound in volumes, with the appropriate index thereto, as herein provided.

#### 4339. Style of public printing—Quality of paper.

SEC. 20. The printing to be performed under this act shall be as follows, to wit: The laws, journals, messages and other documents, in book form, shall be printed solid, in type not smaller than long primer, on good white paper, each page, except the laws, shall not be more than thirty-three "ems" width, and not more than fifty-eight "ems" long, including title, blank line under it and foot line; the laws to be of the same length as the journals, and not more than twenty-nine "ems" wide, exclusive of marginal notes, which notes shall be printed in nonpareil type, and be seven "ems" wide. Figure work, and rule and figure work in messages, reports, and other documents in book form, shall be on pages corresponding in size with the journals, providing it can be brought in by using type not smaller than minion, and whenever such work cannot be brought into pages of the proper size by using type not smaller than minion, it shall be executed in a form to fold and bind in the volume it is intended to accompany. Bills, and other work of a similar character, shall be printed with type not smaller than long primer, on white plain cap paper, commencing the heading one-fourth of the length of the sheet from top, and when said printing does not occupy more than two pages of said sheet, or less, the same shall be printed upon half sheets, and be not more than forty-six "ems" wide, and not more than seventy-three "ems" long, including running head, blank line under it, and foot line, and between each printed line there shall be a white line corresponding with two lines of nonpareil, and each line printed shall be numbered. Blanks shall be printed in such form and on such paper and with such size type as the officers ordering them may direct. The laws shall be printed without chapter headings and with no blank lines, with the exception of one head line, one foot line, and two lines between the last section of an act and the title of another act; *provided*, that when there shall not be space enough between the last section of an act to print the title and enacting clause and one line of the following act upon the same page, such title may be printed on the following page. The journals shall be printed with no

blank lines, with the exception of head line, one foot line, and ten lines between the journal of one day and that of the following day. In printing the "yeas" and "nays," the word "yeas" shall be run in with the names, and the word "nays" shall be run in with the names.

Character of printing of legislative bills, see secs. 4120-4124.

#### 4340. Binding, when—Printing commissioners to make contracts—Cost.

SEC. 21. The work of binding the statutes, journals, messages, reports, and all other printed matter printed by the superintendent of state printing which should properly be bound, shall be under his supervision and direction; and when he has not the facilities for performing the work of binding himself, the board of state printing commissioners may make contracts for such binding, at rates not to exceed fifty cents per copy for binding the session laws; forty-five cents per copy for the journals of the senate and assembly, and sixty cents per copy for the appendix.

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

For general powers and duties of superintendent of public instruction, see Public Schools, sections 3243-3246; see, also, State Constitution, sections 315, 353.

Duty to visit university and make report, section 4649.

Duties in relation to deaf, dumb and blind, sections 1702-1704.

Director of state orphans' home, section 4089.

#### *An Act to authorize the superintendent of public instruction of Nevada to employ a stenographic clerk and fixing of compensation.*

Approved March 7, 1905, 211

#### 4341. May employ stenographer.

SECTION 1. The state superintendent of public instruction of Nevada is hereby authorized to employ a stenographic clerk, whose compensation shall be seventy-five dollars per month.

Compensation increased, see sec. 4398.

#### 4342. Compensation, how paid.

SEC. 2. The controller of state shall, at the end of each month, draw his warrant upon the state treasury in favor of such clerk for the amount of his compensation then due, and the state treasurer shall pay the same out of any moneys in the state treasury not otherwise specially appropriated.

#### *An Act fixing the salary of the superintendent of public instruction.*

Approved March 15, 1897, 86

#### 4343. Salary of superintendent of public instruction—Payable out of school fund—No additional compensation for ex officio duties.

SECTION 1. From and after the first Tuesday after the first Monday in January, eighteen hundred and ninety-nine, the salary of the superintendent of public instruction shall be two thousand dollars (\$2,000) per annum, payable out of the general school fund; and he shall receive no additional compensation for any ex officio duties that are now, or may hereafter be required of him by law.

An appropriation of money for payment of salary of the superintendent of public instruction out of the general school fund is not in violation of Const., sec. 355, ante; there being no restriction on the disposition

of that portion of the fund derived from taxation as provided in Const., sec. 358, ante, and the superintendent being immediately connected with the common schools. State ex rel. Cutting v. Westerfield, 24 Nev. 29 (49 P. 554).

*An Act to abolish the office of state mineralogist, and provide for the care and preservation of the state museum.*

Approved February 1, 1877, 59

**4344. Office of state mineralogist abolished.**

**SECTION 1.** The office of state mineralogist of the State of Nevada is hereby abolished.

**4345. Superintendent of public instruction shall be curator of museum.**

**SEC. 2.** On and after the first day of January, A. D. one thousand eight hundred and seventy-nine, the superintendent of public instruction shall be ex officio curator of the state museum of mineralogical, geological, and other specimens.

**4346. Idem—Duties of curator—Report—Mineral resources—Specimens.**

**SEC. 3.** The curator, when visiting the several school districts in this state, in his capacity as superintendent of public instruction, as is required by law, shall make inquiry, so far as practicable, into the resources of the mines situated in the respective districts, and inspect the same; collect specimens of ores, ascertain their value, catalogue, and place them in the state museum, and prepare for publication in the appendix of his biennial report as superintendent of public instruction, a report as curator of the state museum in detail of his acts performed and information obtained under the provisions of this act.

[Sec. 4 repealed, Stats. 1895, 76, and sec. 5 is thus rendered nugatory.]

See sec. 4201.

**SURVEYOR-GENERAL**

How chosen, term of, eligibility, section 312.

Perform other duties prescribed by law, section 315.

Member state board of irrigation, section 4706.

*An Act concerning the office of surveyor-general.*

Approved March 20, 1865, 411

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| <p>4347. Power to appoint deputies—Oath—Surveys by, valid.</p> <p>4348. May be required to survey state boundaries.</p> <p>4349. To make map of the state—To run boundary line between counties—Commissioners may require survey.</p> <p>4350. To preserve and deliver books and property to successor.</p> | <p>4351. Chief engineer and commissioner of internal improvements—Report to governor—What to contain.</p> <p>4352. To obtain quarterly reports from county surveyors and assessors—Failure to comply, commissioners not to allow compensation.</p> <p>4353. Duty of railroad and toll-road companies—To file maps.</p> <p>4354. Other duties may be prescribed—Expenses.</p> |
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**4347. Power to appoint deputies—Oath—Surveys by, valid.**

**SECTION 1.** The surveyor-general shall have power to appoint a deputy or deputies when necessary, who shall take and subscribe the official oath; and the survey of any deputy shall be equally valid as if made by the surveyor-general.

See secs. 312, 2765, 2774.

Member of bureau of industry, agriculture and irrigation, secs. 4486-4494.

Ex officio state land register, sec. 3196.

State land office, has charge of, secs. 3196-3226.

Register of Carey act lands, sec. 3089.

State Carey act land law, secs. 3064-3097.

See Public Lands, secs. 3063-3226.

Director of state orphans' home, sec. 4089.

**4348. May be required to survey state boundary.**

SEC. 2. When required by law, the surveyor-general shall make an accurate and complete survey, by astronomical observations and linear surveys, of the boundaries of the state, as declared by the constitution, or as may hereafter be determined by the Congress of the United States, or the people of this state.

**4349. To make map of the state—To run boundary line between counties—Commissioners may require survey.**

SEC. 3. When required by law, he shall make an accurate map of the state, and shall survey, and when necessary, designate by plain, visible marks or monuments, and shall describe on the map of the state the boundary lines of the several counties and incorporated cities and towns in the state; and when a boundary line of the state, or of any county, intersects with, or passes in the immediate vicinity of any lake, stream, range of hills or mountains, or other conspicuous object on the surface of the earth, he shall, by the proper observation, determine the place of such intersection, or the distance and bearing from said boundary line of such point of such object as may be nearest to said boundary line, and will best serve as a distinguishing landmark. He shall also determine and describe on the map of the state the length and course of every important stream and lake, and of every important range of hills or mountains, and the greatest elevation or highest peak thereof, within the limits of any county; when called upon by the county commissioners of any county, he shall run any boundary line, or portion of a line, between such county and an adjoining county.

**4350. To preserve and deliver books and property to successor.**

SEC. 4. The surveyor-general shall preserve in his office, and deliver to his successor, all books, maps, plans, drawings, levels, surveys, and field notes, in any way pertaining to his official duties, and shall deliver as aforesaid all instruments and other things belonging to his office.

**4351. Chief engineer and commissioner of internal improvements—Report to governor—What to contain.**

SEC. 5. The surveyor-general shall be chief engineer and commissioner of internal improvements. He shall deliver to the governor annually, on or before the fifteenth day of December, his report, which shall contain: First—An accurate statement of the progress he may have made in the execution of the surveys enjoined on him by law, and in the preparation of the map of the state. Second—Plans and suggestions for the construction and improvement of roads, turnpikes, railroads, canals, and aqueducts; also, plans and suggestions for the preservation and increase of forest and timber trees, for the draining of marshes, prevention of overflows, and the irrigation of arable lands by means of reservoirs, canals, artesian wells, or otherwise. Third—An estimate of the aggregate quantity of land belonging to the state, and the best information he may be able to obtain as to the characteristics of the same. Fourth—An estimate of the aggregate quality of all lands used for or adapted to tillage and grazing within this state, and each county of the state, together with a description of the locations in which the same may be situated. Fifth—An estimate of the aggregate number of horses, cattle, sheep, and swine within the state, and each county of the state. Sixth—An estimate of the aggregate quantity of wheat, rye, maize, potatoes, grapes and other agricultural productions of the preceding year. Seventh—An estimate of the aggregate quantity of all mineral lands in the state, and the quantity and value of each mineral produced during the preceding year, together with a description of the localities in which such minerals may be found. Eighth—All facts which may be within his personal knowledge, or which he may

learn from reliable sources, and which may, in his opinion, be calculated to promote the full development of the resources of the state.

See note to sec. 4347.

**4352. To obtain quarterly reports from county surveyors and assessors—  
Failure to comply—Commissioners not to allow compensation.**

**SEC. 6.** He shall address a circular letter to the county surveyors and county assessors, instructing them, and it is hereby made a part of their official duties, to use their utmost diligence in collecting information relative to each and every matter mentioned in section 5 of this act, and to transmit to him quarterly, at the seat of government, a report, in writing, setting forth the result of their inquiries; and it is hereby made the duty of the county commissioners to refuse to audit or pay any bills for services of the county surveyor or county assessor, in case they shall have failed to comply with the requirements of this act. It shall also be the duty of the county surveyors to transmit, when required, to the surveyor-general, a copy of the field notes and plats of official surveys made by them (except surveys of city or town lots), expressing the bearings from the true meridian, and noting the variations of the magnet from the true meridian, and indicating plainly upon the plat at what point of any river, stream, or county line, or any line of the United States surveys, or any road, canal, or railroad, may be touched or crossed; also, indicating the position of any mountain or other prominent landmark within or near the lines of the survey.

See secs. 1584-1591.

**4353. Duty of railroad and toll-road companies to file maps.**

**SEC. 7.** It shall be the duty of all railroad and toll-road companies to file in the office of the surveyor-general complete topographical maps of the roads and the country through which their roads may run.

**4354. Other duties may be prescribed—Expenses.**

**SEC. 8.** He shall perform all such other and further duties as may be prescribed to him by law, and appropriations may be made from time to time for the necessary expenditures of his office.

See note to sec. 4347.

*An Act relative to maps of state and county boundaries.*

Approved February 23, 1887, 76

**4355. Surveyor-general custodian of boundary maps.**

**SECTION 1.** The secretary of state is directed to transfer from his office, to the office of the surveyor-general, all maps of state and county boundaries now in his possession. All such maps shall hereafter be filed in the office of the surveyor-general.

*An Act to provide for paying the cost of printing and stationery  
required in the state land office.*

Approved March 5, 1897, 36

**4356. State printer to keep account with state land office—Statement  
furnished.**

**SECTION 1.** It is hereby made the duty of the state printer to keep an accurate account of the cost of all labor employed and material used in performing work for the state land office and to render an itemized statement of the same to the state land register on the first day of each and every month.

**4357. Idem—Land register to approve statement.**

**SEC. 2.** The state land register shall examine and certify to the correct-

ness of such statement and shall transmit the same to the clerk of the state board of examiners.

**4358. Idem—Duty of board of examiners.**

SEC. 3. The state board of examiners shall treat such statement in the same manner as a claim against the state, and shall approve the same for such sum as they may find correct.

**4359. To transfer such amounts from school to general fund.**

SEC. 4. The state controller and the state treasurer are hereby authorized and directed to transfer the amounts so allowed from the state school fund to the general fund of the state.

The act of 1887, 97, requiring the surveyor-general to make a survey of all railroads in the state, was cited in connection with the following:

The mere existence of a disputed boundary between counties is insufficient to give a court of equity jurisdiction of the question. The fact that the defendant county is claiming jurisdiction over a part of plaintiff's territory, is collecting taxes therein, and claims the right so to do, is insufficient for this purpose. *Humboldt Co. v. Lander Co.*, 22 Nev. 248, 256 (58 A. S. 750, 26 L. R. A. 729, 38 P. 578).

The placing of the monuments by the surveyor-general, as prescribed in said act,

did not change the boundary from the line originally established by the counties jointly, since said act did not authorize the establishing of new county lines, or the changing of county lines already established. *Humboldt Co. v. Lander Co.*, 24 Nev. 461, 471, 473 (56 P. 228).

The fact that for six years after the placing of the monument the county within whose limits the original boundary located the track did not assess it, and acquiesced in its assessment by the other county, did not estop it from claiming the original line as the correct boundary where it continued to assess all other property within the disputed tract. *Idem.*

**TREASURER**

- How chosen, term of, eligibility, section 312.
- Liable to impeachment, section 335.
- To keep office at seat of government, section 380.
- Not to receive fees or perquisites to his own use, section 389.
- Bonds, to give, section 404.
- Perform other duties prescribed by law, section 315.

**TREASURY**

- No money to be drawn from but on appropriation, sections 277, 286.
- Statements of receipts and expenditures to be published, sections 277, 286.
- Money, how drawn from, sections 277, 286.
- Members of legislature to be paid out of, section 286.

*An Act defining the duties of state treasurer.*

Approved February 2, 1866, 57

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| <p>4360. Office at seat of government—Absence limited.</p> <p>4361. Commission and qualification—Bond, conditions—Examiners to approve.</p> <p>4362. Official seal of treasurer—Secretary of state to provide.</p> <p>4363. General duties of state treasurer—Receipt to controller—Office kept open.</p> <p>4364. Annual report to governor—Reports to legislature.</p> | <p>4365. Books to be open to inspection—Report to controller monthly—Forfeiture of office for neglect.</p> <p>4366. Prohibited from unlawfully using moneys.</p> <p>4367. Wilful neglect of duty a misdemeanor in office.</p> <p>4368. Vacancy—Governor to appoint—Election—Qualification and compensation of successor.</p> <p>4369. May administer oaths—Other duties.</p> |
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**4360. Office at seat of government—Absence limited.**

SECTION 1. The treasurer shall keep his office at the seat of government, and not absent himself from the state for more than ninety days at any one time, without leave of absence from the legislature. *As amended, Stats. 1867, 113.*

- See secs. 312, 380, 2765, 2774.
- Member of board of printing commissioners, sec. 4328.
- Member of board of capitol commissioners, sec. 4411.

Member of board of commissioners for care of insane, sec. 2198.

Member of board of directors, orphans' home, sec. 4089.

Duties of, in relation to foreign building and loan associations, secs. 1361, 1362.

May employ deputy, sec. 4374; clerk, sec. 4196.

#### 4361. Commission and qualification—Bond, conditions of—Examiners to approve.

SEC. 2. He shall be commissioned by the governor; but before such commission shall issue, and before entering upon the duties of his office, he shall take the oath of office prescribed by law, to be indorsed upon his commission, and shall execute and deliver to the governor a bond, payable to the state, in the sum of one hundred thousand dollars, with sureties, to be approved by the board of examiners, conditioned for the faithful performance of all the duties which may be required of him by law, and for the delivery to his successor in office of all books, papers, moneys, vouchers, sureties, evidences of debt, and effects belonging to this said office.

Liability on sureties of bond of de facto officer. Surrender of first term by officer reelected. Liability of sureties of de facto officers, recitals in official bonds. Estoppel. Official bond for sum greater than required. See *State v. Rhoades*, 6 Nev. 352 and citations from same case under sec. 2786, ante.

State treasurer's bond. Money received during former term. Presumptions. Liability of the treasurer's sureties for "special deposits." Qualified property of state in "special deposits," in state treasury. Action against state treasurer's sureties for "special deposits." *State v. Rhoades*, 7 Nev. 434.

#### 4362. Official seal of treasurer—Secretary of state to provide.

SEC. 3. The secretary of state shall procure and deliver to the treasurer a seal of office, with some suitable device, and having engraved around the margin thereof the words, "Office of the Treasurer—Nevada"; a description of which seal shall be retained in the office of the secretary of state as a record. Said seal shall be used to authenticate all writings, papers, and documents certified from such office. Until such seal is procured, the treasurer is authorized to use his own private seal.

#### 4363. General duties of state treasurer—Receipt to controller—Office kept open.

SEC. 4. He shall receive and keep all moneys of the state not expressly required by law to be received and kept by some other person; shall receipt to the controller for all moneys received, from whatever source, and at the time of receiving the same; shall disburse the public moneys upon warrants drawn upon the treasury by the controller of state, and not otherwise. Such warrants shall be registered, and paid in the order of their registry. He shall keep a just, true and comprehensive account of all moneys received and disbursed, and shall deliver to his successor in office all moneys, records, books and papers and other things belonging to his office in good order; and keep his office open, for the transaction of business, every day of the year, Sundays and other nonjudicial days excepted. *As amended, Stats. 1897, 24.*

See notes to sec. 4360.

Custodian of state school funds, sec. 3383.

Controller to certify amounts of receipts to, secs. 4157, 4173, 4174.

Fire insurance fund to keep, secs. 1360, 4180.

Disposition of old unpaid warrants, secs. 4183–4185.

See *State v. Rhoades*, under sec. 2 of this act.

Cited, *State v. Pray*, 30 Nev. 206, 219 (94 P. 218).

#### 4364. Annual report to governor—Reports to legislature.

SEC. 5. He shall deliver to the governor, on the first day of January, or within ten days thereafter, annually, a full exhibit of all moneys received by him into and paid out of the treasury, showing, under separate and appropriate heads, on what account and from what sources received, and for what particular object or service the same has been paid out by him; and shall give information, in writing, to either house of the legislature, whenever

required, upon any subject connected with the treasury or any duty of his office.

**4365. Books to be open to inspection—Report to controller monthly—Forfeiture of office for neglect.**

SEC. 6. The books, papers, and transactions of his office shall be open at all times for the inspection of the governor, controller, board of examiners, of either house of the legislature, or of any committee thereof, or person authorized by law. He shall report to the controller of state, on or before the tenth of each month, the complete operations of the treasury for the preceding month, specifying the amount received and from what sources; the amounts expended in the redemption of bonds, warrants, coupons for interest, etc., and the balance of cash on hand in the treasury to the credit of the various funds. For any failure (except it be unavoidable) to comply with the provisions of this section, the treasurer shall forfeit his office, and it shall be the duty of the governor to declare the same vacant, and appoint a successor. *As amended, Stats. 1873, 175.*

See State v. Rhoades, under sec. 2 of this act.

The books of the treasurer's office are competent as evidence without proof that

they were made by or with the knowledge of the treasurer personally, such books being official and coming under the head of public records. State v. Rhoades, 6 Nev. 353.

**4366. Prohibited from unlawfully using moneys.**

SEC. 7. The treasurer is hereby made responsible, upon his official bond, for all moneys received by him belonging to the state, and is hereby prohibited from using or loaning or borrowing the same, for any purpose whatever, except as provided by law.

See sec. 277.

**4367. Wilful neglect of duty a misdemeanor in office.**

SEC. 8. If the treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is authorized by law, he shall be deemed guilty of misdemeanor in office.

**4368. Vacancy—Governor to appoint—Election—Qualification and compensation of successor.**

SEC. 9. In case of the death, impeachment, absence, or disability of the treasurer, the governor shall make an appointment of some suitable person to perform the duties of the office until a successor shall be elected and qualified, or until such absence or disability shall cease; and such person shall take the oath of office and execute the bond required of the treasurer, and shall receive the same compensation as is allowed by law to the treasurer, in proportion to the time he shall be engaged in such service.

**4369. May administer oaths—Other duties.**

SEC. 10. The treasurer shall have power to administer all oaths or affirmations required or allowed by law, in matters touching the duties of his office, and shall perform all duties, not enumerated in this act, which may be enjoined by law.

[Sec. 11 (salary) superseded, sec. 4394.]

*An Act supplementary to an act entitled "An act defining the duties of the state treasurer," approved February second, eighteen hundred and sixty-six.*

Approved March 1, 1869, 101

**4370. Treasurer's duty in paying warrants—When funds exhausted—Notice given when funds available—Interest.**

SECTION 1. The state treasurer shall pay all warrants drawn upon him

by the state controller, out of the proper fund, as directed, in the order in which the same are presented. If there be no money to pay any warrant when presented, the state treasurer shall indorse thereon the words "not paid for want of funds," and shall note the date of presentation, and attest the indorsement made by his official signature. He shall at the same time make an entry of the date of presentation, number, and amount of the warrant in the register required by law to be kept by him. So soon as money accumulates or is received into the state treasury, applicable to and sufficient for the payment of any outstanding warrant or warrants so presented for payment and not paid for want of funds, the state treasurer shall post a notice in writing in a conspicuous place in his office, setting forth the number and amount of his warrant or warrants, and the fact that there is money in the state treasury to pay the same. From the time of the posting of such notice no interest shall be allowed or paid upon any warrant which by law is or may be entitled to bear interest.

See secs. 277, 4159, 4175.

May refuse to redeem certain warrants, sec. 2845.

#### 4371. *Idem*—Liability to damages on failure to pay when money in treasury—Interest and costs.

SEC. 2. Any failure, neglect, or refusal on the part of the state treasurer to pay any warrant when presented, there being money in the state treasury to pay the same, or to post the notice within five days, as required in this act, after there shall have been received into the state treasury money applicable and sufficient to pay any warrant or warrants presented and not paid for want of funds, or after having received the money and posted the notice as aforesaid on presentation for payment, to pay the warrants so posted, shall subject him to damages to the person or persons aggrieved to an amount equal to treble interest on the sum specified in the warrant or warrants not paid on presentation, as provided in this section, such interest being computed at the rate of three per cent per month during the time such warrant or warrants remain unpaid, and in any suit brought to recover the same, judgment shall be rendered to cover the damages at the time of the entry thereof and for costs.

See sec. 2845.

#### 4372. Public moneys, bonds and securities, how kept—Treasurer not to use same—How paid out.

SEC. 3. The state treasurer shall securely keep in the safe and vault provided for him for that purpose, in his office at the seat of government, all the public moneys, bonds, and securities of the state appertaining to his office, and shall not deposit any part or portion of the same with any individual, copartnership, or corporation; nor shall he use said money, or any part thereof, or allow any one else to do so, except in the payment of bonds, or coupons, or warrants properly drawn upon him by the state controller. *As amended, Stats. 1869, 139; 1873, 171.*

*An Act to prevent persons having a claim or claims against the state from presenting the same claim or claims a second time.*

Approved March 2, 1877. 132

#### 4373. Certain claims not to be paid until release given—Record kept.

SECTION 1. Any person or persons having a claim or claims against the state after the same shall have been presented and allowed, shall, before the same are paid by the treasurer of the state, execute, under seal, a full and complete release of all claims and demands of whatever nature or kind against the state, since the organization of the state to the date of such pay-

ment; and the treasurer of state shall carefully preserve and file alphabetically in his office for future reference all such releases so executed.

*An Act to amend an act entitled "An act to authorize the state treasurer to employ a clerk, and fixing his compensation," approved March ninth, eighteen hundred and sixty-five.*

Approved March 1, 1866, 184

#### 4374. Deputy treasurer.

SECTION 1. The state treasurer is hereby authorized to employ a deputy, whose compensation shall be two hundred and fifty dollars per month. As amended, *Stats. 1873, 59.*

For compensation of deputy treasurer, see sec. 4397.

Repealing by implication, *Stats. 1864-5, 326, sec. 1, and 1866, 184.*

May employ clerk, sec. 4196.

#### 4375. Idem—Compensation, how paid.

SEC. 2. The controller of state shall, at the end of each month, draw his warrant upon the state treasury in favor of such deputy for the amount of his compensation then due, and the state treasurer shall pay the same out of any moneys in the state treasury not otherwise specially appropriated. As amended, *Stats. 1873, 59.*

### STATE VETERINARIAN

*An Act providing for the appointment of a state veterinarian, defining his duties and fixing his compensation. Governor to appoint.*

Approved March 15, 1905, 234

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| 4376. State veterinarian—Appointed by governor—Term—Qualifications.  | 4383. Violation of act a misdemeanor, punishment.   |
| 4377. Duties of veterinarian—Governor may prescribe additional.  | 4384. Sheriff's compensation—District court to allow.   |
| 4378. Three freeholders can demand veterinarian.   | 4385. Veterinarian to report to governor—What report shall contain—Account to render—How audited. |
| 4379. Certain county officers may require services—Duties of veterinarian—To cooperate with U. S. bureau of animal industry. | 4386. State veterinarian to publish information.  |
| 4380. Diseased stock to be examined and quarantined—Sheriff and other officers to aid.                                       | 4387. Salary of state veterinarian.   |
| 4381. Disposition of carcasses.  | 4388. Salary and expenses, how audited and paid.  |
| 4382. Stock from affected districts outside of this state inspected—Veterinarian's fees and expenses—Certificate of health.  | 4389. State veterinarian to report to legislature.  |

#### 4376. State veterinarian—Governor to appoint—Term—Qualifications.

SECTION 1. The governor of the State of Nevada is hereby authorized and empowered to appoint a state veterinarian to aid and assist in developing and protecting the live-stock industry of the State of Nevada. Said veterinarian shall be a graduate of some reputable veterinary school, a man of recognized skill and ability and shall hold his position at the will and pleasure of the governor as herein provided.

#### 4377. Duties of veterinarian—Governor may prescribe additional.

SEC. 2. Said state veterinarian shall devote his time to the investigation of the nature, causes of and remedies for diseases of horses, mules, cattle, swine, sheep, and all other domestic animals; and to such other duties as the governor may prescribe.

#### 4378. Three freeholders can demand veterinarian.

SEC. 3. It shall be lawful for any three freeholders and residents of this

state to go before a justice of the peace, the district attorney or the board of county commissioners and demand the presence and services of the said state veterinarian to investigate an outbreak of any contagious or infectious disease amongst any of the domestic animals.

**4379. Certain county officers may require services—Duty of veterinarian to cooperate with United States bureau of animal industry.**

SEC. 4. It shall be the duty of the justice of the peace, district attorney or the board of county commissioners to notify said veterinarian at once at his office by letter or telegram. It shall be the duty of said state veterinarian to go to the locality named and give such aid and instructions as he may think best for the prevention or cure of the diseases with which he shall find live stock infected. It shall also be the duty of said state veterinarian, to cooperate with the officers of the bureau of animal industry, United States department of agriculture, in the control of infectious or contagious diseases.

See act providing for board of sheep commissioners, secs. 4586-4602.

For provisions of United States bureau of animal industry act, see end of this act, following section 4389.

**4380. Diseased stock to be examined and quarantined—Sheriff and other officers to aid.**

SEC. 5. If, upon investigation, said state veterinarian shall be satisfied that said live stock is infected with what is known as pleuro-pneumonia, tuberculosis, glanders, anthrax, hog cholera, swine plague, foot and mouth disease, or any other contagious or infectious disease against which he may think best to quarantine, he shall have authority to call upon the sheriff or other officer of the law in said county in which the said diseased stock may be found, setting forth in writing the number of stock infected and the character of the disease, the said sheriff or other officer to enforce such regulations as the state veterinarian shall deem necessary to control or subdue said outbreak of infectious disease.

**4381. Disposition of carcasses.**

SEC. 6. Carcasses of every description must be burned immediately or else buried at least three feet beneath the level of the ground and it shall be unlawful to leave them exposed to decay.

**4382. Stock from affected districts outside of this state inspected—Veterinarian's fees and expenses—Certificate of health.**

SEC. 7. No stock from infected districts in other states or territories will be allowed to cross the state lines and enter Nevada until they have first been inspected at the owner's expense. But said state veterinarian shall have the authority to recognize certificate of inspection issued by the inspectors of the United States department, bureau of animal industry, indicating that said stock are free from any contagious or infectious diseases. The veterinarian's fee shall be ten dollars per day and necessary traveling expenses. This shall be applied to the general fund of the State of Nevada. The veterinarian shall be notified by letter or telegram; he shall go at once to such place as he may designate and inspect said stock; if found healthy, he shall give a certificate of health to those in charge of said stock on the payment of veterinarian's fees and necessary traveling expenses.

See United States bureau of animal industry act, following sec. 4389.

**4383. Violation of act a misdemeanor—Punishment.**

SEC. 8. Any person or persons, company or corporation who shall violate any provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than one hundred dollars or more than one thousand dollars or by imprisonment in the county jail

for not less than two months or more than one year or by both such fine and imprisonment for each offense.

**4384. Sheriff's compensation, district court to allow.**

SEC. 9. The sheriff or other officer of the law, shall receive for his services under this act such compensation as is now provided by law for similar labor, which shall be allowed by the district court of the district, and paid out of the county treasury of the county in which such diseased stock shall be found, as other claims are paid.

**4385. Veterinarian to report to governor—What report shall contain—Account to render—How audited.**

SEC. 10. Said state veterinarian shall report to the governor in writing at least once in every month setting forth the locality or localities visited as provided in the preceding sections, the kind of stock inspected, the time taken to inspect them, the number admitted to cross the line into Nevada, the number permitted to leave infected districts and to whom certificates of health for stock were given, the amount of fee received for inspecting said stock and for issuing certificates, also the kind of stock treated, the type and character of the disease, the remedies prescribed and the results as far as known. He shall also render an account for the number of miles traveled and the actual sum of money paid out therefor; and, if found correct, this account shall be audited and allowed by the state controller as is now provided by law.

**4386. State veterinarian to publish information.**

SEC. 11. The state veterinarian shall from time to time select from such report and publish such information as he may think valuable to the people of Nevada. This information may be published in connection with the report relating to agriculture or in a separate bulletin.

**4387. Salary of state veterinarian.**

SEC. 12. The state veterinarian herein provided for shall receive a salary not to exceed eighteen hundred dollars per annum and necessary traveling expenses payable out of the general fund of the State of Nevada, as other claims are paid.

**4388. Salary and expenses, how audited and paid.**

SEC. 13. The state controller is hereby authorized, empowered and required to draw his warrant in favor of the state veterinarian created by this act, for the salary and traveling expenses provided for in this act, when approved by the board of examiners; and the state treasurer is hereby authorized, empowered and directed to pay the same.

**4389. State veterinarian to report to legislature.**

SEC. 14. It shall be the duty of the said state veterinarian to make a report to the state legislature, within ten days of the date of the meeting thereof, of such data and useful knowledge together with such suggestions as may be beneficial to the stock interests of the State of Nevada.

On account of the fact that the provisions of the foregoing act creating a state veterinarian and the provisions of the act creating a state board of sheep commissioners (secs. 4586-4602) are so closely identified with the act of Congress of May 29, 1884, establishing a bureau of animal industry (23 Stat. L. 32-33, U. S. Stats. 1883-4, p. 31), the compilers have deemed it advisable to publish so much of the latter act as is of local importance, to follow the act creating a state veterinarian.

**4390.** *An Act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals.*

**Section 1—Bureau of animal industry—Appointment of a chief—Duties.** That the commissioner of agriculture shall organize in his department a bureau of animal industry, and shall appoint a chief thereof, who shall be a competent veterinary surgeon, and whose duty it shall be to investigate and report upon the condition of the domestic animals of the United States, their protection and use, and also inquire into and report the causes of contagious, infectious, and communicable diseases among them, and the means for the prevention and cure of the same, and to collect such information on these subjects as shall be valuable to the agricultural and commercial interests of the country; and the commissioner of agriculture is hereby authorized to employ a force sufficient for this purpose, not to exceed twenty persons at any one time. \* \* \*

**Sec. 2—Agents—Duties.** That the commissioner of agriculture is authorized to appoint two competent agents, who shall be practical stock-raisers or experienced business men familiar with questions pertaining to commercial transactions in live stock, whose duty it shall be, under the instructions of the commissioner of agriculture, to examine and report upon the best methods of treating, transporting, and caring for animals, and the means to be adopted for the suppression and extirpation of contagious pleuro-pneumonia, and to provide against the spread of other dangerous, contagious, infectious, and communicable diseases. \* \* \*

**Sec. 3—Rules and regulations—Cooperation of states and territories, etc.** That it shall be the duty of the commissioner of agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases, and to certify such rules and regulations to the executive authority of each state and territory, and invite said authorities to cooperate in the execution and enforcement of this act. Whenever the plans and methods of the commissioner of agriculture shall be accepted by any state or territory in which pleuro-pneumonia or other contagious, infectious, or communicable disease is declared to exist, or such state or territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the commissioner of agriculture, and whenever the governor of a state or other properly constituted authorities signify their readiness to cooperate for the extinction of any contagious, infectious, or communicable disease in conformity with the provisions of this act, the commissioner of agriculture is hereby authorized to expend so much of the money appropriated by this act as may be necessary in such investigations, and in such disinfection and quarantine measures as may be necessary to prevent the spread of disease from one state or territory into another.

**Sec. 4—Commissioner of agriculture to make special investigation as to pleuro-pneumonia, etc.** That in order to promote the exportation of live stock from the United States the commissioner of agriculture shall make special investigation as to the existence of pleuro-pneumonia, or any contagious, infectious, or communicable disease, along the dividing lines between the United States and foreign countries, and along the lines of transportation from all parts of the United States to ports from which live stock are exported, and make report of the results of such investigation to the secretary of the treasury, who shall, from time to time, establish such regulations concerning the exportation and transportation of live stock as the results of said investigations may require.

**Sec. 5—Measures to prevent exportation of diseased live stock authorized.** That to prevent the exportation from any port of the United States to any port in a foreign country of live stock affected with any contagious, infectious, or communicable disease, and especially pleuro-pneumonia, the secretary of the treasury be, and he is hereby, authorized to take such steps and adopt such measures not inconsistent with the provisions of this act, as he may deem necessary.

**Sec. 6—Transportation of diseased live stock prohibited—Proviso—Splenic or Texas fever not a contagious disease.** That no railroad company within the United States, or the owners or masters of any steam or sailing or other vessel or boat, shall receive for transportation or transport, from one state or territory to another, or from any state into the District of Columbia, or from the district into any state, any live stock affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia; nor shall any person, company, or corporation deliver for such transportation to any railroad company, or master or owner of any boat or vessel, any live stock, knowing them to be affected with any contagious, infectious, or communicable disease; nor shall any person, company, or corporation drive on foot or transport in private conveyance from one state or territory to another, or from any state into the District of Columbia, or from the district into any state, any live stock, knowing them to be affected with any contagious, infectious, or communicable disease and especially the disease known as pleuro-pneumonia; provided, the so-called splenic or Texas fever shall not be considered a contagious, infectious, or communicable disease within the meaning of sections 4, 5, 6, and

7 of this act, as to cattle being transported by rail to market for slaughter, when the same are unloaded to be fed and watered in lots on the way thereto.

**Sec. 7—Notice to agents of railroads—Penalty.** That it shall be the duty of the commissioner of agriculture to notify, in writing, the proper officials or agents of any railroad, steamboat, or other transportation company doing business in or through any infected locality, and by publication in such newspapers as he may select, of the existence of said contagion; and any person or persons operating any such railroad, or master or owner of any boat or vessel or owner or custodian of, or person having control over such cattle or other live stock within such infected district, who shall knowingly violate the provisions of section 6 of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

[Sec. 8 refers to District of Columbia.]

**Sec. 9—District attorneys to prosecute.** That it shall be the duty of the several United States district attorneys to prosecute all violations of this act which shall be brought to their notice or knowledge by any person making the complaint under oath; and the same shall be heard before any district or circuit court of the United State(s) or territorial court holden within the district in which the violation of this act has been committed.

[Remaining sections are of no local importance and are therefore omitted.]

### SALARIES

Salaries of state officers not included in sections under this heading or in notes thereto:

Attorney-general, section 4138.

Auditor, section 4149.

Bank examiner, section 665.

Commissioner of industry, agriculture and irrigation, section 4491.

District school superintendents, section 3251.

District judges, section 4902.

Inspector of mines, section 4199; deputy, section 4206.

Justices supreme court, section 4893.

License and bullion tax agent, section 4240.

Lieutenant-governor, section 4250.

Mineral land commissioner, section 4145.

Official court reporter, section 4889; stenographers, section 4891.

Principal Virginia school of mines, section 4671.

Railroad commissioners and secretary, section 4549.

State police, section 4284.

Superintendent hospital for mental diseases, section 2203.

Superintendent and matron orphans' home, section 4105.

Superintendent of public instruction, section 4343.

Superintendent of state printing, section 4305.

Veterinarian, section 4388.

Warden of state prison, section 7592.

### *An Act reducing and regulating the salaries and compensation of certain state officers and attaches of the state government of Nevada.*

Approved February 21, 1881, 43

[Section 1, superseded by sec. 4393.]

[Sec. 2, superseded by sec. 4250.]

Cited, State ex rel. Cutting v. Westerfield, 24 Nev. 33, 36 (49 P. 554); State ex rel. Davis v. Eggers, 29 Nev. 476 (16 L. R. A. (N. S.) 630, 91 P. 819); State ex rel. Drury v. Hallock, 19 Nev. 386, 387, 388 (12 P. 832); same, 19 Nev. 373 (12 P. 832); State ex rel. Sadler v. La Grave, 23 Nev. 224 (35 L. R. A. 233, 45 P. 243).

### 4391. Salary of clerk of supreme court.

**SEC. 3.** On and after the first day of January, eighteen hundred and eighty-three, \* \* \* the clerk of the supreme court shall receive a salary of twenty-four hundred dollars per annum; \* \* \*

It was attempted to amend the above section by Stats. 1885, 99, but which act was declared unconstitutional in State ex rel. Drury v. Hallock, 19 Nev. 384.

See sec. 2950.

Salary of deputy, sec. 4900.

Cited, State ex rel. Howell v. La Grave, 23 Nev. 380 (48 P. 674).

[Sec. 4 superseded.]

### 4392. Governor's secretary and deputy officials to perform certain duties without additional compensation.

**SEC. 5.** Whenever the governor's private secretary, or any deputy or clerk

in any state office is appointed as clerk or secretary of any state board or commission, whether by such board or commission or the legislature, he shall serve as such clerk or secretary without any compensation, unless such compensation is specifically fixed by law.

Cited, State ex rel. Drury v. Hallock, 19 Nev. 385 (12 P. 832).

[Sec. 6 superseded.]

#### 4393. Salary and mileage of senators and assemblymen—Allowance for stationery and newspapers.

SEC. 7. To state senators and members of the assembly, ten dollars per day for each day of service; *provided*, the total amount so paid shall not exceed the sum of six hundred dollars at any regular session, and fifteen cents per mile for each mile actually traveled in going to and returning from the place of meeting, which said mileage shall, however, be computed, in all cases, upon the shortest practical routes to the said place of meeting; *provided*, that each member may be allowed not exceeding twenty dollars for the purchase of newspapers and stationery during the session. *As amended, Stats. 1907, 429.*

The balance of this act has been superseded by various salary acts.

Salaries of officers and attaches, sec. 4116.

Cited, State ex rel. Drury v. Hallock, 19 Nev. 385, 386 (12 P. 832).

#### *An Act reducing and regulating the salaries of certain state officers of the State of Nevada.*

Approved March 21, 1891, 104

#### 4394. Salary of governor, secretary of state, controller, treasurer, attorney-general and surveyor-general—School fund.

SECTION 1. From and after the first day of January, A. D. eighteen hundred and ninety-five, the following annual salaries shall be paid to the various state officers of this state, at the time and in the manner prescribed by law: To the governor, four thousand dollars; to the secretary of state, twenty-four hundred dollars; to the state controller, twenty-four hundred dollars; to the state treasurer, twenty-four hundred dollars; to the attorney-general, two thousand dollars; to the surveyor-general and ex officio land register, twenty-four hundred dollars, payable out of the state school fund. \* \* \*

The portion omitted is superseded, sec. 4343.

[Sec. 2 superseded by sec. 4250.]

By Stats. 1893, 32, that portion of this act making the superintendent of public instruction ex officio librarian and clerk was repealed and these positions were attached to the office of secretary of state, but nothing was said in regard to superintendent's salary as curator and secretary. It was held that the superintendent was not entitled to receive any of the compensation attaching in solido to the four ex officio offices. State ex rel. Cutting v. La Grave, 23 Nev. 120, 123-126 (43 P. 470).

Cited, Sadler v. State, 23 Nev. 141 (43 P. 915).

The lieutenant-governor, upon the death of the governor, becomes acting governor, and entitled to receive the salary attached to that office. State ex rel. Sadler v. La Grave, 23 Nev. 216, 222-225 (35 L. R. A. 233, 45 P. 243).

Sections 2 and 3 of Stats. 1883, 78, providing that the clerk of the supreme court shall prepare the decisions of the court for

publication and shall receive for his compensation as reporter of such decisions \$600 a year, was not repealed, in so far as it provides compensation for the clerk's services as reporter by this statute and Stats. 1893, 32, providing that the secretary of state shall be ex officio clerk of the supreme court. State ex rel. Howell v. La Grave, 23 Nev. 373, 378-381 (48 P. 674).

Petitioner's term of office as secretary of state and ex officio clerk of the supreme court began January, 1895, hence this act and the act of 1883, 78, and the act of 1893, 32, were all passed prior to the term for which he was elected. Therefore, Const., sec. 377, ante, is not applicable to such state of facts. Idem.

The office of secretary of state, of ex officio clerk of the supreme court, and of reporter of decisions of the supreme court, are separate and distinct offices, and their being vested in the same person does not change their nature in this respect. Idem.

Petitioner's several offices being distinct, the annual compensation allowed him as reporter of supreme court decisions is not a fee or perquisite within the provisions of Const., sec. 389. *Idem*.

The office of clerk of the supreme court was not abolished by its omission from the amendment of 1889 to Const., sec. 290, and the failure of the legislature to reestablish

it, but continued as a constitutional office under the provision made pursuant to the original constitution; and hence Stats. 1883, 32, providing that the secretary of state should be *ex officio* clerk of the supreme court, was effective. *Idem*.

Cited, State *ex rel.* Davis v. Eggers, 29 Nev. 476, 16 L. R. A. (N. S.) 630, 91 P. 819.

*An Act fixing the salaries of certain deputies in state offices.*

Approved March 23, 1909, 194

**4395. Salary of deputy secretary of state—Proviso.**

SECTION 1. From and after the passage of this act the salary of the deputy secretary of state shall be two thousand four hundred dollars per annum, payable out of the general fund; *provided*, that the said deputy secretary of state shall not receive any additional compensation for services as clerk of the board of prison commissioners, clerk of the board of examiners, or as clerk or deputy of any other board or commission.

See sec. 4392.

**4396. Salary of deputy attorney-general.**

SEC. 2. The salary of one deputy attorney-general is hereby fixed at twenty-four hundred dollars per annum, payable out of the general fund in the same manner as salaries of other state officers are paid.

See sec. 4392.

The intent of this section was that the deputy attorney-general should be paid monthly in the future, and an incumbent who, during the part of the year before approval of the act, had acted as stenographer in the attorney-general's office drawing a salary therefor, and had also acted as deputy attorney-general under a previous statute not providing compensation for such office, was not entitled to receive the designated salary for the portion of the year previous to its passage. State *ex rel.* Fowler v. Eggers, 33 Nev. — (112 P. 699).

Words in a statute simply specifying that an officer shall receive a designated compensation have no retroactive effect, unless there is something in the language indicating it. *Idem*.

The setting apart in a general appropriation bill of various funds to cover payment of salaries and other expenses of the state government, while it may reserve the money for that purpose, does not, in itself, authorize the payment of the money from the fund. *Idem*.

**4397. Salaries, how paid.**

SEC. 3. The state controller is hereby directed to draw his warrant for the salaries named in sections 1 and 2 of this act, and the state treasurer is hereby directed to pay the same each month.

*An Act fixing the salaries and compensation of certain attaches of the government of the State of Nevada.*

Approved March 5, 1907, 61

**4398. Salaries of deputy controller, deputy treasurer, deputy surveyor-general, and certain attaches—Clerk of commissioners for insane.**

SECTION 1. From and after the approval of this act the following salaries shall be paid to the following-named attaches of the state government:

To the deputy state controller, two thousand dollars per annum, and he shall act as clerk of board of state printing commissioners without further compensation.

To the typist in the state controller's office, twelve hundred dollars per annum.

To the deputy surveyor-general and state land register, two thousand dollars per annum, payable out of the general fund.

To the draughtsman in the state land register's office, two thousand dollars per annum, payable out of the general fund.

To the typist in the state land register's office, twelve hundred dollars per annum, payable out of the general fund.

To the deputy state treasurer, two thousand dollars per annum, and he shall act as clerk of the board of commissioners for the care of the indigent insane without further compensation.

To the typist in the attorney-general's office, twelve hundred dollars per annum.

To the typist in the superintendent of public instruction's office, twelve hundred dollars per annum.

See sec. 4392.

Bookkeeper and typist, state printing office, see sec. 4311.

*An Act authorizing the payment of the salaries of officers fixed by law.*

Approved March 8, 1879, 108

**4399. Salary payable monthly—Never in advance.**

SECTION 1. All state officers whose salaries are fixed by law shall be entitled, from and after the passage of this act, to receive same on the first of each calendar month; *provided*, that nothing in this act shall be construed to mean the payment of salaries in advance.

**4400. Salaries, how paid.**

SEC. 2. The controller is hereby authorized and directed to draw his warrant, and the state treasurer to pay same, in accordance with the first section of this act.

No money can be drawn from the treasury as compensation to an officer of the legislature, except when the compensation has been fixed by a law in force prior to the election

of such officer (Const., sec. 286, ante). State ex rel. King v. Hallock, 16 Nev. 152.

Cited, State ex rel. Davis v. Eggers, 29 Nev. 475, 16 L. R. A. (N. S.) 630, 91 P. 819.

*An Act fixing the salaries and compensation of certain attaches of the government of the State of Nevada.*

Approved March 9, 1903, 61

[Section 1 is superseded by section 1 of the act of 1907, sec. 4397, and is therefore omitted.]

**4401. Salaries of capitol employees and certain attaches of library and land office.**

SEC. 2. That the board of capitol commissioners shall be required to fix the salary of the janitor of the capitol building at \$1,200 per annum; the gardener of the state capitol grounds at \$1,200 per annum and the night watchman of the capitol building at \$1,320 per annum; *provided*, said night watchman shall be the appointee and under the direction of the state treasurer; *and it is hereby further provided*, that the salary of the clerk in the state library shall be fixed at \$900 per annum, and the salary of the stenographer in the state land office shall be \$900 per annum, the last to be paid out of the state school fund.

Board of capitol commissioners may fix salaries of janitor, gardener and night watchman at amount not exceeding \$110 per month, sec. 4420.

See sec. 4398.

The act of 1885, 99, is in violation of and void. State ex rel. Drury v. Hallock, 19 Const., sec. 275, ante, and is absolutely null Nev. 384-390 (12 P. 832).

## STATE SEAL

To provide a seal of state, section 4402.

In relation to the great seal, sections 4403, 4404.

*An Act to provide a seal of state for the State of Nevada.*

Approved February 24, 1866, 94

### 4402. Great seal of state—Design—Motto.

SECTION 1. There shall be a seal of the State of Nevada, which shall be kept by the governor and used by him officially, and shall be called "The Great Seal of the State of Nevada," the design of which shall be as follows, to wit: In the foreground, two large mountains, at the base of which, on the right, there shall be located a quartz mill, and on the left a tunnel penetrating the silver leads of the mountain, with a miner running out a carload of ore, and a team loaded with ore for the mill. Immediately in the foreground there shall be emblems indicative of the agricultural resources of the state, as follows: A plow, a sheaf, and a sickle. In the middle ground, a train of railroad cars, passing a mountain gorge; also a telegraph line extending along the line of the railroad. In the extreme background, a range of snow-clad mountains, with the rising sun in the east. Thirty-six stars to encircle the whole group. In an outer circle, the words, "The Great Seal of the State of Nevada" to be engraven with these words, for the motto of our state, "All for Our Country."

See sec. 4403.

*An Act in relation to the great seal of the State of Nevada.*

Approved February 1, 1875, 50

### 4403. Secretary of state to procure great seal.

SECTION 1. It is hereby made the duty of the secretary of state, as soon as practicable after the passage of this act, to procure a seal, the design of which shall be the same as that upon the present great seal of the State of Nevada, as provided by an act entitled "An act to provide a seal of state for the State of Nevada," approved February twenty-fourth, eighteen hundred and sixty-six; and the size thereof shall not be more than two and three-fourths inches in diameter; and when completed, shall be known as the great seal of the State of Nevada, and shall be used instead of the present great seal.

See sec. 4402.

### 4404. Secretary of state to use for verification.

SEC. 2. The secretary of state shall at all times have access to [said seal, and may use the same in verification of all his official acts.

[Sec. 3 obsolete.]

# STATE BOARDS, BUREAUS, AND COMMISSIONS

## STATE WEATHER SERVICE BUREAU

To establish a weather service station and provide for appointment of a director thereof, sections 4405-4410.

### CAPITOL COMMISSIONERS

Providing for state board of capitol commissioners, sections 4411-4421.

In relation to keeping and preservation of state capitol decorations, sections 4422, 4423.

To provide a supply of water for the capitol and state orphans' home, sections 4424-4426.

### BOARD OF DENTAL EXAMINERS

To insure the better education of practitioners of dental surgery, sections 4427-4444.

### EMBALMERS

To establish a state board of embalmers, sections 4445-4454.

### BOARD OF EXAMINERS

Relating to the board of examiners, to define their duties and powers, sections 4455-4464.

Relating to accounts against the state, section 4465.

To restrict the creation of deficiencies in funds or appropriations, sections 4466, 4467.

To provide for the purchase of certain supplies for state officers and attaches of the legislature, sections 4468-4475.

Prescribing duties of the various state boards and commissions as they are now constituted, sections 4476, 4477.

Relating to claims of ex-soldiers of the Spanish war, sections 4478-4480.

Official advertising and publication of supreme court decisions, section 4481.

### FISH COMMISSIONERS

To provide for appointment of a board of fish commissioners, sections 4482, 4483.

To provide for the establishment and maintenance of a state fish hatchery, sections 4484, 4485.

### BUREAU OF INDUSTRY, AGRICULTURE AND IRRIGATION

Creating and establishing a bureau of industry, agriculture, and irrigation, providing for a commission in charge thereof; creating the office of commissioner, sections 4486-4494.

### BOARD OF PHARMACY

To provide for creation of a state board of pharmacy and to regulate the practice of pharmacy, sections 4495-4514.

### PUBLIC SERVICE COMMISSION

Making the railroad commission of Nevada ex officio a public service commission for the regulation and control of certain public utilities, sections 4515-4548.

### STATE RAILROAD COMMISSION

To regulate railroads, telegraph and telephone companies and other common carriers in this state, and creating a railroad commission, sections 4549-4585.

### SHEEP COMMISSION

Regulating the sheep industry in the State of Nevada, creating a state board of sheep commissioners, sections 4586-4602.

Board of bank commissioners, see Banks and Banking.

Board of commissioners for care of insane, see Insane.

Board of orphans' home commissioners, see Orphans' Home.

Board of prison commissioners, see State Prison.

Directors of state agricultural society, see State Agricultural Society.

State board of health, see Public Health.

Board of medical examiners, see Medicine, Surgery and Obstetrics.

## STATE WEATHER SERVICE BUREAU

*An Act to establish a weather service station in Nevada and to provide for the appointment of a director thereof, and appropriating money to pay the expenses of the same.*

Approved February 19, 1887, 70

4405. Central weather station established.

4406. Volunteer stations.

4407. Annual report—Necessary printing and stationery.

4408. Director appointed by governor—  
Report monthly—Salary.

4409. Instruments of volunteer stations.

4410. County auditors constituted reporters.

**4405. Central weather station established.**

SECTION 1. The establishment of a weather service station being necessary to secure as complete a history of the weather of Nevada as possible, in order to furnish trustworthy material for a study of its climate, to acquaint the people of the state and nonresidents with the physical conditions of every locality, based upon reliable climatic data, thereby greatly benefiting agricultural, commercial, manufacturing and municipal interests, there is hereby established at Carson City, in this state, a central weather station, to be under the supervision of a competent director, to be appointed as hereinafter provided.

**4406. Volunteer stations.**

SEC. 2. The duties of said director shall be to establish volunteer weather stations throughout the state, at least one in each county, and to supervise the same; to receive reports from said volunteer weather stations; reduce the same to tabular form, and prepare and have printed monthly reports, copies of which shall be, by said director, sent to all colleges, high schools, hospitals, public libraries, agricultural societies and newspaper proprietors, who shall in writing request the same.

**4407. Annual report—Necessary printing and stationery.**

SEC. 3. Said director shall also prepare an annual report of his labors, and of the work done by the volunteer weather service, and present the same to the governor for publication. Fifteen hundred copies of said report shall be printed by the superintendent of state printing, of which five hundred shall be for the use of state officers, and one thousand shall be for the use of the legislature. The superintendent of state printing shall do all the printing necessary to carry out the requirements of this act, and the secretary of state is authorized to furnish to said director whatever stationery he may need in the proper performance of his duty.

**4408. Director appointed by governor—Report monthly—Salary of.**

SEC. 4. Said director shall be appointed by the governor, and in addition to other duties required under the provisions of this act, he shall file with the state librarian monthly reports of the meteorological observations provided for in the third section of this act, and the same shall be carefully preserved by said librarian and be open to inspection during office hours to any one applying therefor. For the performance of the duties prescribed by this act, the director hereinbefore mentioned, shall receive a salary of six hundred dollars a year, payable in monthly installments, upon the claims being allowed by the board of examiners, and said claims shall be paid as other claims against the state are paid, and shall be in full for all demands of said director, including traveling expenses.

**4409. Instruments of volunteer stations, cost of—State property.**

SEC. 5. Said director is authorized to provide for the equipment of such volunteer weather stations as shall be established by him, of which there shall be at least one in each county, at a cost not to exceed twenty-five dollars for each station so established. Each station shall be supplied with the following instruments: One maximum thermometer, one minimum thermometer, one dry bulb thermometer, one wet bulb thermometer, one rain-gage, with overflow attachment, and such other instruments as may be necessary, of which the cost shall not exceed the sum of twenty-five dollars for each station, as hereinbefore provided. Said director shall apply to the United States central signal office in Washington, D. C., to have the weather stations in this state recognized and registered as volunteer stations, auxiliary to the United States weather service, and shall also apply for and receive the printed blanks, franked envelopes and books of "Instruction for voluntary

observers of the signal service of the United States army," and such other stationery as is usually supplied to the volunteer observers. All instruments purchased with state funds by said director for use in any department of the weather service in this state, and all charts, maps, diagrams and tabulated forms made by him in his official capacity, shall be the property of the state solely.

[Secs. 6 and 7 obsolete.]

#### 4410. County auditors constituted reporters.

SEC. 8. The county auditors of the respective counties of this state are hereby constituted volunteer reporters of meteorological observations, and shall keep and record such observations and reports as are required by the provisions of this act, and report the same to the director of the Nevada weather service station, and shall perform such duty without compensation additional to that now allowed by law for the performance of other duties of their office.

#### CAPITOL COMMISSIONERS

*An Act providing for a state board of capitol commissioners, defining their duties and powers, and repealing all acts in conflict therewith.*

Approved March 20, 1911, 286

4411. What officers constitute.

4412. Chairman—Secretary—Quorum.

4413. Control over buildings and property.

4414. To control certain expenditures.

4415. May rent additional offices.

4416. Legislative chambers may be used for public purposes.

4417. May transfer personal property from one office to another.

4418. May sell movable property—Conditions and report.

4419. Annual inventory.

4420. May employ certain help—Control duties.

4421. Meetings.

#### 4411. What officers constitute.

SECTION 1. The governor, lieutenant-governor, secretary of state, state controller, and state treasurer shall constitute a board of capitol commissioners.

#### 4412. Chairman—Secretary—Quorum.

SEC. 2. The governor shall be chairman of said board, and in case of his absence a temporary chairman shall be chosen from among the members present. Three members of said board shall constitute a quorum for the transaction of all business, and shall determine all questions that may come before said board. The governor's private secretary shall be clerk of said board and shall keep a complete and correct record of all the transactions of said board.

#### 4413. Control over buildings and property.

SEC. 3. Said board shall have supervision over and control of the state capitol building, the capitol grounds and state waterworks, the state printing office building and grounds, and all other state buildings, grounds and properties not otherwise provided for by law.

#### 4414. To control certain expenditures.

SEC. 4. Said board shall control the expenditure of all appropriations for furnishing, repairing and maintaining said buildings and grounds, offices and property connected therewith; for defraying all contingent expenses of all state and other offices about said building; for transportation of books and documents and for storage and transportation of state property.

#### 4415. May rent additional offices.

SEC. 5. Said board shall have power to lease and equip office rooms outside of state buildings for the use of state officers whenever sufficient provision for such officers cannot be provided in the capitol or other buildings.

**4416. Legislative chambers may be used for public purposes.**

SEC. 6. Said board is authorized, in their discretion, to permit the use of the senate and assembly chambers in the capitol building, when not being used by the legislature, for any public meeting intended to promote the public welfare.

**4417. May transfer personal property from one office to another.**

SEC. 7. Said board may authorize the transfer of any property in any of the buildings under their control or offices therein, whenever the same is no longer needed in such building or office, to any other office or state institution, whether under the control of said board or not, where such property may be needed.

**4418. May sell movable property—Conditions and report.**

SEC. 8. Said board may sell any personal or movable state property in or about any of the buildings or offices under their control whenever the same is no longer of use to any state institution and when in the judgment of the board it will be of advantage to the state to make such sale. Such sales may only be made at a meeting when all the members of the board have been notified, and a full and complete record of all such sales shall be entered upon the minutes of such board, giving a description of the property sold, to whom, and the price obtained therefor. The clerk of said board shall, prior to the meeting of each regular session of the legislature, prepare a complete inventory of all property so sold, together with the price obtained therefor, and a copy of such inventory shall be furnished to the committees on ways and means of the senate and assembly.

**4419. Annual inventory.**

SEC. 9. Said board shall cause one or more of the employees mentioned in the next section, once each year, to make an inventory of all property in said buildings or offices subject to the control of said board.

**4420. May employ certain help—Control duties.**

SEC. 10. Said board is authorized to employ two night watchmen, one janitor, one fireman and one gardener at a salary of not exceeding one hundred and ten dollars per month each, providing the watchman whose duty it shall be to guard the vault of the state treasury shall be designated by the state treasurer. Said board is also empowered to employ such additional assistance as necessity may require. Said employees shall perform such duties as said board may direct and may be transferred from one branch of employment to another, and they shall take care of all the buildings, grounds and offices under the control of said board.

See sec. 4401.

**4421. Meetings.**

SEC. 11. Said board shall hold monthly meetings and may be called in special session by the chairman or by two of its members.

The supreme court has the power to procure, at the expense of the state, furniture for the courtroom where the commissioners had refused to procure the same. State ex

rel. Kitzmeyer v. Davis, 26 Nev. 373, 378 (68 P. 689).

The supreme court possesses the inherent power to procure, at the expense of the state, suitable furniture for its courtroom. Idem.

*An Act in relation to the keeping and preservation of the state capitol decorations, state mineral cabinet, mineral specimens, curios, etc.*

Approved March 10, 1899, 69

**4422. Capitol decorations, minerals, curios, not to be removed—Exception.**

SECTION 1. All state boards and state officers having jurisdiction in and control over any state property are specially forbidden to allow the state cap-

itol decorations and bunting, the state mineral cabinets, mineral specimens, curios, and all state property of such character, from being borrowed or taken out by any person or societies, or removed from the premises of the state buildings at the capital seat; *provided*, in case of national, international and foreign expositions of the world's arts and productions, and upon a satisfactory bond being furnished, the mineral specimens and curios may be borrowed.

#### 4423. *Idem*—Duty to preserve.

SEC. 2. The said boards and officers are specially instructed to use all means to preserve and keep intact all of the said named property.

*An Act to provide a supply of water for the capitol and the state orphans' home.*

Approved March 6, 1879, 85

#### 4424. Supply, how obtained—Joint commission.

SECTION 1. That the board of state capitol commissioners and the board of commissioners of the state orphans' home be, and they are hereby, constituted a joint commission, with full powers to purchase a supply of water for the use of said buildings and grounds, and to provide for conducting the same to said buildings and grounds.

[Sec. 2, carrying appropriation, omitted.]

#### 4425. Surveys.

SEC. 3. That it shall be the duty of the surveyor-general of the State of Nevada to make or cause to be made, without expense to the state, any surveys that may be requested by said joint commission in connection with said water supply.

#### 4426. Prison labor to be utilized.

SEC. 4. That so far as the same can be advantageously used, the labor of the prisoners in the Nevada state prison shall be used in and about any work connected with supplying water for said buildings and grounds.

### BOARD OF DENTAL EXAMINERS

*An Act to insure the better education of practitioners of dental surgery, and to regulate the practice of dentistry in the State of Nevada, providing penalties for the violation hereof, and to repeal an act now in force relating to the same and known as "An act to insure the better education of practitioners of dental surgery, and to regulate the practice of dentistry in the State of Nevada," approved March 16, 1895.*

Approved March 16, 1905, 242

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| 4427. Unlawful to practice dentistry without license—Proviso.  | 4436. Affidavit of intention to begin apprenticeship, what contain—Receipt.  |
| 4428. Board of dental examiners—Governor to appoint.   | 4437. Application fee—Annual fee—Remission—Revocation—Secretary must furnish county clerks with list of practicing dentists—Expenses, how paid—Money, how deposited. |
| 4429. Organization of board—Called meeting—To examine all applicants for license.                                      | 4438. Who shall be understood to be practicing dentistry—Unlicensed persons not to perform operations.   |
| 4430. Compensation of members.   | 4439. Misdemeanor and penalty—Offenses specified.  |
| 4431. Each member to file postoffice address.  | 4440. <i>Idem</i> —Not to apply in certain cases.  |
| 4432. Power to remove from office.   | 4441. Fines, penalties and forfeitures, how paid—Who may prefer complaints.  |
| 4433. Board to examine applicants—What examination shall include—Must be registered—Applicant must be 21 years of age. | 4442. Shall report to the governor.  |
| 4434. Certificate to be registered with county clerk—Failure shall work forfeiture—Penalty.                            | 4443. Quorum.  |
| 4435. Eligibility for examination—Certificate from other state.  | 4444. Not to apply to physicians and surgeons.   |

**4427. Unlawful to practice dentistry without license—Proviso.**

SECTION 1. It shall be unlawful for any person to engage in the practice of dentistry in the State of Nevada unless said person shall have obtained a license from a board of dental examiners, duly authorized and appointed under the provisions of this act to issue licenses; *provided*, that this act shall not affect the right under the laws of the State of Nevada, of dentists to practice dentistry who have lawful right to practice dentistry at the time of the passage of this act.

**4428. Board of dental examiners, governor to appoint—Term of office.**

SEC. 2. A board of dental examiners to consist of five (5) reputable and ethical practicing dentists is hereby created, to be known as the board of dental examiners of Nevada, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of this board shall be appointed by the governor of Nevada, all of whom shall have been actively and legally engaged in the practice of dentistry in the State of Nevada, for at least one year next preceding the date of their appointment, and none of whom shall be members of the faculty of any dental college or dental department of any medical college in the State of Nevada, or shall have any financial interest in any such college. The said five (5) shall compose the board of dental examiners of Nevada. The term for which the members of said board shall hold office shall be four (4) years, except that two of the members of the board first to be appointed under this act shall hold their term of office for the term of one year, two for the term of two years, and one for the term of three years, and until their successors are duly appointed and qualified. In case a vacancy occurs in the membership of said board, such vacancy shall be filled by appointment by the governor, within thirty (30) days after such vacancy occurs.

**4429. Organization of board—Called meeting—To examine all applicants for license—Seal.**

SEC. 3. It shall be the power and duty of said board to organize by the election of one of its members president, another secretary and another treasurer; to meet at least twice a year, at such time and place as the board may designate, for the purpose of transacting the business of the board, and at such other times as the board may elect, or on the call of the president of the board, or of not less than three (3) members thereof; a written notice of the time, place, and object of such called meeting to be mailed by the secretary of said board to all the members thereof not parties to the call, at least fifteen (15) days before the day of meeting; to examine all applicants for licenses to practice dentistry according to the provisions of this act; to collect and apply all fees as directed by this act; to keep a book showing the names of all persons to whom licenses have been granted by said board to practice dentistry, and such other books as may be necessary to plainly show all the acts and proceedings of said board; to have and to use a seal bearing the name "Nevada State Board of Dental Examiners."

**4430. Compensation of members.**

SEC. 4. Out of the funds coming into the possession of the board, each member of said board may receive as compensation five dollars (\$5) for each day actually spent in attending to the duties of his office, and traveling expenses going to and coming from the meetings of the board. Said expenses shall be paid from the fees and fines received by the board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury.

**4431. Each member to file postoffice address.**

SEC. 5. Each member of the board shall, upon his qualifications and the

organization of the board, file with the secretary his postoffice address, and thereafter any notice of any change therein. Any notice sent to the address so on file shall be deemed to comply with the requirements of this act as to notice to them.

#### 4432. Power to remove from office.

SEC. 6. The governor shall have the power to remove from office at any time, any member of the board for continued neglect of duty required by this act, or for incompetency, unprofessional or dishonorable conduct.

#### 4433. Board to examine applicants—What examination shall include—Must be registered—Applicant must be 21 years of age.

SEC. 7. Said board shall examine all applicants for examination who shall furnish satisfactory evidence of having complied with the provisions of this act, relating to qualification for examination, and all persons satisfactorily passing such examinations shall be granted by said board a license to practice dentistry in the State of Nevada. The examination of applicants shall be elementary and practical in character, but sufficiently thorough to test the fitness of the candidate to practice dentistry. It shall include, written in the English language, questions on the following subjects: Anatomy, physiology, chemistry, materia medica, therapeutics, metallurgy, histology, pathology, operative and prosthetic dentistry, hygiene and dental jurisprudence. The answers to which shall be written or oral in the English language. Demonstrations of the applicant's skill in operative and prosthetic dentistry must also be given. All persons successfully passing such examinations shall be registered as licensed dentists on the board register, as provided in section 3, and shall also receive a certificate of such registration; said certificate to be signed by the president and secretary of said board. In no case shall any applicant be examined or given a certificate who is not twenty-one years of age.

#### 4434. Certificate to be registered with county clerk—Failure shall work forfeiture—Penalty.

SEC. 8. Any person who shall receive a certificate of qualification from said board shall cause his or her certificate to be registered with the county clerk of any county or counties in which such person may desire to engage in the practice of dentistry, and the county clerks of the several counties in this state shall charge for registering such certificate a fee of twenty-five cents for such registration. Any failure, neglect, or refusal on the part of any person holding such certificate to register the same with the county clerk as above directed for a period of six months shall work a forfeiture of the certificate, and no certificate, when once forfeited, shall be restored, except upon the payment to the said board of examiners of the sum of twenty-five dollars as a penalty for such neglect, failure or refusal.

#### 4435. Eligibility for examination—Certificate from other state.

SEC. 9. No person shall be eligible for examination by the state board of dental examiners who shall not furnish satisfactory evidence of having graduated from a reputable dental college, which must have been endorsed by the board of dental examiners of Nevada; or who shall not have graduated from a high school or similar institution of learning, in this or some other state of the United States, requiring a three years' course of study, and who cannot furnish to the board of dental examiners an affidavit, containing his or her name, the name of his or her preceptor, and the names of at least two reputable witnesses, certified to in the State of Nevada before a notary public, showing that he or she has completed an apprenticeship of four years of twelve months each, with a licensed practitioner of dentistry, in the State of Nevada, or cannot furnish to said board of examiners a certificate from the state board

of dental examiners, or similar body, of some other state in the United States, showing that he or she has been a licensed practitioner of dentistry in that state for at least five (5) years.

**4436. Affidavit of intention to begin apprenticeship, what shall contain—  
Receipt.**

SEC. 10. From and after the passage of this act any and all persons desiring to enter upon the practice of dentistry in the State of Nevada, without graduating from a reputable college in the United States, or producing satisfactory evidence of having been a licensed practitioner of dentistry in some other state for at least five years, must file with the board of dental examiners an affidavit, certified to before a notary public of the State of Nevada of his intention to begin an apprenticeship with a licensed practitioner of dentistry in this state, and the said affidavit must certify that the affiant has regularly graduated from a high school or similar institution of learning in the United States, as provided in section 12 of this act, and contain in full the names of both affiant and his proposed preceptor and the names of two reputable witnesses, together with the date of beginning of his proposed term of apprenticeship; and the board of dental examiners shall issue to affiant a receipt for the same.

**4437. Application fee—Annual fee—Remission—Revocation—Secretary must furnish county clerks with list of practicing dentists—  
Expenses, how paid—Money, how deposited.**

SEC. 11. Every person applying to the board of dental examiners for a license to practice dentistry shall pay to the board a fee of twenty-five (\$25) dollars, which shall in no case be refunded. Every licensed dentist shall, on or before the first day of May of each year, except the one in which he is licensed, pay to the secretary of the board of dental examiners a fee of two (\$2) dollars, which shall be used exclusively for the prosecution of violators of this act and for expenses of collecting said fee. The year for which a fee shall be paid shall begin the July first following the May when it becomes due and end the succeeding June thirtieth. The board may reduce or remit altogether said fee for any year, but such reduction or remission must be made alike to all, liable to pay the same. In case any person defaults in paying said fee, his license may be revoked by the board of dental examiners on thirty days' notice in writing from the secretary, unless within said time said fee is paid, together with such penalty not exceeding ten (\$10) dollars, as the board may impose. Upon payment of said fee and penalty the board shall reinstate the delinquent's license. On or before the first day of July of each year the secretary of the board shall send to the county clerk of each county in the state a certified list of all practicing dentists therein who have paid said fee and the clerk shall enter or paste the same in the register of dentists. Necessary expenses, per diem compensation and mileage of the members of the board incurred while in attendance on meetings not for prosecuting violators of this act shall be paid out of the other fees and fines provided for in this act. All moneys received under this act shall be deposited in some reliable bank in the name of the board, and shall be withdrawn only on the joint check of the president and the secretary of the board.

**4438. Who shall be understood to be practicing dentistry—Proviso—  
Unlicensed persons not to perform operations.**

SEC. 12. Any and all persons shall be understood to be practicing dentistry within the meaning of this act who shall for a fee, salary, or reward, paid directly or indirectly, either to himself or to some other person, perform operations of any kind upon, or treat diseases or lesions of the human teeth or jaws, or correct malimposed positions thereof, or display a sign, or in any way advertise himself as a dentist; but nothing in this act contained shall prohibit bona

fide students of dentistry from operating in the clinical departments or the laboratory of a reputable dental college, or an unlicensed person from performing merely mechanical work upon inert matter in a dental office or laboratory; or the student of a licentiate from assisting his preceptor in dental operations while in the presence of and under the personal supervision of his instructor; or a duly licensed physician from treating diseases of the mouth, or performing operations in oral surgery. But nothing in the provisions of this act shall be construed to permit the performance of dental operations by any unlicensed persons under cover of the name of a regular practitioner of dentistry.

#### 4439. Misdemeanor and penalty—Offenses specified.

SEC. 13. Any person, company or association shall be guilty of a misdemeanor and upon conviction thereof shall be punishable with a fine of not less than fifty (\$50) dollars or more than five hundred (\$500) dollars, or by imprisonment for not less than five (5) days nor more than six (6) months in the county jail, or by both fine and imprisonment, who

1. Shall sell or barter, or offer to sell or barter, any diploma or document, conferring or purporting to confer any dental degree, or any certificate or transcript, made or purporting to be made, pursuant to the laws regulating the license and registration of dentists; or

2. Shall purchase or procure by barter, any such diploma, certificate or transcript, with intent that the same shall be used as evidence of the holder's qualification to practice dentistry, or in fraud of the laws regulating such practice; or

3. Shall, with fraudulent intent, alter in a material regard any such diploma, certificate or transcript; or

4. Shall use or attempt to use any such diploma, certificate, or transcript, which has been purchased, fraudulently issued, counterfeited or materially altered, either as a license or color of license to practice dentistry, or in order to procure registration as a dentist; or

5. Shall practice dentistry under a false or assumed name; or

6. Shall assume the degree of "Doctor of Dental Surgery" or "Doctor of Dental Medicine," or shall append the letters "D.D.S." or "D.M.D." to his or her name, not having duly conferred upon him or her, by diploma from a recognized dental college or school legally empowered to confer the same, the right to assume said title; or shall assume any title, or append any letters to his or her name, with the intent to represent falsely that he or she has received a dental degree or license; or

7. Shall in an affidavit, required of an applicant for examination, license, or registration, under this act, wilfully make a false statement in a material regard; or

8. Shall engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office the name of each and every person employed in the practice of dentistry therein, together with the word mechanic or apprentice after the name of each unlicensed person employed; or

9. Shall within ten days after demand, made by the secretary of the board, fail to furnish to said board the name and address of all persons practicing or assisting in the practice of dentistry in the office of said person, company or association, at any time within sixty days prior to said notice, together with a sworn statement showing under and by what license or authority said person, company or association, and said employee are and have been practicing dentistry, but said affidavit shall not be used as evidence against such person, company or association in any proceeding under this section; or

10. Is practicing dentistry in the state without a license, or whose license has been revoked or suspended.

4440. *Idem*—Not to apply in certain cases.

SEC. 14. It is hereby further provided that the conferring of degrees and the bestowing of diplomas, by reputable dental colleges of this state, who have been endorsed by the board of dental examiners of Nevada, and are members of the national association of dental faculties, are not included in the foregoing penalties, nor shall their rights and prerogative ever be abridged in any manner whatsoever.

4441. Fines, penalties and forfeitures, how paid—Who may prefer complaint—District attorney to prosecute.

SEC. 15. All fines, penalties, or forfeitures, not including the examination fee, imposed or collected for the violation of any of the foregoing provisions of this act, unless otherwise specified, shall be paid as follows: One-half into the common school fund in the county in which the prosecution is had, and one-half to the treasurer of this board, to be turned into the regular funds of this board, and it shall be the duty of the county treasurer of each county, upon the receipt by him of any such fines, penalties or forfeitures, to forthwith pay over the same one-half to the treasurer of this board. Said board, or any member or officer thereof, may prefer a complaint for violation of the law regulating the practice of dentistry, before any court of competent jurisdiction, and may by its officers, counsel, and agents, and in presenting the law or facts before said court, in any proceeding taken thereon; and it shall be the duty of the district attorney of each county of this state to prosecute all violations of the aforesaid provisions of this act in their respective counties in which such violation occurs.

Relative to provision as to disposition of fine, see Constitution, sec. 355.

4442. Shall report to the governor.

SEC. 16. The members of the board of dental examiners shall make an annual report of its proceedings to the governor of Nevada by the first of December of each year, together with an account of all moneys received and disbursed by them, pursuant to this act.

4443. Quorum.

SEC. 17. Three members of said board of dental examiners shall constitute a quorum for the transaction of business at any meeting of the board.

4444. Not to apply to physicians and surgeons.

SEC. 18. Nothing in this act shall be so construed as to interfere with the rights and privileges of physicians and surgeons in the discharge of their duties.

**EMBALMERS**

*An Act to establish a state board of embalmers; to provide a system of examination, registration and licensing of embalmers; to provide for the better protection of life and health; to prevent the spread of infectious and contagious diseases in the state; and to impose penalties for the violation of its provisions.*

Approved February 20, 1909, 26

4445. Governor to appoint board of embalmers—Term.

4446. Qualifications and duties—Organization—Regulations—Salaries and expenses.

4447. Meetings—Quorum.

4448. Examinations—Licenses—Disinfection—Board of health.

4449. *Idem*—Fees—Renewal of license.

4450. Seal—Regulations as to licenses.

4451. Practicing without license, misdemeanor—Not to apply to certain persons.

4452. Fees, to whom paid—Report to governor—Balance of funds payable to school fund.

4453. Prior licenses respected.

4454. Laws relating to transportation of dead bodies not affected.

**4445. Governor to appoint board of embalmers—Term.**

SECTION 1. The governor, as soon as practical, after the passage of this act, shall appoint three persons who shall be practical and practicing embalmers. One of the persons so appointed shall hold office for one year; one for two years; one for three years, unless sooner removed. Appointments to fill vacancies caused by death, resignation or removal before the expiration of the terms shall be made for the residue of such term by the governor. And all appointments to fill vacancies caused by the expiration of such terms shall be made in the same manner, and shall be for a period of three years.

**4446. Qualifications and duties—Organization—Regulations—Salaries and expenses.**

SEC. 2. The members of such board before entering on their duties shall respectively take, and subscribe, to the oath required by other state officers, which shall be filed in the office of the secretary of state, who is hereby authorized to administer same. They shall have the power to select out of their own number a president, secretary and treasurer, and adopt such regulations for the transaction of business of the board of embalmers and management of its affairs as they may deem expedient. The members of the said board shall receive no salary as such, but the actual traveling expenses spent by its members shall be paid out of the receipts as hereinafter directed.

**4447. Meetings—Quorum.**

SEC. 3. Said board shall meet at least once every year, and may also hold special meetings, if the proper discharge of its duties shall require, at a time and place to be fixed by the rules and by-laws of the board, and the rules and by-laws of the board shall provide for the giving of timely notice of all special meetings to all members of the board and to all applicants for licenses. Two of its members at any meeting may organize, and shall constitute a quorum for the transaction of business.

**4448. Examinations—Licenses—Disinfection—Board of health.**

SEC. 4. The members of this board shall examine candidates for licenses on the subject of embalming and care, transportation and preservation of deceased persons; also on the subject of sanitary disinfection for the prevention of the spread of infectious and contagious diseases, in accordance with the rules of the state board of health.

**4449. Idem—Fees—Renewal of license.**

SEC. 5. Every person who wishes to practice the profession of embalming shall appear before the state board of embalmers and upon the payment of a fee not to exceed ten dollars, to cover expenses of examination, be examined in the knowledge of embalming, sanitation, disinfecting bodies of deceased persons, and the clothing, excreta, and anything likely to be infected in cases of death from infectious or contagious diseases, in accordance with the rules and regulations of the state board of health. Such examination shall be in writing and by actual demonstration on cadaver. All examination papers shall be kept on record by said state board of embalmers, and if the applicant be of good moral character and shall have had one year of actual training in practical embalming, either in a college prescribing a course in the science of embalming, or as an assistant to a practicing embalmer, and pass such examination, the said board must issue to said applicant license to practice the profession of embalming for one year. If the applicant desires a renewal of the license the said board shall grant it, except for cause, and the annual fee for the renewal of licenses shall not exceed the sum of two dollars.

**4450. Seal—Regulations as to licenses.**

SEC. 6. Said board is hereby authorized to adopt and use a common seal, and any description of any matter of evidence in the office of said board with the certificate of the secretary thereon attached under the seal of said board shall be competent evidence of such matter of record in any court in this state. All licenses shall be signed by the president and secretary of the state board and attested by its seal, and shall specify the name of the person to whom issued. Every license shall be nonassignable and nontransferable and shall be displayed by such licensee in a conspicuous place in his, or her, office or place of business.

**4451. Practicing without license, misdemeanor—Not to apply to certain persons.**

SEC. 7. Any person who shall practice, or hold himself or herself out as practicing the profession of embalming of human dead bodies, without having complied with the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof before any court of competent jurisdiction shall be sentenced to pay a fine of not less than twenty-five dollars, nor more than five hundred dollars, for each and every offense; *provided*, that nothing in this act contained shall be construed to apply to persons engaged as layers-out, or shrouders of the dead, or to the employees of any cemetery whose duty or business extends no further; nor to officials or employees of any state institution.

**4452. Fees, to whom paid—Report to governor—Balance of funds payable to school fund.**

SEC. 8. All fees collected under the provisions of this act shall be paid to the treasurer of the state board of embalmers to be used for the purpose of defraying its necessary expenses; and the treasurer of the state board shall give bond in the sum of five hundred dollars to the approval of the said board for the honest and faithful discharge of his duties. It shall be the duty of said board on or before the first Monday of December of each and every year to make a report in writing to the governor of this state containing detailed statement of nature of receipts and manner of expenditures, and any balance of money remaining at the end of the year as balance over necessary expenses, traveling expenses of board included in the discharge of their duties as such, except a reserve not to exceed five hundred dollars, to be held as an emergency fund to meet the extraordinary expenses as herein contained, shall be paid into the general school fund.

**4453. Prior licenses respected.**

SEC. 9. The state board of embalmers shall recognize licenses issued previous to the passage of this act, or at any other time by other state boards of embalmers, and state health authorities, and upon presentation of such licenses shall issue the regular license to holders of such license and certificate of competency.

**4454. Laws relating to transportation of dead bodies not affected.**

SEC. 10. All laws in force in this state pertaining to the disposition, shipment, or burial of human dead bodies, or regulations of the state health department relating thereto, shall be and are in nowise affected by the provisions of this act.

See secs. 6549-6553.

## BOARD OF EXAMINERS

Who to constitute, section 314.

Powers and duties of, section 314.

*An Act relating to the board of examiners, to define their duties and powers, and to impose certain duties on the controller and treasurer.*

Approved February 7, 1865, 135

4455. Board of examiners to examine books and accounts of controller and treasurer—To count money.
4456. *Idem*—Board to file affidavit and publish.
4457. Controller and treasurer required to permit examination.
4458. When no appropriation has been made to pay claim—Recommendations to legislature.
4459. Duty where appropriation has been made—Unliquidated demands—Controller not to draw warrant, when—Failure of board to act.
4460. Chairman may issue process—Allowance for witnesses.
4461. May establish rules—Administer oaths, take depositions.
4462. False testimony perjury, penalty.
4463. Semimonthly sessions—Record.
4464. Quorum.
4455. Board of examiners to examine books and accounts of controller and treasurer—To count money.

SECTION 1. It shall be the duty of the board of examiners, consisting of the governor, secretary of state, and attorney-general, as often as it may be deemed proper, to examine the books of the controller and treasurer, the accounts and vouchers in their office, and to count the money in the treasury; and for the purpose of discharging the duties imposed on it by this act, the said board is authorized to demand, and the controller and treasurer are hereby required to furnish the said board, without delay, such information as it may demand, touching the books, papers, vouchers, or matters pertaining to or cognizable in their offices respectively; *provided*, that the counting of the moneys in the treasury shall take place at least once a month, without the said board giving the treasurer any previous notice of the hour or day of the said counting.

See secs. 314, 2844.

4456. *Idem*—Board to file affidavit and publish.

SEC. 2. Said board shall, at least once in each month, file an affidavit in the office of the secretary of state, showing the actual amount of money in the treasury at their last counting prior thereto, and shall cause a copy of said affidavit to be published in one daily newspaper published at the capital; *provided*, that if no daily newspaper be published at the capital, then such affidavit to be published in such other daily newspaper as shall be designated by the board.

4457. Controller and treasurer required to permit examination.

SEC. 3. It shall be the duty of the controller and treasurer to permit the said board of examiners to examine the books and papers of their respective offices, and of the treasurer to permit the money in the treasury to be counted whenever the said board may wish to make said examination or counting, without delaying said examination or counting on any pretense whatever.

[Sec. 4 repealed, Stats. 1869, 116.]

4458. When no appropriation has been made to pay claim—Recommendations to legislature.

SEC. 5. It shall be the duty of the board of examiners to examine into all claims against the state, presented to them by petition, for which no appropriation has been made, and which require to be acted upon by the

legislature, and to take all evidence in regard to the same which may be offered by the claimant, or deemed proper by the board. The evidence shall be reduced to writing, and, together with the petition, shall be transmitted to the legislature on the first day of its next session, together with the opinions of the board in reference to the merits of the same. *As amended, Stats. 1869, 116.*

See sec. 314.

The institution of the board of examiners was not intended as a check on legislative extravagance, but to secure, as a prerequisite to legislative action, an examination of such claims as require such action upon them as claims—not creative action, but adoptive or rejective action. *State ex rel. Ash v. Parkinson, 5 Nev. 16.*

The examining powers of the board of examiners and of the controller are, with reference to the legislature, only advisory. *State ex rel. Lewis v. Doron, 5 Nev. 399; State ex rel. Cutting v. La Grave, 23 Nev. 387 (48 P. 370).*

It is the duty of this board to audit the claims of the respective counties against the state on account of the special election, and it is not within the power of the legislature to confer this authority elsewhere. *State ex rel. Lyon Co. v. Hallock, 20 Nev. 326, 328 (22 P. 123).*

Mandamus will not lie against the state controller to compel him to issue a warrant in any greater amount than audited and allowed by the board of examiners. *Idem.*

The state board of examiners has no authority to employ counsel to assist the attorney-general in the prosecution and defense of actions for the collection of public revenues. The state controller alone has authority to institute and prosecute such actions and to direct and superintend the collection of all moneys due the state (citing *Stats. 1893, 112*). *State ex rel. Coffin v. Horton, 21 Nev. 466, 468 (34 P. 316).*

This board has unlimited power to investigate the merits of all claims presented for allowance and may act upon facts within the knowledge of its members, as well as upon evidence obtained from other sources. *Idem.*

#### 4459. Duty where appropriation has been made—Unliquidated demands—When controller not to draw warrant—Failure of board to act.

SEC. 6. All claims against the state for services or advances, for payment of which an appropriation has been made by law, and which have been by law authorized, but of which the amount has not been liquidated and fixed, may be presented to the board of examiners in the form of an account or petition, and in such manner as said board shall prescribe by their rules, the claimant may present his evidence to sustain said demand, which evidence, if oral, shall be reduced to writing, and they shall either reject or allow the claim, in whole or in part, within thirty days from its presentation, and shall indorse upon the same, if allowed in whole or in part, over their signatures: "Approved for the sum of \_\_\_\_\_ dollars," and shall immediately transmit the same so indorsed, together with all the evidence received by them relating thereto, to the controller of state. The controller shall not allow or draw his warrant for any claim of the class described in this section, which shall not have been approved by said board, or a greater amount than allowed by said board, except when said claim shall not have been acted upon by said board within thirty days prior to its presentation. *As amended, Stats. 1869, 116.*

[Sec. 7 repealed, *Stats. 1869, 116.*]

See sec. 4158.

See *State ex rel. Lyon Co. v. Hallock*, under sec. 5 of this act.

#### 4460. Chairman may issue process—Witnesses, allowance for.

SEC. 8. The governor of this state (and the secretary of state in his absence) shall act as chairman of the board of examiners, and, as said chairman, have power to issue subpoenas, and compel the attendance of witness before said board, in the same manner that any court in this state can compel the attendance of witness before it; and whenever, in the opinion of said board, the testimony of any witness against a demand pending before them is material, it shall be the duty of said chairman to cause the attendance of said witness before said board to testify concerning said demand, and said board are hereby authorized to make such witness a reasonable allowance for such attendance, not exceeding the fees of witnesses in civil cases, which

shall be paid from the contingent fund allowed said board, but in no instance shall an allowance be made in favor of a witness who testifies in behalf of a claimant.

#### 4461. May establish rules, administer oaths, take depositions.

SEC. 9. The said board shall have authority to establish rules and regulations for its government, not inconsistent with the provisions of this act, and each member thereof is hereby authorized to administer an oath or affirmation to any person or persons concerning any matter before said board, or intended to be brought before it, and each member of said board is hereby authorized to take the deposition or depositions of any witness or witnesses, to be used before said board in any matter pending before it.

See State ex rel. Coffin v. Horton, under sec. 5 of this act.

#### 4462. False testimony perjury—Penalty.

SEC. 10. If any person shall knowingly and wilfully swear falsely before said board, or any member thereof, in a matter pending before said board, at the time of taking said oath, or in a matter to be submitted to said board, such person shall be deemed guilty of perjury, and on conviction thereof shall be subjected to the same pains, penalties, and disabilities which are now, or shall be hereafter prescribed by law for wilful and corrupt perjury.

#### 4463. Semimonthly sessions—Record.

SEC. 11. The board shall hold sessions for the transaction of business at least twice in each month, and shall cause a record of their proceedings to be kept, and any member thereof may cause his dissent to the action of the majority upon a matter brought before it to be entered upon said record.

#### 4464. Quorum.

SEC. 12. A majority of said board shall constitute a quorum, and may as such discharge any of the duties specified in this act.

*An Act relating to accounts against the state.*

Approved February 23, 1871, 70

#### 4465. Itemized duplicate claims to be filed.

SECTION 1. The state printer, and all other persons having claims against the state, shall file with the state board of examiners an itemized duplicate of their accounts.

*An Act to restrict the creation of deficiencies in funds or appropriations set apart or made by the legislature of the State of Nevada.*

Approved March 12, 1897, 80

#### 4466. Restrictions as to deficiencies.

SECTION 1. No board, commission, state officer or employee of the State of Nevada, having charge of or entrusted with the expenditure or disbursement of any money set apart or appropriated by the legislature to be paid out or expended for the benefit of the State of Nevada, shall expend or pay out, or contract to be expended or paid out, any sum of money whatever in excess of the amount so set apart or appropriated by the legislature, so as to create a deficiency in such fund or appropriation, unless such deficiency, and the amount thereof shall have first been authorized in writing by the state board of examiners.

#### 4467. Idem—No allowance nor warrant.

SEC. 2. The state board of examiners is hereby prohibited from allowing, and the state controller from drawing his warrant for any deficiency claim

against the State of Nevada, not incurred or created in accordance with the provisions of section 1 of this act.

*An Act to provide for the purchase of certain supplies for state officers and attaches of the legislature.*

Approved March 2, 1877, 115

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| <p>4468. Furnishing board.<br/>4469. Board to advertise—Lowest bidder—<br/>Bonds—May buy in open market.<br/>4470. Duties of secretary of state—Inventory of supplies—Issued only on requisition.</p> | <p>4471. Secretary of state to take inventory—<br/>Examination of vouchers.<br/>4472. Furnishing board to report regarding legislative stationery.<br/>4473. Expenses of board—No salary.<br/>4474. Stationery, how issued to legislature.<br/>4475. Surplus returned by legislature—Controller to withhold warrants, when.</p> |
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#### 4468. Furnishing board.

SECTION 1. The state board of examiners is hereby constituted ex officio a furnishing board, with the powers and duties hereinafter specified.

#### 4469. Board to advertise—Lowest bidder—Bonds—May buy in open market.

SEC. 2. It shall be the duty of said board, as often as it shall become necessary, to advertise, for thirty days, in one daily newspaper published in Virginia City, one daily newspaper published in Carson City, one daily newspaper published in Reno, Nevada, and one daily newspaper published in San Francisco, California, for sealed proposals to furnish stationery, blank books, and such other articles necessary for the use of said state and legislative officers as are entitled thereto, or any of them; and said board shall specify in said advertisement the amount and kinds of each article desired, samples or minute descriptions of which shall accompany and be deposited with the sealed proposals for furnishing the same, in the office of the secretary of state; and all proposals received, as aforesaid, shall be opened and compared by said board, any two of whom shall constitute a quorum, at the secretary of state's office, at 12 o'clock m. of the day specified in said advertisement; and the said board shall then and there award the contract for furnishing said supplies, or any of them to the lowest bidder, whose sealed bid shall be accompanied by a bond, with two or more sureties in the sum of \$....., the sum to be not less than twice the amount of the value of the articles to be supplied, payable to the people of the State of Nevada, conditioned that if the bidder shall receive the award of said contract he will, in twenty days thereafter, deliver the supplies or articles for which he has been awarded the contract; *provided*, that in their said advertisement said board may classify said supplies and articles, and may receive bids and award contracts for such separate articles or class of supplies as they shall deem the lowest and best; *provided, further*, that said board may require any class or articles of said supplies to be delivered in installments; *provided further*, that any and all bids which shall be deemed too high by said board may be declined, in which case said board shall again advertise for sealed proposals to furnish the classes or articles of supply so declined, and so on for the same cause, as often as it shall occur; *and, provided further*, that in such case said board may purchase any articles or supplies for which bids have been rejected as aforesaid, in open market, and in amounts sufficient for immediate necessities, but at prices not exceeding the lowest prices in the bids rejected.

#### 4470. Duties of secretary of state—Inventory of supplies—Issued only on requisition.

SEC. 3. It shall be the duty of the secretary of state, immediately after the passage of this act, to take a full and complete inventory of all stationery,

blank books, and other articles and supplies aforesaid, then on hand, and enter the same in a set of books to be kept for that purpose, making a separate account for each class of articles; and in like manner he shall enter in said books a detailed and classified account of all purchases of articles and supplies authorized by this act, showing the amount and cost of each article and class of supplies purchased, the amount and cost of each class issued, amount and cost of each article and class issued to each state officer and attache of the legislature, and amount and cost of each article and class on hand. He shall issue the supplies aforesaid only upon the requisition of the proper officer, and shall take a receipt for the same upon delivery, which requisition and receipt shall be filed and preserved in his office.

#### 4471. Secretary of state to take inventory—Examination of vouchers.

SEC. 4. It shall be the duty of said board, at the end of each fiscal year and such other times as they shall deem necessary, to require the secretary of state to take an inventory of all the articles and classes of said supplies on hand and contracted for, and to make an examination of the amounts and vouchers appertaining to the same. *As amended, Stats. 1889, 81.*

#### 4472. Legislative stationery—Board to report.

SEC. 5. It shall be the duty of said board, at least once a month prior to the assembling of each legislature, to advertise in accordance with section 2 of this act, for a supply of stationery and such other articles as shall be sufficient for the use of the state officers and attaches of the legislature, or necessary for the public service, and at the commencement of each session said board shall report to the legislature a full account of their receipts and expenditures and stock of supplies on hand.

#### 4473. Expenses of board—No salary.

SEC. 6. The actual expenses incurred by said board in executing the powers and discharging the duties prescribed and imposed in this act, when certified by them, shall be audited by the controller, and paid by the treasurer out of any money which shall have been appropriated for that purpose; *provided*, nothing in this act shall be construed as allowing salary or compensation to said furnishing board for any services performed under the provisions of this act.

#### 4474. Stationery, how issued to legislature.

SEC. 7. It shall be the duty of the secretary of the senate and chief clerk of the assembly, as often as it shall become necessary, to make requisitions upon the secretary of state for such stationery, etc., as they shall deem necessary for the use of the legislature and all committees of the same, and for which, upon delivery, they shall give their receipts to the secretary of state. And it shall be the duty of the secretary of the senate and chief clerk of the assembly, to issue all stationery to the several officers of their respective houses as are entitled thereto, taking their receipts for the same.

#### 4475. Surplus returned by legislature—Controller to withhold warrants, when.

SEC. 8. At the close of each session of the legislature hereafter, it shall be the duty of each attache of the legislature drawing supplies as above provided, to return to the officer from whom such supplies were drawn, all articles in his possession belonging to the state. The state controller is hereby required to withhold the last week's warrant of all attaches until they present a certificate from the secretary of state to the effect that the property of the state (or so much thereof as has not been necessarily consumed in the discharge of the duties of their office), for which he holds receipts, has been returned to his custody.

*An Act prescribing the duties of the various state boards and commissioners as they are now constituted and restricting the powers of state officers and employees.*

Approved March 16, 1895, 107

**4476. Purchase of supplies, how made—Services rendered—Restrictions—Applies to all officers.**

SECTION 1. From and after the passage of this act, no officer or employee of the state shall purchase on the credit of the state any article of supplies, goods, wares or merchandise or obtain any services to be rendered by any person for the state, except by expressed permission and written authority previously obtained from the board or commission, or a majority of the members thereof having control and supervision of the department or office for which such purchase is made or such services are rendered. Except only in cases where such officer or employee has specific authority to purchase or obtain the same, conferred upon him by statute.

**4477. Idem—Examiners not to allow claims or controller or treasurer pay, when.**

SEC. 2. The state board of examiners shall not allow nor the state treasurer pay any claim of any person for goods sold or services rendered unless the same were sold or rendered in accordance with the provisions of section 1 of this act.

*An Act relating to the claims of ex-soldiers of the Spanish war against the United States.*

Approved March 9, 1905, 82

**4478. Claims of ex-soldiers against United States—Examiners to investigate.**

SECTION 1. The state board of examiners is hereby authorized and directed to investigate all claims against the United States government by persons who served in the Nevada quota of the United States army in the late war with Spain, and to approve such of its claims as appear to be just.

**4479. Idem—Notice to claimants—Proofs.**

SEC. 2. The said board shall give reasonable notice to all claimants to present their claims to the board within such time as may be fixed by the board. The claims shall be verified by the oaths of the claimants and the board may require such other proofs as may be deemed necessary to guard against fraud and imposition.

**4480. Idem—Collection of claims—State not liable.**

SEC. 3. The said board is further authorized and directed to take proper steps for the collection of the various claims approved, but nothing herein contained shall be so construed as to make the State of Nevada liable for any of such claims except as they may be paid through the state to the claimants by the United States government.

*An Act to amend an act entitled "An act to provide for the publication of the decisions of the supreme court of the State of Nevada and such other official advertising as is required by the state," approved March 29, 1907.*

Approved March 24, 1911, 360

**4481. Newspapers to do official advertising and publish decisions—Expense limited.**

SECTION 1. The state board of examiners shall, within ten days after the approval of this act, select two daily newspapers, published at the state

capital, in one of which all advertising required by the State of Nevada shall be published; *provided*, the expense of said publication shall not exceed the sum of one hundred dollars per month, and in the other said newspaper so selected shall be published all the decisions of the supreme court of the State of Nevada, each decision in two successive issues of the paper, within ten days after a copy of such decision shall have been delivered to the publisher of said newspaper by the clerk of the supreme court, and the publisher shall, within two days after the publication of such decision, furnish four hundred printed copies thereof to the clerk of the supreme court; *provided*, that the expense of such publication and extra copies furnished said clerk shall not exceed the sum of one hundred and twenty-five [dollars] per month; the claims for which advertising and the publication of such supreme court decisions shall be paid monthly out of any moneys in the state treasury not otherwise appropriated, for the purposes of carrying out the provisions of this act.

Original act (Stats. 1907, 436) has been superseded by this act, and therefore all of said former act, including title, has been omitted.

#### FISH COMMISSIONERS

*An Act to provide for the appointment of a board of fish commissioners and to define their duties.*

Approved March 16, 1905, 264

#### 4482. Fish commissioners, governor to appoint—Powers and duties.

SECTION 1. The governor of this state is hereby authorized and empowered to appoint three suitable persons to be styled "Fish Commissioners," whose duty shall be to establish fish hatcheries, in localities suitable to the hatching, upon such of the waters of this state as, in their judgment, shall be most available for the purpose of stocking and supplying the streams and lakes of this state with both foreign and native fish; and for such purpose may take the ova or spawn from fish now inhabiting the waters of the state; and may purchase and import from other states and countries spawn or ova of valuable fish, suitable for food, and may introduce the same, when obtained, into such rivers, streams and lakes as they may deem suited to the habits and successful culture of such fish. They may also employ persons who are skillful and expert in the science of fish breeding, and may superintend and direct the construction of fish-ways and fish ladders that may be built in the streams and waters of this state. The commission may, in their discretion, distribute the ova or spawn to be procured by them to such person or persons as have proper lakes, ponds or streams for the propagation and breeding of fish, and who will, without expense to the state, take charge of such breeding and propagation.

See Fish and Game, secs. 2047-2113.

Cited, State ex rel. Mills v. McMillan, 33 Nev. —.

#### 4483. Term of office—No compensation for services—Expenses—Report to governor.

SEC. 2. Such commissioners shall hold their respective offices for the term of four years, unless some other persons shall be appointed to fill the vacancy occasioned by death, resignation, or inability to attend to the duties required. The commissioners authorized to be appointed by this act shall receive no compensation for their services. Their necessary expenses incidental to procuring and distributing the ova or spawn of fish, in the employment of fish breeders, and in carrying out the provisions of this act, shall be paid from any moneys that may be appropriated by the legislature, upon accounts or vouchers to be approved by the state board of examiners. The commissioners shall report biennially to the governor an account of their

transactions under this act, and make an exhibit of their expenditure of money under its provisions.

*An Act to provide for the acquisition, construction, establishment and maintenance of a state fish hatchery, and to appropriate money therefor.*

Approved February 5, 1909. 7.

#### 4484. State fish hatchery—Commissioners to provide.

SECTION 1. The state board of fish commissioners is hereby authorized and directed to acquire, construct and establish a state fish hatchery at such point and in such locality within this state as to them shall be best adapted for that purpose, said hatchery, when acquired and established, to be maintained and conducted by the state, under the direction and control of the state board of fish commissioners.

#### 4485. Idem—Appropriation—Claims, how paid.

SEC. 2. For the purpose of complying with and carrying out the provisions of this act, the sum of five thousand dollars is hereby appropriated, out of any moneys in the general fund of the state treasury not otherwise specifically appropriated, to be expended under the direction of the state board of fish commissioners; and the state controller is hereby directed to draw his warrant for said amount in favor of the state board of fish commissioners, at such times, and in such amounts as may be approved by the state board of examiners, and the state treasurer is hereby directed to pay the same.

### BUREAU OF INDUSTRY, AGRICULTURE AND IRRIGATION

*An Act creating and establishing a Nevada bureau of industry, agriculture and irrigation, providing for a commission in charge thereof; creating the office of commissioner of industry, agriculture and irrigation, and fixing his compensation; defining the objects and purposes of said bureau; prescribing the powers and duties of said commission; appropriating funds for its support and maintenance and to carry out its objects and purposes, and other matters relating thereto.*

Approved March 17, 1911, 75

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| <p>4486. Nevada bureau of industry, agriculture and irrigation—State commission of industry, agriculture and irrigation—"Commissioner."</p> <p>4487. Term of office of commissioner—Pleasure of governor.</p> <p>4488. Office rooms—Office hours—Title of bureau—Meetings.</p> <p>4489. Powers, duties and functions of commission—Correspondence.</p> | <p>4490. May exact fees, when—May accept transportation and contributions—Paid direct to treasurer—County contributions.</p> <p>4491. Salary of the commissioner—Actual expenses of other members.</p> <p>4492. Appropriation—Disbursements, how made.</p> <p>4493. Printing, where may be done.</p> <p>4494. Penal provisions.</p> |
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#### 4486. Nevada bureau of industry, agriculture and irrigation—"Commissioner."

SECTION 1. That there is hereby created and established a Nevada bureau of industry, agriculture and irrigation. Said bureau shall be governed and controlled by a commission which shall be designated as state commission of industry, agriculture and irrigation, and shall be composed of five members, four of whom shall be ex officio members, namely: The governor, the surveyor-general, the attorney-general, and the state engineer, and one other member, to be appointed by the governor, the office of which is hereby created, who shall be entitled commissioner of industry, agriculture and irrigation; and hereafter, wherever in this act the word "commissioner" appears it shall be understood to mean and refer to said last-named official. The governor shall be ex officio chairman of said commission and said commissioner the secretary.

See secs. 3090-3093.

**4487. Term of office of commissioner—Pleasure of governor.**

SEC. 2. This act shall take effect April first, nineteen hundred and eleven, and the term of office of said commissioner shall begin on that date. He shall qualify by taking and subscribing to the official oath and shall hold office at the pleasure of the governor.

**4488. Office rooms—Office hours—Title of bureau—Meetings.**

SEC. 3. Said commission, on its organization, may rent, unless otherwise provided therewith by the board of capitol commissioners, suitable offices for its headquarters, which shall be known as Nevada bureau of industry, agriculture and irrigation, may furnish and equip the same according to its practical requirements, and may employ necessary clerical and other assistance. The commissioner shall keep his office in said bureau and the same shall be kept open the usual hours that other state offices are kept open. Said commission shall meet from time to time at the call of the governor for the transaction of business, and no expenditure shall be made or expense contracted without it be authorized by a majority vote at such meeting and the minutes thereof entered of record.

**4489. Powers, duties and functions of commission—Information, to collect and preserve—Correspondence—To study industrial problems of state—Restrictions—To conduct certain experiments—To have control of Carey act lands—To assist in exhibit at Panama-Pacific exposition.**

SEC. 4. The general and special powers, duties and functions of said commission are hereby specifically defined as follows, namely:

First—It shall establish, conduct and control said Nevada bureau of industry, agriculture and irrigation, which shall, as rapidly as its organization may be perfected, be made a practical bureau of information for the use and benefit of the people of this state, and outside inquirers, concerning avenues, openings and opportunities for industrial, agricultural, irrigation and reclamation enterprises in Nevada, and it shall be so conducted as to meet such purpose in the highest practicable degree. Said bureau shall be the place of filing and keeping for ready reference, books, periodicals, reports, maps, charts, correspondence, exhibits and special and general information on all subjects appertaining to the arts, industries, agricultural, irrigation and reclamation conditions, resources, opportunities, projects and possibilities within the state, and which shall be classified, catalogued and indexed in such manner as to make information on any subject easily available for the study and investigation of visitors and the use of the commission.

Second—Said commission shall, under direction of the commissioner, have personal charge of said bureau, and as truly and accurately as may be, answer all reasonable inquiries of visitors and correspondents, and through written and printed letters, bulletins, documents, and magazine and newspaper articles, make such information serve in every way possible the upbuilding of the state.

Third—Said commission shall initiate an exhaustive study of industrial, agricultural, irrigation and reclamation problems within the state, may designate any of its members to visit any section of the state to gather information and conduct inquiries; may lend its support, encouragement and advice in aid of all legitimate enterprises within the scope of its work, and may assist in organizing cooperative enterprises of benefit to the public or to any community; *provided*, that nothing in this act shall be construed as authorizing or permitting said commission to advertise, organize, promote, furnish special information, issue any opinion concerning any particular mine or mining property or mining enterprise; but all information issued relative to the mining industry shall be general in terms and restricted to the character

of ores and actual production of the state and of the several mining districts.

Fourth—Said commission may undertake and conduct reasonable and practicable explorations and experiments to determine the feasibility of reclaiming favorable portions of the state by utilizing the subsurface waters, may lease or purchase well-drilling machinery and equipment; drill, or cause to be drilled, test wells, equip the same with pumping machinery and determine the cost of pumping water for irrigation. But no exploration or experiments, authorized by this paragraph, shall be conducted on any land temporarily withdrawn from the public domain, or segregated by the selection of this state and the approval of the secretary of the interior from the public domain, under the provisions of the Carey act, unless the state itself be exclusively interested in and conducting the project for the public benefit and the state's profit, and which is hereby authorized.

Fifth—Said commission shall have control of the selection, management and disposal of all lands granted the state under the provisions of the act of Congress approved August eighteenth, eighteen hundred and ninety-four (28 U. S. Stat. 372-422), known as the Carey act, and all acts amendatory thereof or supplemental thereto, and of all additional grants which may hereafter be made the state in accordance therewith, subject to the provisions of any statute governing the commission which may hereafter be enacted; and

Sixth—Said commission shall assist in the gathering and preparation of a suitable exhibit of the state's agricultural, industrial and mining resources for the Panama-Pacific exposition to be held in the city of San Francisco, California, in 1915.

#### 4490. May exact fees, when—May accept transportation and contributions—Paid direct to treasurer—County contributions.

SEC. 5. The commission is authorized to exact fees when proper, and to solicit and receive transportation, and may enter into agreements whereby the work, efforts and accomplishments of the commission of special value or benefit to any individual, corporation, community, municipality, or county may be rewarded by cash contributions direct or contingent to a special fund which is hereby established in the state treasury for such purpose, to be called industrial commission fund; *provided, however*, that all fees, gifts, or contributions to said fund or in aid of the work of the commission shall be paid by the contributor or donor to the state treasurer direct, who shall issue to the donor or contributor his receipt therefor, countersigned by the state controller, and it shall be unlawful for said commission, any member or employee thereof, to personally receive any such fees, gifts or contributions other than transportation, office room, or ground space to be used in carrying on the work of the commission. The board of county commissioners of any county is hereby authorized, in its discretion, to make an appropriation from the county treasury of such county to meet in part the cost or expense of any exploration or experimental work conducted in such county under the provisions of this act.

#### 4491. Salary of commissioner—Actual expenses of other members.

SEC. 6. Said commissioner shall receive a salary of three thousand six hundred dollars per annum, payable in equal monthly installments by the state treasurer on warrants drawn by the state controller. The members of said commission when engaged in field work or delegated to special duty, shall be entitled to actual traveling, living, and other necessary expenses, which shall be audited by the commission and on the certificate of the commissioner, approved by the state board of examiners, shall be paid by the state treasurer, on warrant of the state controller, out of any moneys in the treasury available therefor.

#### 4492. Appropriation—Disbursements, how made.

SEC. 7. There is hereby appropriated to carry out the purposes of this act, the sum of \$25,000, and all disbursements from which, as well as from the said industrial commission fund, shall be on certificates of the commissioner, approved by the state board of examiners when the state controller shall draw his warrant and the state treasurer pay the same.

#### 4493. Printing, where may be done.

SEC. 8. All forms, blanks, envelopes, letterheads, circulars, pamphlets, bulletins and reports required to be printed by said commission, may, in its discretion, be printed at the state printing office under the general provisions of the act entitled "An act to designate and authorize the work to be done in the state printing office," approved March 5, 1909; *provided*, that when printed at the state printing office, if more than fifteen hundred copies of any bulletin or report be required, the cost of the excess number shall be paid for out of any appropriation to carry out the purposes of this act.

#### 4494. Penal provisions.

SEC. 9. Any person distributing any literature under the provisions of this act which is not correct or thoroughly reliable, or any member of said commission who shall receive or accept any contribution, fee, emolument or thing of value, either directly or indirectly, for his services as a member of said commission, other than that provided by law, shall be subject to a fine of not less than five hundred dollars or more than one thousand dollars, and imprisonment for not less than six months or more than one year in the state penitentiary.

Under a previous act creating a publicity commission (Stats. 1907, 408), it was held that the act constituted a sufficient appropriation of the salary of the chairman; but, as it failed to prescribe any maximum expenditure for traveling expenses, the act

was void in so far as it authorized payment of such expenses by the state, under Const., sec. 277, ante. State ex rel. Davis v. Eggers, 29 Nev. 469, 472, 485, 486, 16 L. R. A. (N. S.) 630, 91 P. 819.

### BOARD OF PHARMACY

*An Act to provide for the creation of a state board of pharmacy; to regulate the practice of pharmacy; to prohibit the use of deteriorated and adulterated drugs; and to regulate the sale of poisons.*

Approved March 28, 1901, 124

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| <p>4495. State board of pharmacy—Governor to appoint—Term—Qualifications—Vacancies.</p> <p>4496. Idem—Officers—Meetings.</p> <p>4497. Seal—Examinations of applicants—Certificates—County clerks to be notified and to keep list—Board may take testimony.</p> <p>4498. License, to whom issued—Examinations—Discretion of board—Appeal to courts.</p> <p>4499. Fees of applicants—Money, how used.</p> <p>4500. Forged or fraudulent diploma or license presented—Misdemeanor.</p> <p>4501. Board may issue certificates—Showing to be made.</p> <p>4502. Certificates to be recorded with the county recorder.</p> <p>4503. Negligence in compounding drugs, misdemeanor—Penalty.</p> <p>4504. Board may refuse certificates, when—Certificates may be revoked—Revocation filed with clerks and recorders—Appeal to courts.</p> <p>4505. Gratuitous services—Pharmacists of army or navy.</p> | <p>4506. Receipts and disbursements—Expenses—State aid.</p> <p>4507. State aid limited.</p> <p>4508. Quorum—Certificates, how issued and what authorized by.</p> <p>4509. Practicing without compliance with act a misdemeanor—Penalty—Who may institute proceedings.</p> <p>4510. Board to serve without compensation.</p> <p>4511. Unlawful to add to or remove from drugs for purpose of adulteration, etc.—Sale of such forbidden—Penalty—Complaints investigated—Prosecutions.</p> <p>4512. Retail of certain poisons without label unlawful—Inquiry to be made—Entry of sale to be made—Open to inspection—Provisions not applicable to physicians—Penalty for violation.</p> <p>4513. Only licensed pharmacists may compound drugs—Misdemeanor—Exceptions—Poisons to be labeled.</p> <p>4514. Act to take effect, when.</p> |
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**4495. State board of pharmacy—Governor to appoint—Term—Qualifications—Vacancies.**

SECTION 1. A state board of pharmacy, to consist of five competent pharmacists, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of said board shall be appointed by the governor within thirty days after the passage of this act, to act for two years from the date of such appointment, and shall be appointed by the governor every fourth year thereafter. Each shall be a reputable, competent pharmacist, who shall have been engaged in the practice of pharmacy in the State of Nevada for at least five years immediately prior to his appointment. Vacancies in said board, by death or otherwise, shall be filled by the governor by the appointment of a person duly qualified under this act to fill the unexpired term of the person in whose stead the appointment is made.

**4496. Idem—Officers—Meetings.**

SEC. 2. Said board shall choose one of its members president and one secretary, who shall hold their offices for one year from the date of their selection. The first members appointed on said board shall meet and organize at the state capitol, in Carson City, Nevada, on the first Monday in May, 1901, and thereafter they shall meet twice in each year, on the first Monday of May and November, at such place as shall be most convenient to the said board and to the applicants for authority to practice pharmacy in this state. Due notice of all such meetings shall be given by publication in such newspaper as said board shall deem most likely to disseminate such notice.

**4497. Seal—Examination of applicants—Certificates—County clerks to be notified and to keep list—Board may take testimony.**

SEC. 3. Said board shall procure a seal and shall require, through their president or secretary, applications for examinations or certificates; the president and secretary shall have authority to administer oaths and the board to take testimony in all matters relating to its duties; it shall issue certificates to all who furnish satisfactory proof of having received diplomas or licenses from reputable and legally chartered colleges of pharmacy, and boards of pharmacy of the United States, which are in good standing. It shall prepare two forms of certificates—one for persons who present to it satisfactory diplomas or licenses, and the other for candidates who may be examined by the board. And whenever a certificate is issued by said board, it shall notify the respective county clerks of the several counties within this state of the issuance of such certificate or certificates, and it shall be the duty of said clerks to keep and file said notices and also to keep a list of the persons to whom issued.

**4498. License, to whom issued—Examinations—Discretion of board—Appeal to courts.**

SEC. 4. Said board shall issue a certificate to any person who shall have been regularly engaged in the practice of pharmacy in this state for five years immediately preceding the passage of this act, or who shall present to the board a satisfactory diploma or license from a reputable college of pharmacy, or board of pharmacy within the United States, or who, after an examination by said board, shall be found qualified to practice pharmacy. When the board is not in session its secretary may issue a temporary certificate; *provided*, the applicant therefor shall have deposited the usual fee and filed with said secretary his diploma or license from some reputable and legally chartered college of pharmacy or board of pharmacy, in good standing within the United States, and such temporary certificate shall entitle the holder to practice pharmacy until the next regular meeting of said

board. All examinations of applicants to practice pharmacy shall be thorough and searching and shall be in the following branches: Theory and practice of pharmacy; pharmacognosy, chemistry, botany, materia medica, vegetable histology, physiology and prescription work; and prior to such examination the board shall have satisfactory proof that the applicant has had at least a grammar-school preliminary education, and not less than four years' experience in pharmacy work or in compounding physicians' prescriptions. In case of failure to pass, the board shall grant a second examination within one year without additional fee. The board may judge whether the college of pharmacy, or board of pharmacy, which issued any diploma or license presented to it, is reputable and legally chartered and worthy of recognition, subject to the action of the courts in case of abuse of its discretion in this respect.

#### 4499. Fees of applicants—Money, how used.

SEC. 5. With each application for authority to practice pharmacy within this state, there shall be deposited with its board, or its president or secretary, the sum of five dollars, and in case of issuance of license to the applicant an additional sum of ten dollars shall be paid by the applicant to said board, and all moneys collected by said board shall be used by it to defray its legitimate expenses.

#### 4500. Forged or fraudulent diploma or license presented—Misdemeanor.

SEC. 6. It shall be unlawful for any person to present to said board any forged or fraudulent diploma or license or one which was not issued to the person presenting the same, and any person who shall so present such a diploma or license shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars or by imprisonment in the county jail for a period of not less than fifty nor more than one hundred and eighty days, or by both such fine and imprisonment, for each and every such offense.

#### 4501. Board may issue certificates—Showing to be made.

SEC. 7. Any person to whom a diploma or license has been issued may present the same in person, by letter or by proxy to the board, accompanied by proof to the satisfaction of the board that such diploma or license was issued to the person presenting the same, and, if the said board shall be satisfied with such proof, and also as to the character and standard of colleges of pharmacy or board of pharmacy within the United States which issued said diploma or license, said board shall thereupon issue its certificate to the applicant.

#### 4502. Certificates to be recorded with county recorder.

SEC. 8. Every person to whom a certificate from the board of pharmacy shall have issued shall, before he enters upon the practice of pharmacy in this state, have said certificate recorded in the office of the county recorder of the county in which he resides.

#### 4503. Negligence in compounding drugs misdemeanor—Penalty.

SEC. 9. Any person who shall, after the passage of this act, fail to use due care and reasonable caution, or who shall be grossly negligent in compounding drugs or in the filling of prescriptions, to the jeopardy of the health or life of the public, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred or more than five hundred dollars, or by imprisonment in the county jail for not less than fifty days nor more than one hundred (and) eighty days for each and every offense, or by both such fine and imprisonment.

**4504. Board may refuse certificates, when—Certificates may be revoked—Revocation filed with clerks and recorders—Appeal to courts.**

SEC. 10. The board may refuse a certificate to any individual guilty of unprofessional or dishonorable conduct, or when said board shall be advised by satisfactory and competent proof that the applicant for such certificate is unduly careless, grossly negligent, or fails to use reasonable precaution in the compounding of drugs or the filling of prescriptions, to the jeopardy of the health or life of the public; and it is hereby further provided that, upon conviction of the offense set forth in section 9 of this act, the certificate to practice pharmacy granted to the person so convicted shall be in writing by the board of pharmacy forever revoked, and a copy of such revocation shall be furnished the respective county clerks and county recorders of the several counties within this state, and it shall be the duty of the respective county clerks to keep and file said revocation and also to keep a list of the persons whom such revocations name; and it shall be the duty of the respective county recorders to record in their offices in the proper book of record said revocations. In all cases of refusal or revocation, except in cases of conviction of the offense provided for in section 9 of this act, the party aggrieved may appeal to the courts for adjudication of the controversy.

**4505. Gratuitous services—Pharmacists of army or navy.**

SEC. 11. Nothing in this act shall be construed to prohibit gratuitous services in cases of emergency, or to duly appointed pharmacists of the United States army or navy.

**4506. Receipts and disbursements—Expenses—State aid.**

SEC. 12. All moneys received by this board shall be paid out on its order for its actual necessary expenses and the expenses of its members incurred in attending its meetings, and in case the money received by the said board shall be insufficient to meet its actual expenses and the actual traveling expenses of its members in attending its meetings, then the board shall certify to the state controller, under its seal, and over the signatures of its president and secretary, the amount actually necessary to meet the remainder of the traveling expenses of its members for attending such meetings, and upon the receipt of such certificate the controller shall draw his warrant upon state treasurer for the same, which shall be payable out of any funds in the state treasury not otherwise appropriated.

**4507. State aid limited.**

SEC. 13. The amount of money which shall be drawn by warrant of the state controller payable out of the state treasury for the necessary expenses of said board, as provided by section 12 of this act, shall not exceed one hundred and fifty dollars per annum.

**4508. Quorum—Certificates, how issued and what authorized by.**

SEC. 14. A majority of said board shall constitute a quorum to transact all business. All certificates issued by said board shall bear its seal and signatures of the president and secretary, and shall authorize the person to whom it is issued for that purpose to practice pharmacy in any and all counties in this state upon complying with the requirements of this act.

**4509. Practicing without compliance with act a misdemeanor—Penalty—Who may institute proceedings.**

SEC. 15. Any person practicing pharmacy or compounding drugs or medicines or filling physicians' prescriptions in this state, without first complying with the provisions of this act, shall be deemed guilty of a misdemeanor and,

upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not less than fifty days, nor more than one hundred and eighty days for each and every offense, or by both such fine and imprisonment. Any person may institute proceedings at law provided for in this act, and it shall be the duty of the board of pharmacy, or any member thereof, whenever satisfied that any of the provisions of this act have been violated, to institute, or cause to be instituted, the proper proceedings for punishment thereof.

**4510. Board to serve without compensation.**

**SEC. 16.** No member of the board of pharmacy of this state shall receive any compensation for any service or services rendered under the provisions of this act.

**4511. Unlawful to add to or remove from drugs for purpose of adulteration—Sale of such forbidden—Penalty—Complaints investigated—Prosecutions.**

**SEC. 17.** No person shall add to or remove from any drug, chemical or medical preparation any ingredient or material for the purpose of adulteration or substitution or which shall deteriorate the quality, commercial value or medical effect, or alter the nature or composition of such article, and no person shall knowingly sell or offer for sale any such adulterated, altered or substituted drug, chemical or medical preparation without first informing the purchaser of the adulteration or sophistication of the article sold or offered for sale. Any person who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than fifty dollars for the first offense, and for each subsequent offense a fine of not less than fifty dollars nor more than one hundred dollars. On written complaint being entered against any person or persons charging them with specific violation of any of the provisions of this section, the board of pharmacy is hereby empowered to delegate one of its members, or other suitable person, who shall have authority to inspect drugs, chemicals or medicines, and to make a thorough investigation of the case; he shall then report the result of his investigation, and, if such report justify such action, the board shall notify the proper district attorney, who shall prosecute the offender according to law.

**4512. Retail of certain poisons without label unlawful—Inquiry to be made—Entry of sale to be made—Open to inspection—Provisions not applicable to physicians—Penalty for violation.**

**SEC. 18.** It shall be unlawful for any person or persons to retail any poisons enumerated in schedules "A" and "B," appended to this act, without labeling the box, bottle or paper in which said poison is contained with the name of the article, the word poison, and the name and place of business of the seller, nor shall it be lawful to sell or deliver any poison mentioned in schedules "A" and "B," unless on inquiry it is found that the buyer is aware of its poisonous character, and that it is to be used for a legitimate purpose, nor shall it be lawful to sell or deliver any poison included in schedule "A" without making, or causing to be made, an entry, in a book kept for that purpose only, stating the date of sale, the name and address of purchaser, the name and quantity of the poison sold, the purpose for which it is stated by the purchaser to be required and the name of the dispenser; said book to be always open for inspection by the proper authorities, and to be preserved for at least five years. The provisions of this section shall not apply

to the dispensing of poisons when prescribed by practitioners of medicine, nor to the sale of poisons if in a single bottle, box or package does not contain more than one ordinary dose. Dealers shall affix to every bottle, box, parcel or other enclosure of any original package containing any of the articles mentioned in schedules "A" and "B" of this act, a suitable label or brand with the word "POISON," but they are hereby exempted from the registration of the sale of such articles when sold at wholesale or to a registered pharmacist or physician. Any person failing to comply with the requirements of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding fifty dollars.

Omitting to label or wrongful label of drugs, penalty for, sec. 6542.

Sale of narcotic drugs, regulations, penalties, sec. 6543.

Presenting fraudulent prescriptions, sec. 6545.

#### 4513. Only licensed pharmacists to compound drugs—Misdemeanor— Exception—Poisons to be labeled.

SEC. 19. Any registered or licensed pharmacist who shall in his place of business permit the compounding or dispensing of drugs or the filling of prescriptions of medical practitioners of this state by persons not licensed by the board of pharmacy, and any person not duly licensed by said board, who shall compound or dispense drugs or fill the prescriptions of medical practitioners within this state, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than five hundred dollars for every subsequent offense. Nothing in this act shall apply to or interfere with the business of any practitioner of medicine who does not keep a pharmacy or open shop for the retailing of medicine or poison, nor with the exclusive wholesaling business of any dealer, except that portion of section 18 which relates to marking or labeling certain poisons mentioned in this act; nor shall general dealers come under the provisions of this act in so far as it relates to the keeping for sale of proprietary medicines in original packages of drugs and medicines, but in no case shall they compound or prepare any pharmaceutical preparations or prescriptions.

#### SCHEDULE "A."

Arsenic, corrosive sublimate, cyanide of potassium, hydrocyanic acid, strychnia, cocaine, and all other poisonous vegetable alkaloids and their salts, opium and all its preparations excepting those which contain less than two grains to the ounce.

#### SCHEDULE "B."

Aconite, belladonna, cocaine, colchium, conium, nux vomica, savin, cantharides, phosphorus, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral, sulphate of zinc, sugar of lead, mineral acids, carbolic acid, oxalic acid, white precipitate, red precipitate, biniodide of mercury, and essential oil of almonds.

See sec. 4512 and note.

#### 4514. Act to take effect, when.

SEC. 20. This act shall take effect, so far as certificates provided for are concerned, and be in force in that respect on and after the first day of May, 1901, and in all other respects it shall take effect upon its approval.

## PUBLIC SERVICE COMMISSION

*An Act making the railroad commission of Nevada ex officio a public service commission for the regulation and control of certain public utilities, prescribing the manner in which such public utilities shall be regulated and controlled, requiring such public utilities to furnish reasonably adequate service and facilities, prohibiting unjust and unreasonable charges for services rendered by such public utilities, providing penalties for violation of the provisions of this act, authorizing such public service commission to appoint an expert engineer and to employ clerks and assistants, and making an appropriation for carrying out the provisions of this act.*

Approved March 23, 1911, 322

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4547. Traveling and other expenses.
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#### 4515. Public service commission created.

SECTION 1. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with the provisions of this act.

#### 4516. Railroad commission to be public service commission.

SEC. 2. The railroad commission of Nevada shall be, ex officio, the public service commission hereby created, and for the purposes of this act it shall be known as and styled "Public Service Commission of Nevada." It shall provide itself with a seal bearing these words, by which its official acts shall be

authenticated in all cases where a seal is required; and in the name, as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Nevada shall act as secretary of the commission hereby created, but the business of the public service commission shall be kept entirely separate from that of the railroad commission.

#### 4517. Term "public utility" defined—Powers of board.

SEC. 3. The term "public utility" within the meaning of this act shall embrace every corporation, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate or control any plant or equipment, or any part of a plant or equipment within the state for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, light, power in any form or by any agency, water for business, manufacturing, agricultural or household use, or sewerage service whether within the limits of municipalities, towns or villages, or elsewhere; and the public service commission is hereby invested with full power of supervision, regulation and control of all such utilities, subject to the provisions of this act and to the exclusion of the jurisdiction, regulation and control of such utilities by any municipality, town or village.

#### 4518. Commission may prescribe rules of procedure—Proviso.

SEC. 4. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; *provided*, that nothing in this act shall be construed as vesting judicial powers in said commission, or as denying to any person, firm, association, corporation, municipality, county, town or village the right to test in a court of competent jurisdiction the legality or reasonableness of any final order made by the commission in the exercise of its duties or powers.

#### 4519. Charges for utilities must be reasonable and just.

SEC. 5. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water or power produced, transmitted, delivered or furnished or for any service to be rendered as, or in connection with, any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

#### 4520. Commission may investigate all public utilities.

SEC. 6. The commission may, in its discretion, investigate and ascertain the value of all the property of every public utility actually used and useful for the convenience of the public. In making such investigation the commission may avail itself of all information contained in the assessment rolls of the various counties and the public records of the various branches of the state government or any other information obtainable.

#### 4521. All public utilities must report to commission—Blanks for reports—Books to be kept in approved form—Annual report—Right of examination.

SEC. 7. Every public utility shall keep and render to the commission, in manner and form prescribed by the commission, uniform and detailed accounts of all business transacted.

(a) Every public utility engaged directly or indirectly in any other business than those mentioned in section 3 of this act, shall, if required by the commission, keep and render in like manner and form the accounts of all such

other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers and records of such other business. The commission shall cause to be prepared suitable blanks for carrying out the purpose of this act, and shall, when necessary, furnish such blanks to each public utility. No public utility shall keep any other books, accounts, papers or records of the business transacted than those prescribed or approved by the commission. Each public utility shall have an office within this state, and shall keep in said office all such books, accounts, records or papers, none of which shall be removed at any time from the state except upon such conditions as may be prescribed by the commission.

(b) The accounts of all such public utilities shall be closed annually on the 30th day of June, a balance sheet taken promptly therefrom, and full annual reports of the business be made to the commission not later than the 15th day of September following the closing of the accounts. The reports shall be in such form as may be prescribed by the commission, and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The commission may, at any time, call for desired information omitted from such reports, or not provided for therein, whenever, in the judgment of the commission, such information is necessary.

(c) Any commissioner, or any person or persons authorized by the commission, shall have the right to examine the books, accounts, records and papers of any public utility, for the purpose of determining their correctness, and whether they are being kept in accordance with the rules and system prescribed by the commission.

#### 4522. Penalty for failure to make report.

SEC. 8. Any officer, agent or person in charge of the books, accounts, records and papers, or any of them, of any public utility, who shall refuse or fail for a period of thirty days to furnish the commission with any report required by the provisions of this act, and any officer, agent or person in charge of any particular books, accounts, records or papers relating to the business of such public utility who shall refuse to permit any commissioner or other person duly authorized by the commission to inspect such books, accounts, records or papers on behalf of the commission, shall be subject to a fine of not less than one hundred dollars (\$100), or more than five hundred dollars (\$500), such fine to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure on the part of such officer, agent or person in charge shall be deemed a separate offense, and be subject to the penalty herein prescribed.

#### 4523. Commission to make annual report.

SEC. 9. The commission shall make and publish annual reports for each calendar year showing its proceedings, which reports shall, as nearly as may be, conform in a general way to those of the railroad commission of this state, and be made at the same time. All the reports, records, accounts, books, files, papers and memoranda of every nature in the possession of the commission shall be open to the public, at all reasonable times, subject to the exception that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

#### 4524. Commission to fix standards for service—Tests may be made—May procure testing apparatus.

SEC. 10. The commission shall ascertain and prescribe for each kind of public utility adequate, convenient and serviceable standards for the measurement of quality, pressure, voltage or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe

reasonable regulations for the examination and testing of such products or service and for the measurement thereof. Any consumer, user or party served may have the quality or quantity of the product or the character of any service rendered by any public utility tested upon the payment of fees fixed by the commission, which fees, however, shall be paid by the public utility and repaid to the complaining party if the quality or quantity of the product or the character of the service be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require.

The commission may, in its discretion, purchase such materials, apparatus, and standard measuring instruments for such examinations and tests, as it may deem necessary. The commission shall have the right and power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in this act and set up and use on such premises any necessary apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made as herein provided shall be subject to the penalties prescribed in section 8 of this act.

**4525. Utility companies must file schedules with commission—To be posted for public inspection—Not changed without legal notice.**

SEC. 11. Every public utility shall file with the commission within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed or product furnished in connection therewith by any public utility controlled or operated by it. In connection with such schedule, and as a part of it, shall also be filed all rules and regulations that in any manner affect the rates charged or to be charged for any service or product. A copy or so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type and posted in every station or office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and conveniently inspected. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall, in like manner, be printed and filed with the commission, and so much thereof as the commission may deem necessary for the use of the public shall be posted conspicuously in every station or office as in this section above provided. No changes shall thereafter be made in any schedule, including schedules of joint rates or in the rules and regulations affecting any and all rates or charges except upon thirty days' notice to the commission and all such charges shall be plainly indicated, or by filing new schedules in lieu thereof thirty days prior to the time the same are to take effect; *provided*, that the commission, upon application of any public utility may prescribe a less time within which a reduction may be made. Copies of all new or amended schedules shall be filed, and posted in the stations and offices of public utilities as in the case of original schedules.

**4526. No rebates or discrimination in rates charged—Existing contracts not disturbed.**

SEC. 12. It shall be unlawful for any public utility to charge, demand, collect or receive a greater or less compensation for any service performed by it within the state or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect or receive any rate, toll or charge not specified in such schedules. The rates, tolls and charges named therein shall be the lawful rates, tolls and charges until the same are changed as provided

in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession or special privilege to any consumer or user, which directly or indirectly shall or may have the effect of changing the rates, tolls, charges or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in section 10 of this act. This, however, shall not have the effect of suspending, rescinding, invalidating or in any way affecting existing contracts.

**4527. Commission may classify service of utilities.**

SEC. 13. The commission may prescribe classifications of the service of all public utilities, and in such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications, for which schedules the commission may, when necessary, prescribe the forms.

**4528. Commission may adopt rules regarding inspection and its proceedings—Hearings public.**

SEC. 14. The commissioners shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings held for the purpose of determining any question affecting public utilities; *provided*, that all such hearings shall be public.

**4529. May require production of books and papers—Failure to comply—Penalty.**

SEC. 15. The commission may require, by order to be served on any public utility in the same manner as a summons in a civil action, the production at such time and place as the commission may designate of any books, accounts, papers or records kept by such public utility in any office or place without the State of Nevada, or verified copies in lieu thereof, if the commission shall so direct, in order that an examination thereof may be made by the commission or under its direction, or for use as testimony. If any public utility shall refuse or fail to comply with such order, the said utility shall be subject to the liability named in section 8.

**4530. Expert may be employed—Powers—Other assistants.**

SEC. 16. The commission shall have the authority to employ an expert engineer at a salary of \$3,600 per annum and necessary traveling expenses and is invested with full power to remove such engineer whenever his services shall be unsatisfactory to the commission. The commission may employ and remove such other experts, clerks and assistants as it shall deem necessary, and fix their compensations.

**4531. Investigation of unreasonable charges by commission, when—Utility to have notice—Notice of public hearing—Witness fees and mileage.**

SEC. 17. Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or club, or by any body politic or municipal organization or by any person or persons, firm or firms, corporation or corporations, or association or associations, the same being interested, that any of the rates, tolls, charges or schedules of any joint rate or rates are in any respect unreasonable or unjustly discriminating, or that any regulations, measurements, practice or act whatsoever affecting or relating to the production, transmission or delivery or furnishing of heat, light, water or power, or any service in connection therewith is, in any respect, unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the

commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice or act complained of shall be entered without a formal hearing.

(a) The commission shall, prior to such formal hearing, notify the public utility complained of that complaint has been made, stating the substance thereof, or, if deemed necessary, accompanying the notice with a copy of the complaint, and ten days after such notice has been given, the commission may set a time for a hearing.

(b) The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

#### 4532. May apply to court for summons—Disobedience of, contempt.

SEC. 18. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission, or any member, or the secretary thereof, may apply to the clerk of the nearest district court for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court and punished accordingly.

#### 4533. Commission may lower rates, when—Separate hearings, when—Dismissals—May proceed on own motion.

SEC. 19. If upon such hearing and due investigation, the rates, tolls, charges, schedules or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this act, the commission shall have the power to fix and order substituted therefor such rate or rates, tolls, charges or schedules, as shall be just and reasonable. If it shall in a like manner be found that any regulation, measurement, practice, act or service complained is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service or acts, and make such order relating thereto as may be just and reasonable.

(b) When complaint is made of more than one rate, charge or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of and at such times and places as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices and service, and after a full hearing as above provided, by order make such changes as may be just and reasonable, the same as if a formal complaint had been made.

#### 4534. Depositions of witnesses.

SEC. 20. The commission or any party to any proceeding before it, may

cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

**4535. Record of all proceedings to be taken by stenographer.**

**SEC. 21.** A full and complete record shall be kept of all proceedings before the commission or its representative on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as herein-after provided for the bringing of actions against the commission, before the action is reached for trial, the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation to be filed with the clerk of the court in which the action is pending.

**4536. No one excused from testifying on grounds of self-incrimination—Proviso.**

**SEC. 22.** No person shall be excused from testifying, or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this act, on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; *provided*, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

**4537. Refusal to make reports or to exhibit books and papers—Penalty.**

**SEC. 23.** Any officer, agent, or employee of any public utility who shall wilfully fail or refuse to fill out and return any blanks as required by this act, or shall wilfully fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such questions, or shall evade the answer to any such question, where the fact inquired of is within his knowledge, or who shall, upon proper demand, wilfully fail or refuse to exhibit to any commission or any commissioners, or any person also authorized to examine the same, any book, paper or account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in section 8 of this act.

**4538. Commission to enforce this act—Attorney-general and district attorneys to prosecute.**

**SEC. 24.** The commission shall inquire into any neglect or violations of the laws of this state by any such public utility as hereinbefore defined, doing business therein, or by the officers, agents, or employees thereof, and shall have the power, and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the attorney-general; upon the request of the commission it shall be the duty of the attorney-general, or the prosecuting attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

**4539. All rates and regulations fixed by commission prima facie lawful.**

**SEC. 25.** All rates, fares, charges, classifications and joint rates fixed by the commission shall be enforced, and shall be prima facie lawful, from the date of the order until changed or modified by the commission, or in pursuance of section 26 of this act. All regulations, practices and service, prescribed by the commission shall be enforced and shall be prima facie reasonable unless suspended or found otherwise in an action brought for that purpose,

pursuant to the provisions of section 27 of this act, or until changed or modified by the commission itself upon satisfactory showing made.

4540. Appeal to district court, when—Procedure—Actions to have precedence—Injunction only after notice—Contradictory evidence, how treated—Order may be rescinded or modified, when—Appeal may be taken, when—Burden of proof.

SEC. 26. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within ninety (90) days commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order is unreasonable. The commission and other parties defendant shall file their answers to said complaint within thirty (30) days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty (20) days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to said commission.

(a) No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; *provided*, that all rates fixed by the commission shall be deemed reasonable and just, and shall remain in full force and effect until final determination by the courts having jurisdiction.

(b) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen (15) days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may later modify, amend or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

(c) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

(d) Either party to said action within sixty (60) days after service of a copy of the order or judgment of the court may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Nevada the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(e) In all actions under this act the burden of proof shall be upon the

party attacking or resisting the order of the commission to show by clear and satisfactory evidence that the order is unlawful, or unreasonable, as the case may be.

#### 4541. Notice of serious accidents given commission—Investigation.

SEC. 27. Every public utility shall, whenever an accident occurs in the conduct of its operations, causing death or personal injuries, give immediate notice thereof to the commission. If in its judgment the public interest requires it, the commission shall cause an investigation to be made forthwith, at such place and in such manner as the commission shall deem it best.

#### 4542. Penalties for public utility violating this act.

SEC. 28. If any public utility shall violate any provision of this act, or shall do any act herein prohibited, or shall fail, or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate, or do any act herein prohibited, for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court for every such violation, failure or refusal, such public utility shall be subject to the penalty prescribed by section 8 of this act.

#### 4543. All reports to commission must be sworn to—False oath perjury.

SEC. 29. Every annual report, record or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record or statement, shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

#### 4544. Suits at law—Attorney-general to represent commission—Special counsel.

SEC. 30. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the State of Nevada in the district court of any county having jurisdiction of the defendant. The attorney-general of Nevada shall be the counsel in any proceeding, investigation, hearing or trial, prosecuted or defended by the commission, as also shall any prosecuting attorney selected by said commission, or other special counsel furnished said commission in any county where such action is pending.

#### 4545. May compel compliance by mandamus.

SEC. 31. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof, and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

#### 4546. Printing for commission, where done.

SEC. 32. Except in cases of emergency, all the necessary printing of the commission shall be done at the state printing office, and it is made the duty of the state printer to have such printing done as expeditiously as possible.

#### 4547. Traveling and other expenses.

SEC. 33. The commission and secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses and be approved by the chairman of the commission.

4548. Each section independent of all others as regards constitutionality.

SEC. 34. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or inoperative for any cause shall not be deemed to affect any other section thereof.

#### STATE RAILROAD COMMISSION

See statutes regulating incorporation of railroads and governing railroads generally, secs. 3511-3601.

*An Act to regulate railroads, telegraph and telephone companies and other common carriers in this state, creating a railroad commission, constituting the governor, the lieutenant-governor, and the attorney-general a railroad board for the appointment and removal of the railroad commissioners, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure an adequate railway service, and fixing maximum freight charges.*

Approved March 5, 1907, 73

4549. Railroad commission board created—Who constitute—Commissioners appointed—Term of office—Vacancy—Chief commissioner—Associate commissioners—Equal voice—Political complexion—May be removed for cause—Not to be interested in railroads—Complaints to be investigated within reasonable time—Effect of failure—Chief and first associate commissioner to give entire time—Oaths to be taken—Salaries—Secretary of, salary—Official title of commission—Office kept at Carson City—Sessions held any place—Expenses—Rules of procedure—To confer with similar bodies of other states and attend conventions—Present commission not disturbed.
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4551. Adequate service required for reasonable charge.
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4554. Concentration, commodity, transit and other special contract rates.
4555. Powers of commission to regulate freights and fares—Transmission of telegraph and telephone messages—Joint rates—Physical condition—Safety appliances—Crossings—Changes in service—Transfer tracks—Long and short haul.
4556. Certain freight may be carried free—Passes or reduced rates allowed to certain persons—Attendants allowed on stock trains—No discrimination.
4557. Duty to maintain adequate depots and buildings—Commission may enforce.
4558. Duty of railroad to furnish suitable cars—No discrimination—Proviso—Commission may make regulations.
4559. Connecting lines—Duties to each other—Precedence to live stock and perishable freight—When may control private tracks.
4560. Commission to act on complaints—Hearings—Process for witnesses—Power of commission to remedy—May act on own motion—Railroad may be complainant.
4561. Each commissioner may administer oaths—Issue subpoenas—District court may enforce—Witness fees—Depositions—Record of proceedings—Transcript to be furnished, when.
4562. Power to fix reasonable rates and service—Railroads to comply with orders—When take effect—May rescind orders.
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4564. Railroads may institute action against commission to set aside orders—Procedure—Precedence—Injunction Trial—Judgment—Appeal—Burden of proof.
4565. Rules of procedure—Witnesses—Immunity—Certified copies, prima facie evidence.
4566. Authority of commission to make inquiries—Blanks, form of—Duty of railroad to furnish information—Inspection—Subpenas—Penalty for disobedience.
4567. Joint traffic contracts to be furnished on request—List of passes or mileage books.
4568. Railroad to make annual reports to commission.
4569. May investigate violations of interstate commerce law—Reports to be filed with.
4570. Penalty for unjust discrimination—Rebates, lower rates.
4571. Preferences unlawful.

4572. Rebates — False devices, misdemeanor — Penalty.
4573. Passes to state officials and other persons prohibited — Exception — Penalty — Forfeiture of office.
4574. Treble damages, when allowed — Provision.
4575. Failure to fill out blanks, make returns, give information, exhibit books or papers — Penalty.
4576. Idem — Acts of omission and commission — Penalties.
4577. Other powers of commission to regulate.
4578. Duty of railroads to notify commission relative to accidents — Investigations — Notice of expenses — Evidence kept.
4579. To inquire into neglect — Report violations to attorney-general — Duty to aid in prosecutions — Actions for forfeiture.
4580. Claims for damages or overcharge not acted on by railroad to be investigated — Annual reports to governor — Printing, where done.
4581. Substantial compliance with act — Rules and regulations.
4582. Act not to affect other rights of action.
4583. All remedies available to commission.
4584. All railroads to file copies of schedules of rates.
4585. Each section of act independent.

**4549. Railroad commission board created — Who constitute — Commissioners appointed — Term of office — Vacancy — Chief commissioner — Associate commissioners — Equal voice — Political complexion — May be removed for cause — Not to be interested in railroads — Complaints to be investigated within reasonable time — Effect of failure — Chief and first associate commissioner to give entire time — Oaths to be taken — Salaries — Secretary of, salary — Official title of commission — Office kept at Carson City — Sessions held any place — Expenses — Rules of procedure — To confer with similar bodies of other states and attend conventions — Present commission not disturbed.**

**SECTION 1.** A railroad commission is hereby created, to be composed of three commissioners. The governor, the lieutenant-governor, and the attorney-general shall constitute a railroad board for the purpose of appointing such commissioners. A majority of the members of said railroad board may perform all the duties required of such board. Within thirty days after the passage of this act the railroad board shall appoint such commissioners and designate the term of each, and they shall hold until their successors are appointed. The term of one such appointee shall terminate on the first Monday in February, 1909; the term of the second such appointee shall terminate on the first Monday in February, 1910; and the term of the third such appointee shall terminate on the first Monday in February, 1911. On the second Monday in January, 1909, and annually thereafter, there shall be appointed, in the same manner, one commissioner for the term of three years from the first Monday in February of such year. Each commissioner so appointed shall hold office until his successor is appointed and qualified. Any vacancy shall be filled by appointment by the railroad board.

(a) One commissioner, who shall be designated as chief commissioner and shall be chairman of the commission, shall be an attorney at law, and well versed in the law of railroad regulation; one to be designated as first associate commissioner shall be a practical railroad man familiar with the operation of railroads generally; the third to be designated as the second associate commissioner, shall be a business man having a general knowledge of fares and freights, tolls and charges, as levied by the railroads, and all common carriers included within the term "railroad" as defined in this act. Each commissioner, as herein designated, shall have an equal voice and vote upon all questions whereon the commission is required to or may act as a body. A majority of said commission shall have full power to act in all matters within its jurisdiction, and in the event of two of the commissioners being disabled or disqualified from acting, or in the event of there being two vacancies at the same time in the commission, the remaining commissioner shall have power to do all the acts and things which a majority of the commission might do, and his official acts shall stand as the acts of the commission. At no time shall more than two of said commissioners be members of the same political party.

(b) The railroad board may at any time remove any commissioner for any inefficiency, neglect of duty, or malfeasance in office. Before such removal it shall give such commissioner a copy of the charges made against him and shall fix a time when he can be heard in his own defense, which shall not be less than ten days thereafter, and said hearing shall be open to the public. If he shall be removed the railroad board shall file in the office of the secretary of state a complete statement of all charges made against such commissioner and findings thereon, with the record of the proceedings.

(c) No person so appointed shall be pecuniarily interested in any railroad in this state or elsewhere, and if any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if he shall become so interested otherwise than voluntarily, he shall, within a reasonable time, divest himself of such interest, and failing to do so his office shall become vacant and the railroad board shall proceed as provided for in section 1, subdivision b, of this act.

(d) Whenever a complaint is made to the commission of a violation of any of the provisions of this act, or of any order of the commission, it shall, within four months, commence investigation of said charge, and shall determine the same within six months, unless the person preferring said charges shall agree in writing to a longer time. A failure to comply with this provision shall ipso facto render the office of each of the commissioners vacant, and the railroad board shall appoint new commissioners as provided for by this act.

(e) Neither the chief commissioner nor the first associate commissioner shall hold any other office or position of profit, or pursue any other regular business or vocation. These limitations and restrictions shall not apply to the second associate commissioner, but none of the commissioners shall be a member of any political convention, or a member of any committee of any political party.

(f) Before entering upon the duties of his office, each of said commissioners shall take and subscribe the constitutional oath of office, and shall in addition thereto swear (or affirm) that he is not pecuniarily interested in any railroad in this state or elsewhere, or common carrier, which oath or affirmation shall be filed in the office of the secretary of state.

(g) The chief commissioner shall receive a salary of \$5,000 per annum, the first associate commissioner shall receive a salary of \$4,000 per annum, and the second associate commissioner shall receive a salary of \$2,500 per annum, all payable in the same manner as the salaries of other state officers are paid.

(h) Said commission may appoint a secretary, who shall be an expert rate man at a salary of not more than \$2,400 per annum and may employ such other clerks and experts as may be necessary to perform any service it may require of them, and shall fix their compensation.

(i) The secretary shall take and subscribe to an oath similar to that of the commissioners, and shall keep full and correct records of all transactions and proceedings of the commission, and shall perform such other duties as may be required by the commission. Any person ineligible to the office of commissioner shall be ineligible to the office of secretary.

(j) The commission shall be known collectively as the "Railroad Commission of Nevada," and in that name may sue and be sued. It shall have a seal with the words "Railroad Commission of Nevada," and such other design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings, and of which the courts shall take judicial notice.

(k) The commission shall keep its office at Carson City, and shall be provided by the board of capitol commissioners with suitable room or rooms,

necessary office furniture, supplies, stationery, books, periodicals, maps, and all necessary expenses shall be audited and paid as other state expenses are audited and paid. The commission may hold sessions at any place other than its office, when the convenience of the parties so requires. The commissioners and secretary and such other clerks and experts as may be employed shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expense, and be approved by the chairman of the commission.

(l) The commission shall have the power to adopt and publish rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroads and other parties before it, and all hearings shall be open to the public.

(m) The commission may confer by correspondence, or by attending conventions, or otherwise, with the railroad commissioners of other states, and with the interstate commerce commission on any matters relating to railroads. All necessary expenses incurred in attending such conventions shall be a charge against the state, and be audited and paid as other state claims are paid; *provided*, that all such claims shall be sworn to by the commissioner incurring the expense, and be approved by the chairman.

(n) Nothing herein contained shall be so construed as to affect the date of the beginning or ending of the term of any commissioner now in office, or to change the dates of future appointments from those now prescribed by law, but from and after the passage of this amendatory act the commissioner now designated as the one who shall not hold any other office or position of profit, or pursue any other business or vocation, or serve on or under any committee of any party, but shall devote his entire time to the duties of his office, shall be officially designated "Chief Commissioner," and be paid the salary herein prescribed and the commissioner whose term began on the first Monday in February, 1911, shall be officially designated "First Associate Commissioner," and the salary paid him as herein prescribed. The salaries herein provided for shall be deemed and considered full compensation for all services rendered by the members of the commission, whether as railroad commissioners or in any other official or ex officio capacity. *As amended, Stats. 1909, 131; 1911, 376.*

See public service commission, secs. 4515-4548.

Const., sec. 275, ante, applies to the subject and not to the effect of a law, and if the necessary effect of a statute is to repeal previous legislation on the same subject it does no violence to such provision by failing to specifically express such repeal in its title, nor is it necessary that a general provision expressly repealing prior inconsistent legislation on the same subject should be mentioned in the title. *Southern Pac. Co., et al., v. Bartine, et al., 170 Fed. 725.*

The inclusion in a statute of a section foreign to the subject of the act and not mentioned in its title does not invalidate the remainder of the act, although it may itself be void. *Idem.*

Said section does not apply to a new act which is complete in itself and which does not purport to be amendatory of any previous act and does not require a reference to any other law to discover its scope or meaning. Such an act is not amendatory within the meaning of the provision, although in general terms it repeals all acts and parts of acts inconsistent with its provisions. *Idem.*

This act is not amendatory, but is a complete act covering the entire subject, which is not unconstitutional because it does not reenact or publish at length former statutes, but which supersedes and by implication repeals all former legislation on the subject. *Idem.*

The provision of this section that the governor, lieutenant-governor, and attorney-general of the state shall constitute a railroad board for the purpose of appointing the members of a railroad commission thereby created, is not the appointment of such state officers to a new office and a violation of the state constitution as the exercise of an executive function, but merely imposes new duties on such officers, and is a valid exercise of legislative power, especially in view of the fact that the constitution nowhere vests the governor with sole appointive power, but merely provides that he shall be the "chief executive" (ante, sec. 294), and also provides in art. 15, sec. 10, that "all officers whose election or appointment is not otherwise provided for shall be chosen or appointed as may be prescribed by law" (ante, sec. 378). *Idem.*

**4550. Meaning of term "railroad"—What provisions of act apply to.**

SEC. 2. The term "railroad" as used herein, shall mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers (appointed by any court whatsoever) that now, or may hereafter, own, operate, manage or control any railroad or part of a railroad as a common carrier in this state, or cars, or other equipment used thereon, or bridges, terminals, or sidetracks, or any docks or wharves or storage elevators used in connection therewith, whether owned by such railroads or otherwise. The term "railroad," whenever used herein, shall mean and embrace express companies, telegraph and telephone companies, and all companies which may own cars of any kind or character, used and operated as a part of railroad trains, in or through this state, and all duties required of and penalties imposed upon any railroad or any officer or agent thereof shall, in so far as the same are applicable, be required of and imposed upon express companies, telegraph and telephone companies, and companies which may own cars of any kind or character, used and operated as a part of railroad trains in or through this state, and their officers and agents, and the commission shall have the power of supervision and control of all such companies to the same extent as of railroads.

(a) The provisions of this act shall apply to the transportation of passengers and property and the transmission of messages between points within the state, and to the receiving, switching, delivering, storing and hauling of such property, and receiving and delivering messages, and to all charges connected therewith, including icing charges and mileage charges, and shall apply to all railroads, corporations, express companies, car companies, freight and freight-line companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers, upon or over any line of railroad within this state, and to any common carrier engaged in the transportation of passengers and property, wholly by rail, or partly by rail and partly by water. *As amended, Stats. 1909, 133.*

**4551. Adequate service required for reasonable charge.**

SEC. 3. Every railroad is hereby required to furnish reasonably adequate service and facilities, and the charges made for any service rendered or to be rendered in the transportation of passengers or property or for any service in connection therewith, or for the receiving, switching, delivering, storing or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

**4552. Railroads to furnish schedules—Open to public inspection—What to state and include—Copies to be kept on file in depots and offices—Joint rates—Changes not to be made without notice to commission—Notice of changes given to public—Unlawful to make greater or less charge than given in schedule—Form of schedule.**

SEC. 4. Every railroad shall print in plain type, and file with the commission within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, fares and charges for the transportation of passengers and property, and any service in connection therewith, which it has established and which are in force at the time between all points in this state upon its line, or any line controlled or operated by it, and the rates, fares and charges shown on such schedules as are in effect at the date this act takes effect. The schedule printed as aforesaid shall plainly state the charges upon its line or any line controlled or operated by it in this state between which passengers and property will be carried, and there shall be filed therewith the classifications of freight in force. Every railroad shall publish with and as a part of such schedules all rules and regulations that in any manner affect

the rates charged or to be charged for the transportation of passengers or property, also its charges for delay in unloading or loading cars, for track and car service, or rental, and for demurrage, switching, terminal or transfer service, or for rendering any other service in connection with the transportation of persons or property. Two copies of said schedules for the use of the public shall be filed and kept on file in every depot, station and office of such railroad where passengers or freight are received for transportation in such form and place as to be accessible to the public and where they can be conveniently inspected. When passengers or property are transported over connecting lines in this state operated by more than one railroad, and the several railroads operating such lines establish joint rates, fares and charges, a schedule of joint rates shall also in like manner be printed and filed with the commission, and in every depot, station, and office of such railroads where such passengers or property are received for transportation.

(a) No change shall thereafter be made in any schedule, including schedule of joint rates, or in any classification, except upon thirty days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof thirty days prior to the time the same are to take effect; *provided*, that the commission, upon application of any railroad, may prescribe a less time within which a reduction may be made. Copies of all new schedules shall be filed as hereinbefore provided in every depot, station and office of such railroad ten days prior to the time the same are to take effect, unless the commission shall prescribe a less time.

(b) Whenever a change is made in any existing schedule, including schedule of joint rates, a notice shall be posted by the railroad in a conspicuous place in every depot, station and office, stating that changes have been made in the schedule on file, specifying the class or commodity affected and the date when the same will take effect.

(c) It shall be unlawful for any railroads to charge, demand, collect or receive a greater or less compensation for the transportation of passengers, property, or for any service in connection therewith, than is specified in such printed schedule, including schedules of joint rates, as may at the time be in force, and the rates, fares and charges named therein shall be the lawful rates, fares and charges until the same are changed as herein provided.

(d) The commission may prescribe such changes in the form in which the schedules are issued by the railroad as may be found expedient, and such schedules shall, as far as practicable, conform to the forms prescribed by the interstate commerce commission.

See sec. 3579.

**4553. Joint rates to be just and reasonable—May be less than local charge.**

**SEC. 5.** Whenever passengers or property are transported over two or more connecting lines of railroads between points in this state, and the railroad companies have made joint rates for the transportation of the same, such rates and all charges in connection therewith shall be just and reasonable, and every unjust and unreasonable charge is prohibited and declared to be unlawful; *provided*, that a less charge by each of said railroads for its proportion of said joint rates than is made locally between the same points on their respective lines shall not for that reason be construed as a violation of the provisions of this act, nor render such railroads liable to any of the penalties thereof.

**4554. Concentration, commodity, transit and other special contract rates.**

**SEC. 6.** Nothing in this act shall be construed to prevent concentration, commodity, transit and other special contract rates, but all such rates shall

be open to all shippers of a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this act as to the printing and filing of the same; *provided*, all such rates shall be under the supervision and regulation of the commission.

4555. Powers of commission to regulate freights and fares—Transmission of telegraph and telephone messages—Joint rates—Physical condition—Safety appliances—Crossings—Changes in service—Transfer tracks—Long and short haul.

SEC. 7. The commission shall have full power to prescribe just and reasonable railroad classifications of freight; and to fix just and reasonable charges for the transportation of all intrastate freight and intrastate passengers, for sleeping-car accommodations, for goods, merchandise, and all matter of every kind carried by express companies within this state, for the transmission of messages by telegraph companies, and for the use of telephone lines within the state. The commission shall also have power to make just and reasonable regulations for the apportionment of all such charges between two or more companies jointly engaged in the transportation of freight, passengers, express matter, telegraph or telephone messages.

The commission shall also have full power to investigate the physical condition of all railroad property, and, in the interest of safety or service, shall have power to determine and order repairs, reinforcements or reconstruction of property, including buildings, tracks, and equipment; also the power to determine and order the use of safety appliances in the interest of employees and the traveling public, such as crossing-gates, flagmen, bells, devices, etc., interlocking plants at railway crossings and all other modern safety devices. The commission shall have full power to determine and order the manner in which any railroad, street railway, steam or electric railway, or other common carrier, may cross another railroad, street railway, whatever the motive power, at grade, or above or below grade, and shall prescribe the safety appliances and regulations that should be adopted at such crossings or at existing grade crossings of railroads, steam, electric, or other motive power railways for the protection of the public and the prevention of accidents. The commission shall have the power whenever, in its judgment, it shall appear wise and proper to do so, to authorize and direct reasonable changes in train schedules and train service.

The commission shall have power to determine and order the construction of connecting or transfer tracks between two or more lines of railway, which may now or hereafter enter or pass through any town or city in this state. The expense of said construction of such tracks to be divided between and paid by the corporations operating said railways.

It shall be the duty of all railroad corporations whose tracks shall be so connected reciprocally to transfer cars from one railroad to the other upon demand of shippers or the railroad concerned, and for which transfer service reasonable charges may be made.

Nothing in this act shall be construed so as to allow any railroad to charge more for a shorter than for a longer haul, either for passengers or freight, when the shorter haul is included within the longer, or to authorize the commission to allow such charge to be made.

Original section 7 repealed, and new section enacted (Stats. 1909, 134).

A state has power, either through its legislature or a commission, to regulate the rates of charge of common carriers on intrastate business, subject to the limitation that such rates must be reasonable and afford to the carrier just and reasonable compensation for the services performed and for the

use of the property devoted to the business, estimated at its fair valuation. *Southern Pac. Co., et al., v. Bartine, et al.*, 170 Fed. 725.

In estimating the value of the property of a railroad company for the purpose of determining the reasonableness of rates fixed

by a state, neither the market value of its stocks and bonds, the cost of construction, nor the cost of reproduction of the property is absolutely controlling, but each should be regarded as a fact tending to show fair value, and, if one only of such facts is shown, it may be assumed that it represents such value. *Idem.*

In determining the reasonableness of freight rates fixed by a state on intrastate business, as applied to a railroad doing both intrastate and interstate business, it must be recognized that the cost of handling local shipments is relatively greater than through shipments, and, it being impossible to determine the exact ratio of difference, the opinions of experts based upon the facts of each particular case are admissible on the question. *Idem.*

In a suit for an injunction in a federal court the amount in dispute for jurisdictional purposes is the value of the right to be protected, and, where the requisite value is alleged and not denied, it is immaterial how much, or whether any, actual loss has been sustained. *Idem.*

It does not necessarily follow that a schedule of maximum freight rates is confiscatory and unconstitutional because it fails to yield to a railroad company a reasonable return on the investment. Such rates must

be reasonable, not only to the company but also to the public, and the fact that they do not prove remunerative to a new road built through a sparsely settled country where there is at present little local business, does not require the few people and the small business to pay such rates as will make the road immediately profitable to its stockholders. *Idem.*

In suits by various railroad companies to enjoin the enforcement of this act, evidence considered, and, except in the case of one complainant, held insufficient to show that such maximum rates, if adopted and enforced, would be unconstitutional as confiscatory. *Idem.*

The fixing of railroad rates by a state through whatever body, and although preceded by an investigation judicial in form, is a legislative and not a judicial act, and a statute authorizing the fixing of rates by a railroad commission is not invalid as an attempt to confer judicial power on the commission in violation of a provision of the state constitution. *Idem.*

This act, to fix just and reasonable rates to be charged by such company, is not unconstitutional as denying to some railroad companies the equal protection of the laws because the rates so prescribed may not be the same to all companies. *Idem.*

#### 4556. Certain freight may be carried free—Passes or reduced rates allowed to certain persons—Attendants allowed on stock trains—No discrimination.

SEC. 8. Nothing herein shall prevent the carriage, storage, or handling of freight free or at reduced rates for the United States, the state or any political subdivision thereof, or any municipality thereof, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or household goods and supplies, the property of employees, or the issuance of mileage, commutation, or excursion passengers' tickets; *provided*, that the same shall be obtainable by any persons applying therefor, without discrimination, or of party tickets; *provided*, that the same shall be obtainable by any person applying therefor under like circumstances and conditions. This act shall not be construed as preventing railroads from giving free transportation or reduced rates therefor to any minister of the gospel, constable in any county of the state, officer or agent of incorporated colleges, college professors, school teachers, students attending institutions of learning, regular agents of charitable societies when traveling upon the business of the society only, destitute or homeless persons, railroad officers, attorneys, directors, employees or members of their families, or bona fide ex-railroad employees of any steam or electric railroad in search of employment, or to prevent the exchange of passes with officers, attorneys, or employees of other railroads and members of their families.

(a) Upon any shipment of live stock or other property of such nature as to require the care of an attendant, the railroad may furnish to the shipper, or some person or persons designated by him, free transportation for such attendant, including return passage to the point at which the shipment originated; *provided*, that there shall be no discrimination in reference thereto between such shippers, and the commission shall have power to prescribe regulations in relation thereto. *As amended, Stats. 1909, 135; 1911, 375.*

**4557. Duty to maintain adequate depots and buildings—Commission may enforce.**

SEC. 9. It shall be the duty of every railroad to provide and maintain adequate depots and depot buildings at its regular stations and establish new stations wherever required, for the accommodation of passengers, and said depot buildings shall be kept clean, well lighted and warm for the comfort and accommodation of the traveling public. All railroads shall keep and maintain adequate and suitable freight depots, wherever needed, buildings, switches and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroad; *provided*, that this shall not be construed as repealing any existing law on the subject; *provided, further*, that to remove all doubts which have arisen upon the subject, the commission is specifically invested with full power to enforce the provisions of this section, and of this entire act. *As amended, Stats. 1909, 136.*

**4558. Duty of railroad to furnish suitable cars—No discrimination—Proviso—Commission may make regulations.**

SEC. 10. Every railroad shall, when within its power to do so, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots. In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor in proportion to their respective immediate requirements without discrimination between shippers or competitive or noncompetitive places; *provided*, preference may be given to shipments of live stock and perishable property.

(a) The commission shall have the power to enforce reasonable regulations for furnishing cars to shippers, and switching the same, and for the loading and unloading thereof, and the weighing of the cars and freight offered for shipment over any line of railroad.

**4559. Connecting lines—Duties to each other—Precedence to live stock and perishable freight—When may control private tracks.**

SEC. 11. All railroad companies as between themselves, and all interurban and electric railroads as between themselves and each other, shall afford all reasonable and proper facilities for the interchange of traffic between their respective lines for forwarding and delivering passengers and property, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars, loaded or empty, or any passengers destined to any point on its own or any connecting lines; *provided*, that precedence over other freight may be given to live stock and perishable freight.

(a) The commission shall have control over private tracks in so far as the same are used by common carriers, in connection with any railroad for the transportation of freight, in all respects the same as though such tracks were a part of the track of said railroad.

**4560. Commission to act on complaints—Hearings—Process for witnesses — Power of commission to remedy — May act on own motion—Railroad may be complainant.**

SEC. 12. Upon complaint of any person, firm, corporation or association, or of any mercantile, agricultural or manufacturing society, or of any body politic or municipal organization, that any of the rates, charges or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property, or any service in connection therewith, are in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commission may notify the railroad complained of that complaint has been made, and ten days after such notice has been given

the commission may proceed to investigate the same as hereinafter provided, but before proceeding to make such investigation the commission shall give the railroad and the complainants ten days' notice of the time and place when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. If upon such investigation the rate or rates, or any regulation, practice or service complained of shall be found to be unreasonable or unjustly discriminatory, or the service shall be found to be inadequate, the commission shall have power to fix and order substituted therefor such rate or rates, fares, charges or classifications, as it shall have determined to be just and reasonable and which shall be charged, imposed and followed in the future, and shall also have power to make such orders respecting such regulation, practice or service, as it shall have determined to be reasonable and which shall be observed and followed in the future.

(a) The commission may, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately, and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant.

(b) Whenever the commission shall believe that any rate or rates or charge or charges may be unreasonable or unjustly discriminatory, and that investigation relating thereto should be made, it may, upon its own motion, investigate the same. Before making such investigation it shall present to the railroad a statement in writing, setting forth the rate or charge to be investigated. Thereafter, on ten days' notice to the railroad of the time and place of such investigation, the commission may proceed to investigate such rate or charge in the same manner and make like orders in respect thereto as if such investigation had been made upon complaint.

(c) This section shall be construed to permit any railroad to make complaint with like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization.

**4561.** Each commissioner may administer oaths—Issue subpoenas—District court may enforce—Witness fees—Depositions—Record of proceedings—Transcripts to be furnished, when.

**SEC. 13.** Each of the commissioners, for the purposes mentioned in this act, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses, and the production of papers, way bills, books, accounts, documents and testimony. In the case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein.

(a) Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the commission; *provided*, that no witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated.

(b) The commission or any party may, in the investigation, cause the depo-

sitions of witnesses residing within or without the state to be taken in the manner prescribed by the law for like depositions in civil actions in district courts.

(c) A full and complete record shall be kept of all proceedings had before the commission or any investigation had under section 12 of this act, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission under the provisions of section 16 of this act the commission shall, before said action is reached for trial, cause a certified transcript of all proceedings had and testimony taken upon such investigation to be filed with the clerk of the district court of the county where the action is pending. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, taken by the stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript in longhand of all testimony taken at the investigation, or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation; and to all other persons, a copy, on payment of a reasonable amount therefor, to be fixed by the commission. *As amended, Stats. 1909, 136.*

#### 4562. Power to fix reasonable rates and service—Railroads to comply with orders—When take effect—May rescind orders.

SEC. 14. Whenever, upon an investigation made under the provisions of this act, the commission shall find any existing rate or rates, fares, charges or classification, or any joint rate or rates, or any regulation or practice whatsoever, affecting the transportation of persons or property, or any service in connection therewith, are unreasonable or unjustly discriminatory, or any service is inadequate, it shall determine and by order fix a reasonable rate, fare, charge, classification or joint rate to be imposed, observed and followed in the future in lieu of that found to be unreasonable or unjustly discriminatory, and it shall determine and by order fix a reasonable regulation, practice or service to be imposed, observed or followed in the future, in lieu of that found to be unreasonable or unjustly discriminatory or inadequate, as the case may be, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the railroad affected thereby, which order shall of its own force take effect and become operative thirty days after the service thereof. All railroads to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any railroad in any such rates, fares or charges, or in any joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the railroads affected thereby, in like manner, and the same shall take effect within such time thereafter as the commission shall prescribe.

(a) The commission may at any time, upon application of any person or any railroad, and upon notice to the parties interested, and after opportunity to be heard as provided in section 12, rescind, alter or amend any order fixing any rate or rates, charges or classification, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders. *As amended, Stats. 1909, 137.*

#### 4563. Regulations prima facie reasonable and lawful.

SEC. 15. All rates, fares, charges, classifications and joint rates fixed by

the commission shall be in force, and shall be prima facie lawful, until changed or modified by the commission, or in pursuance of section 16 of this act. All regulations, practices and services prescribed by the commission shall be in force and shall be prima facie reasonable, unless suspended or found otherwise in an action brought for that purpose, pursuant to the provisions of section 16 of this act, or until changed or modified by the commission as provided for in paragraph a, section 14, of this act. *As amended, Stats. 1909, 138.*

**4564. Railroads may institute action against commission to set aside orders—Procedure—Precedence—Injunction—Trial—Judgment—Appeal—Burden of proof.**

**SEC. 16.** Any railroad or other party in interest being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may, within ninety (90) days, commence an action in the district court of the proper county, against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice or service, fixed in such order is unreasonable, in which action the adverse parties shall be served with a summons and copy of the complaint. The commission shall file its answer, and on leave of court, any interested party may file the answer to said complaint within thirty (30) days, after the service thereof, whereupon said action shall be at issue and stand ready for trial upon twenty (20) days' notice by either party. All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce original evidence in addition to the transcript of the evidence offered to said commission.

(a) No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; *provided*, that all rates fixed by the commission shall be deemed reasonable and just, and shall remain in full force and effect until final determination by the courts, upon appeal.

(b) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen (15) days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

(c) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

(d) Either party to said action within sixty (60) days after service of a copy of the order or judgment of the court may appeal or take the case up

on error as in other civil actions. Where an appeal is taken the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(e) In all actions under this section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that the order of the commission complained of is unlawful, or unreasonable, as the case may be.

#### 4565. Rules of procedure—Witnesses—Immunity—Certified copies prima facie evidence.

SEC. 17. In all actions and proceedings in court arising under this act all processes shall be served, and the practice and rules of evidence shall be the same as in civil actions, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil processes shall execute any process issued under the provisions of this act, and shall receive such compensation therefor as may be prescribed by law for similar services.

(a) No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any violation of the provisions of this act, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; *provided*, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

(b) Upon application of any person the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence in any court or proceeding of the facts stated therein.

#### 4566. Authority of commission to make inquiries—Blanks, form of—Duty of railroad to furnish information—Inspection—Subpenas—Penalty for disobedience.

SEC. 18. The commission shall have the authority to inquire into the management of the business of all railroads, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any railroad all necessary information to enable the commission to perform the duties and carry out the objects for which it was created.

(a) The commission shall cause to be prepared suitable blanks for the purposes designated in this act, which shall conform as nearly as practicable to the forms prescribed by the interstate commerce commission, and shall, when necessary, furnish such blanks to each railroad. Any railroad receiving from the commission any such blanks, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure, and said answer shall be verified under oath by the proper officer of said railroad and returned to the commission at its offices within the time fixed by the commission; the making of a false affidavit or filing of the same shall be deemed perjury and punishable as such under the statutes of Nevada defining perjury.

(b) The commission, or any commissioner, or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books and papers of any railroad and to examine under oath any officer, agent or employee of such railroad in relation to any matter which is the subject of complaint and investigation; *provided*, that

any person other than the one of the said commissioners who shall make such demand shall produce his authority to make such inspection under the hand of a commissioner, or of the secretary and under the seal of said commission.

(c) The commission may require by order or subpoena, and to be served on any railroad, in the same manner that a summons is served in a civil action in a district court, the production within this state, at such time and place as it may designate, of any books, papers or accounts relating to any matter which is the subject of complaint or investigation kept by said railroad in any office or place without the State of Nevada, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction, and such subpoena may issue to any sheriff in any county of the state. Any railroad failing or refusing to comply with any such order or subpoena within a reasonable time shall, for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than one hundred dollars nor more than one thousand dollars, to be recovered in a civil action brought in the name of the railroad commission of Nevada.

#### 4567. Joint traffic contracts to be furnished on request—List of passes or mileage books.

SEC. 19. Every railroad, whenever required by the commission, shall, within a time to be fixed by the commission, deliver to the commission for its use copies of all contracts which relate to the transportation of persons or property, or any service in connection therewith made or entered into by it with any other railroad company, terminal company, depot company, equipment company, car company, express or other transportation company, bridge company, or any shipper or shippers, producers or consumers, or other persons doing business with it.

(a) Every railroad shall, on the first Monday in January of each year, and oftener if required by the commission, file with the commission a verified list of all railroad tickets, passes, and mileage books issued free or for other than actual bona fide money consideration at full established rates during the preceding year, together with the names of the recipients thereof, the amount received therefor, and the reason for issuing the same. This provision shall not apply to the sale of tickets at reduced rates open to the public. *As amended, Stats. 1909, 138.*

#### 4568. Railroads to make annual reports to commission.

SEC. 20. Every railroad company incorporated or doing business in this state, or which shall hereafter become incorporated or do business in this state shall, on or before the 15th day of September, 1907, and on or before the same day of each year thereafter, make and transmit to the commission in its office in Nevada a full and true statement, under oath of the proper officer of such corporation, of the affairs of such corporation relative to the State of Nevada, for the year ending on the 30th day of June preceding, which statement for the State of Nevada shall be similar in character and detail to the annual report required to be made by railroad companies to the interstate commerce commission, and such other and further information as may be required by the commission.

See sec. 3555.

#### 4569. May investigate violations of interstate commerce law—Reports to be filed with.

SEC. 21. The commission shall have power, and on complaint of any person it is hereby made its duty, to investigate all or any freight rates on interstate traffic on railroads in this state, and when the same are, in the

opinion of the commission, excessive or discriminatory, or are levied or laid in violation of the interstate commerce law, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission shall present the facts to the railroad, with a request to make such changes as the commission may advise, and if such changes are not made within a reasonable time, the commission shall apply by petition to the interstate commerce commission for relief. All freight tariffs issued by any such railroad relating to interstate traffic in this state shall be filed in the office of the commission within thirty days after the passage of this act, and all such tariffs thereafter issued shall be filed with the commission when issued.

#### 4570. Penalty for unjust discrimination—Rebates, lower rates.

SEC. 22. If any railroad, or any agent or officer thereof, shall directly or indirectly, by any special rate, rebate, drawback, or by means of false billing, false classification, false weighing, or by any other device whatsoever, charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it for the transportation of persons or property or for any service in connection therewith than that prescribed in the published tariffs then in force, or established as provided herein, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such railroads shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful, and upon conviction thereof shall forfeit and pay into the state treasury not less than one hundred dollars nor more than five thousand dollars for such offense; and any agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars for each offense.

(a) It shall be unlawful for any railroad to demand, charge, collect or receive from any person, firm or corporation, a less compensation for the transportation of property or for any service rendered or to be rendered by said railroad in consideration of said person, firm or corporation furnishing any part of the facilities incident thereto; *provided*, nothing herein shall be construed as prohibiting any railroad from procuring any facilities or service incident to transportation and paying a reasonable compensation therefor.

See secs. 3575-3577, 3581.

#### 4571. Preferences unlawful.

SEC. 23. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue 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 undue or unreasonable prejudice or disadvantage in any respect whatsoever.

See sec. 3581.

#### 4572. Rebates—False devices misdemeanor—Penalty.

SEC. 24. It shall be unlawful for any person, firm, or corporation knowingly to accept or receive any rebate, concession or discrimination in respect to transportation of any property wholly within this state, or for any service in connection therewith, whereby any such property shall by false billing, false classification, false weighing, or any other device whatsoever be transported at a less rate than that named in the published tariffs in force as provided herein, or whereby any service or advantage is received other than is herein specified. Any person, firm or corporation violating the provisions of this

section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars for each offense.

See secs. 3581, 6737.

**4573. Passes to state officials and other persons prohibited—Exception—Penalty—Forfeiture of office.**

**SEC. 25.** It shall be unlawful for any person, firm or corporation engaged in business as a common carrier to give or furnish to any state, district, county or municipal officer of this state, or to any person other than those mentioned in section 8, any pass, frank, free or reduced transportation, or for any such state, district, county or municipal officer to accept such frank, pass, free or reduced transportation. Any firm, person or corporation, or the agent thereof, or any state, district, county or municipal officer violating the provisions of this section shall, upon conviction thereof, be fined in any sum not less than one hundred dollars, or more than five hundred dollars, and in addition to such penalty the office of any such state, district, county or municipal officer shall, upon his conviction, ipso facto become vacant. *As amended, Stats. 1909, 139.*

**4574. Treble damages, when allowed—Proviso.**

**SEC. 26.** If any railroad shall do or cause to be done or permit to be done any matter, act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such railroad shall be liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation; *provided*, that any recovery as in this section provided shall in no manner affect the recovery by the state of the penalty prescribed for such violation.

**4575. Failure to fill out blanks, make returns, give information, exhibit books or papers—Penalty.**

**SEC. 27.** Any officer, agent or employee of any railroad who shall wilfully fail or refuse to fill out and return any blanks as required by this act, or shall wilfully fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such questions, or shall evade the answer to any such question, where the fact inquired of is within his knowledge, or who shall, upon proper demand, wilfully fail or refuse to exhibit to any commissioner or any commissioners, or any person authorized to examine the same, any book, paper or account of such railroad, which is in his possession or under his control, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each such offense, and a penalty of not less than five hundred dollars nor more than one thousand dollars shall be recovered from the railroad for each such offense when such officer, agent, or employee acted in obedience to the direction, instructions or request of such railroad or any general officer thereof.

**4576. Idem—Acts of omission and commission—Penalties.**

**SEC. 28.** If any railroad shall violate any provision of this act, or shall do any act herein prohibited, or shall fail, or refuse to perform any duty enjoined upon it, or upon failure of any railroad to place in operation any rate or joint rate, or do any other act herein prohibited, for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement or order made by the commission or any court (upon its application), for every such violation, failure or refusal, such railroad or railroads shall forfeit and pay into the state treasury a sum of not less than one hundred dollars nor more than ten thousand dollars for each offense. In construing and enforcing the provisions of this section, the act, omission or failure of any officer,

agent, or other person acting for or employed by any railroad, acting within the scope of his employment shall in every case be deemed to be the act, omission or failure of such railroad.

See sec. 3582.

#### 4577. Other powers of commission to regulate.

SEC. 29. Whenever, after hearing an investigation as provided by this act, the commission shall find that any charge, regulation, or practice affecting the transportation of passengers or property, or any service in connection therewith, not hereinbefore specifically designated, is unreasonable or unjustly discriminatory, it shall have the power to regulate the same as provided in sections 12 and 14 of this act.

#### 4578. Duty of railroads to notify commission relative to accidents— Investigations, notice of—Expenses—Evidence kept.

SEC. 30. Every railroad shall, whenever an accident attendant with loss of human life occurs within this state, upon its line of road or on its depot grounds or yards, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith, which investigation shall be held in the locality of the accident, unless, for greater convenience of those concerned, it shall order such investigation to be held at some other place, and said investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall seasonably notify an officer or station agent of the company of the time and place of the investigation. The cost of such investigation shall be certified by the chairman of the commission, and the same shall be audited and paid by the state in the same manner as other expenses are audited and paid and a record or file of said proceedings and evidence shall be kept by said commission.

#### 4579. To inquire into neglect—Report violations to attorney-general— Duty to aid in prosecutions—Actions for forfeiture.

SEC. 31. The commission shall inquire into any neglect or violation of the laws of this state by any such railroad corporation hereinbefore defined doing business therein, or by the officers, agents or employees thereof, or by any person operating a railroad, and shall have the power and it shall be its duty to enforce the provisions of this act as well as all other laws relating to railroads and report all violations thereof to the attorney-general; upon request of the commission it shall be the duty of the attorney-general or the prosecuting attorney of the proper, or any county, to aid in any investigation, prosecution, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act and all other laws of this state relating to railroads and for the punishment of all violations thereof. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the State of Nevada in the district court of any county having jurisdiction of the defendant. The attorney-general of Nevada shall be the counsel in any proceeding, investigation, hearing or trial prosecuted or defended by the commission or any prosecuting attorney selected by said commission, or other special counsel furnished said commission, in any county where such action is pending.

#### 4580. Claims for damages or overcharge not acted on by railroad to be investigated—Annual reports to governor—Printing, where done.

SEC. 32. All claims against any railroad for loss of or damage to property from any cause, or from overcharge upon any shipments, or from any other service, if not acted upon within ninety days from the date of the filing of such

claim with the railroad, may be investigated by the commission, in its discretion, and the result of such investigation shall be duly recorded and filed in the archives of the commission, be opened to examination by the public, and be embodied in the commission's next regular report. The regular reports of the commission shall be made to the governor annually as soon after the thirty-first day of December in each year as may be feasible in order to bring the report down to that date.

(a) It is hereby further provided that, except in cases of emergency, all the necessary printing of the commission shall be done at the state printing office, and it is made the duty of the state printer to have such printing done as expeditiously as possible. *As amended, Stats. 1909, 139.*

#### 4581. Substantial compliance with act—Rules and regulations.

SEC. 33. A substantial compliance with the requirements of this act shall be sufficient to give effect to all rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

#### 4582. Act not to affect other rights of action.

SEC. 34. This act shall not have the effect to release or waive any right of action by the state or by any person for any right, penalty, or forfeiture which may have arisen or which may hereafter arise under any law of this state; and all penalties and forfeitures accruing under this act shall be cumulative and a suit for, and recovery of one, shall not be a bar to the recovery of any other penalty.

#### 4583. All remedies available to commission.

SEC. 35. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations as to the provisions hereof and all orders of the commission, the commission can compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction or by other civil remedies.

#### 4584. All railroads to file copies of schedules of rates.

SEC. 36. Every railroad in this state shall, within sixty days after the passage of this act, file in the office of the commission copies of all schedules of rates, including joint rates in force on its line or lines, between points within this state on the date this act takes effect.

#### 4585. Each section of act independent.

SEC. 37. Each section of this act and every part of each section is hereby declared to be independent sections and parts of sections and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or any part thereof.

### SHEEP COMMISSION

*An Act regulating the sheep industry in the State of Nevada, creating a state board of sheep commissioners, defining their duties and prescribing their compensation.*

Approved March 26, 1907, 234

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#### 4586. Board of sheep commissioners.

SECTION 1. That a state board of sheep commissioners be and the same is hereby created.

#### 4587. Board, how constituted—Governor to appoint—Term—Bond—Salary—Qualifications—Meetings.

SEC. 2. That the state board of sheep commissioners, hereinafter called the board, shall consist of three (3) members, all of whom shall be experienced wool growers, no two of whom shall be from the same county, said members to be appointed by the governor, and to hold their office for four years, and until their successors are duly appointed and qualified. Each of said commissioners, before entering upon the duties of his office, shall take and subscribe to the constitutional oath of office and enter into a bond with at least two sureties in the penal sum of twenty-five hundred dollars (\$2,500), payable to the State of Nevada, and conditioned for the faithful performance of the duties of his office, which bond shall be approved by the governor, and filed in the office of secretary of state. The members of the board shall each receive for their services five hundred dollars (\$500) per annum and actual transportation expenses while in discharge of their duties. Said salary and expenses shall be paid from the state treasury. Each member of said board shall be a qualified elector of the county from which he is chosen, and must reside during his term of office within the state. Said board must hold their meetings quarterly, and oftener if so requested by any member of the board.

#### 4588. Officers—Rules of bureau of animal industry—Authority of inspectors—Secretary—Salary—Office—Tax rate, to fix—Expenses, how paid—Annual report to governor—Powers of board—Quarantine and dipping—Health regulations—Publication of orders—Legal notice.

SEC. 3. The board shall elect one of its members president, and is empowered to make rules and regulations for governing itself and for the enforcement of the provisions of this act, and shall have exclusive control of all matters pertaining to the sheep industry. It shall adopt on behalf of the state the rules and regulations of the United States bureau of animal industry, relating to the control and suppression of disease in sheep, and to cooperate with the officers of said bureau in the enforcement of such rules and regulations. The board is authorized to give the inspectors of the bureau of animal industry full authority and power for the inspection, quarantine, and condemnation of sheep or goats affected with any infectious or contagious disease, and for these purposes are granted all the authority of the present inspectors of the state, and are authorized and empowered to enter upon any ground or premises of this state for the purpose of enforcing the inspection, quarantine and condemnation laws of this state. The board shall appoint a secretary, prescribe his duties and fix his salary, which shall not exceed seven hundred and fifty (\$750) per annum. The board shall maintain an office at some point within this state to be determined by the board. The maintenance of such office and the secretary's salary shall be paid from the state treasury in the same manner as the salaries and expenses of state officers. The board shall fix the rate

of tax to be levied, as provided for in section 4 of this act, and shall send notice of the same to the county commissioners of the several counties of the state on or before the first day of August of each year. The board shall audit all bills of salaries and expenses incurred in the enforcement of this act that may be payable from the sheep inspection fund, and, if found correct, shall certify the same to the state controller, who shall draw a warrant on the state treasurer in favor of the parties entitled thereto. The board shall make an annual report in writing to the governor on or before the thirtieth day of November in each year, giving a statement of the transactions of the board, and facts relating to the condition of the sheep industry in this state. The board shall have power to order an inspection or quarantine of any sheep in the state, compel dipping at such times and as often as it deems necessary to insure the suppression of scab, and divide the state into such districts as may be necessary for the enforcement of this act. The board shall have power to quarantine and compel the cleaning and disinfecting of any shearing, dipping or other corrals where sheep are handled, and when owners or persons in charge of such corrals fail or refuse to clean and disinfect such corrals, the board shall have power to order the inspector to take charge of such corral and clean and disinfect it, the expense of which shall be paid by the owner or person in charge, and shall be a lien on such corral until the expense is paid. All orders, rules or regulations made by the board must be published at least twice in some newspaper having general circulation in the state, which shall constitute a legal notice upon all sheep men of the order made.

For federal act creating bureau of animal industry, see sec. 4390.

#### 4589. Tax on sheep for sheep inspection fund.

SEC. 4. The board of county commissioners, at the time of the annual levy of taxes, must, at the request of the board, levy the rate of tax recommended by the board, not to exceed twelve mills on the dollar, on all sheep assessed in their respective counties, according to the assessed valuation of the same, the said tax to be collected as other taxes and paid to the state treasurer, who must keep the same in a separate fund to be known as the sheep inspection fund. *As amended, Stats. 1909, 74.*

#### 4590. Assessor to prepare statement of total number and value of sheep— County treasurer to notify board—Sheep inspection fund.

SEC. 5. The county assessor must, on or before the fourth Monday in October of each year, prepare from the assessment book of such year, as corrected by the board of equalization, a statement showing the total number of all sheep assessed and the value of the same. And the county treasurer must notify the state board of sheep commissioners of all moneys forwarded to the state treasurer belonging to the state sheep inspection fund at the time said moneys are forwarded to the state treasurer, also make final report to said board at the time he makes settlement with the state controller. *As amended, Stats. 1911, 380.*

#### 4591. Sheep inspectors, how appointed—Bond—Salary—Inspection record—Powers of inspectors—Quarantine—Lien for expenses.

SEC. 6. The board shall have charge of the enforcement of the provisions of this act, and of all rules and regulations made and adopted by it. The board shall appoint such inspectors as may be necessary, and said inspectors, before entering upon the duties of their office, shall file a bond in the sum of one thousand dollars (\$1,000), payable to the state, for the faithful performance of their duties, with and to be approved by the board. Such inspectors shall receive five dollars (\$5) per diem and actual transportation expenses incurred in the performance of their duty, to be paid from the sheep inspection fund. The board and each inspector must keep a book,

to be known as the inspection record, in which they must enter their official acts. Such record must show the name of the owner of every flock of sheep inspected, and the time when and place where the same was inspected. Inspectors shall have the right at all times to enter any premises, farms, fields, pens, slaughter houses, buildings or cars, where any sheep are quartered, for the purpose of examining them, in order to determine whether they are affected with any infectious or contagious disease. All inspectors and their deputies shall have the same powers and authority of peace officers. The board shall have the power to order an inspector to quarantine any corral, pens, slaughter houses, buildings and cars where sheep may have been handled, and compel the cleaning and disinfecting of the same when deemed necessary for the purposes of this act. Where owners or persons in charge of such places refuse to clean and disinfect them, the inspector shall have the right to take charge of such places, and cause the same to be cleaned and disinfecting, the expense of which must be paid by the owner or person in charge, and shall be a lien upon such premises, corrals, pens, slaughter houses, buildings, cars, etc., until such expense is paid.

#### 4592. Report of inspectors.

SEC. 7. Inspectors shall report to the board in writing as often and at such times as may be requested by said board.

#### 4593. Inspectors to issue bill of health, when—Term "sheep" defined—Includes goats.

SEC. 8. Each inspector must inspect all the sheep within the district assigned to him, when so ordered by the board, and must make and issue certificate or bill of health for all sheep whose owners have complied with the law and the orders, rules and regulations made and adopted by the board, describing the sheep with the marks and brands thereon, which shall entitle the owner or agent in charge to pass with such sheep from one district to another in the state. The inspector shall immediately file with the board a duplicate of all certificates issued by him. The term "sheep" shall include goats, lambs and kids.

#### 4594. Immediate notification of infected sheep.

SEC. 9. Whenever any sheep shall become infected with scab or other infectious or contagious disease, the owner or agent in charge must immediately notify the board or inspector.

#### 4595. Quarantine enforced, when—Owner to pay expense—Lien.

SEC. 10. When sheep are found diseased, regulation for their quarantine must be made at once by the inspector of the district where such sheep are found, who must define the place and limits within which such sheep may be grazed, herded or driven, and such sheep must be held in quarantine until pronounced cured from disease by the board or inspector. The expense of dipping, hand-dressing, spotting, feeding and taking care of all sheep quarantined under the provisions of this act, must be paid for by the owner or agent in charge of such sheep; and such expense shall be a lien upon such sheep until paid.

#### 4596. Dipping of sheep—Regulations—Formula for dip.

SEC. 11. All sheep in the state must be dipped at such time or times as may be ordered by the board. Such dipping shall be done under the supervision of an inspector. The dip used in all cases must be a lime and sulphur dip, or a sulphur and tobacco dip, the formula of each to be as follows:

1. A lime and sulphur dip, made with 8 pounds of fresh lime and 25 pounds of flowers of sulphur, to 100 gallons of water, the lime and sulphur to be boiled together for not less than two hours.

2. A tobacco and sulphur dip, made from "Scab Cure," "Black Leaf," or "Laidlow and McKill's Tobacco Extract," to be used in such quantities as prescribed by directions for using such dips, with 16 pounds of flowers of sulphur to 11 gallons of water. Clean, pure water must be used in all cases, and the dip kept at a temperature of from 100 to 115 Fahrenheit, the sheep to be kept in the vat at least two minutes; *provided*, that if the formulas required by the bureau of animal industry of the United States for dipping sheep will be changed, the board must adopt the same in lieu of the foregoing formulas.

**4597. Sheep brought into state, board or inspector to be notified—Not applicable to sheep in railroad transit.**

**SEC. 12.** When any owner or person in charge of sheep shall bring such sheep into this state before entering from an adjoining state or territory for the purpose of grazing, they shall notify the board, or any inspector, in writing, of such fact immediately before entering the state, stating the time when and the place where such sheep shall enter; *provided, however*, that sheep in transit on the cars shall not be required to give notice unless they shall remain in the state, or are unloading to feed and rest for a longer period than forty-eight hours.

**4598. Permit to move diseased sheep.**

**SEC. 13.** In no case shall any scabby or exposed sheep be removed from one point to another within any district, or from one district to another, without a written permit from the board or an inspector.

**4599. Penalty for noncompliance with dipping directions.**

**SEC. 14.** Any person or persons owning or having charge of any dipping vat or vessel in which sheep are dipped, and every owner of sheep, or agent in charge of them, who shall refuse or neglect to dip all sheep in the manner prescribed in the preceding section, who shall fail to observe any and all rules and regulations made and adopted by the board in accordance with the provisions of this act, shall be liable to the fines and penalties imposed hereinafter in this act.

**4600. Inspector to file proper vouchers.**

**SEC. 15.** Whenever any inspector files in the office of the state controller proper vouchers, duly approved by the board setting forth:

1. The name of such inspector;
2. The kind and nature of service rendered;
3. The particular locality where the work was done;
4. The length of time employed;
5. The number of sheep inspected and the name of the owner or person in charge of such sheep;
6. The disease or diseases treated, and the number treated for each disease, and the length of time of such treatment;
7. The amount claimed for such services;

Then and in such case, the state controller must draw a warrant in favor of such inspector, payable out of the moneys in the sheep inspection fund.

**4601. Appropriation.**

**SEC. 16.** That the sum of ten thousand dollars is hereby appropriated out of any moneys not otherwise appropriated from the general fund for the purpose of carrying this act into effect. All moneys so appropriated to be returned into the general fund from such taxes as may be levied upon the sheep as herein provided.

**4602. Misdemeanor—Penalty.**

**SEC. 17.** Any person who violates any provision of this act, or who dis-

regards any order or direction made by the board or inspectors in accordance therewith, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment not exceeding six months, or by both such fine and imprisonment.

For federal act creating bureau of animal industry, see sec. 4390.

## TELEGRAPH

*An Act for the regulation of the telegraph, and to secure secrecy and fidelity in the transmission of telegraphic messages.*

Approved February 16, 1864, 125

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### 4603. Divulging or altering message—Penalty—Proviso.

SECTION 1. If any officer, agent, operator, clerk, or employee of a telegraph company, or any other person, shall wilfully divulge to any other person than the party from whom the same was received, or to whom the same is addressed, or his agent or attorney, any message received or sent, or intended to be sent, over any telegraph line, or the contents, substance, purport, effect, or meaning of such message, or any part thereof; or shall wilfully alter any such message by adding thereto, or omitting therefrom, any word or words, figure or figures, so as to materially change the sense, purport, or meaning of such message, to the injury of the person sending or desiring to send the same, or to whom the same was directed, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; *provided*, that when numerals or words of number occur in any message, the operator or clerk sending or receiving may express the same in words or figures, or in both words and figures, and such fact shall not be deemed an alteration of the message, nor in any manner affecting its genuineness, force, or validity.

See secs. 6713, 6825.

See act to regulate railroads, telegraph companies, etc., secs. 4549-4585.

### 4604. Transmitting or delivering false or forged message—Penalty.

SEC. 2. If any agent, operator, or employee in any telegraph office, or any other person, shall knowingly or wilfully send by telegraph to any person or persons, any false or forged message, purporting to be from such telegraph

office, or from any other person, or shall wilfully deliver or cause to be delivered to any person, any such message, falsely purporting to have been received by telegraph; or if any person or persons shall furnish or conspire to furnish, or cause to be furnished, to any such agent, operator or employee, to be so sent by telegraph, or to be so delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud any individual, partnership, or corporation, or the public, the person or persons so offending, shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

#### 4605. Agent, operator or employee not to use information—Penalty.

SEC. 3. If any agent, operator, or employee in any telegraph office, shall in any way use or appropriate any information derived by him from any private message or messages passing through his hands, and addressed to any other person or persons, or in any other manner acquired by him, by reason of his trust as such agent, operator, or employee, or shall trade or speculate upon any such information so obtained, or in any manner turn, or attempt to turn, the same to his own account, profit or advantage, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall also be liable in treble damages to the party aggrieved, for all loss or injury sustained by reason of such wrongful act.

#### 4606. Messages sent in order—Unreasonable delay in sending or delivery—Penalty—Messages in aid of criminal or fraudulent acts may be withheld.

SEC. 4. If any agent, operator, or employee in any telegraph office, shall unreasonably and wilfully refuse or neglect to send any message received at such office for transmission, or shall unreasonably and wilfully postpone the same out of its order, or shall unreasonably and wilfully refuse or neglect to deliver any message received by telegraph, the person so offending shall be deemed guilty of a misdemeanor, and may be punished by a fine, not to exceed five hundred dollars, or imprisonment, not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; *provided*, that nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon shall have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States, or other resistance to lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

See sec. 6825.

It is the duty of telegraph companies to transmit messages with reasonable diligence and in the order of time in which they are received. *Mackay v. W. U. Tel. Co.*, 16 Nev. 222.

Unless the importance of a message is shown either by its own terms or by explanation made to the person receiving it on behalf of the telegraph company, no damages

are recoverable for failure or delay in transmission beyond the price paid for that purpose. *Idem*.

Telegraph companies are liable to the extent of the actual damage sustained for delay or failure in transmitting a dispatch, the importance of which is manifest either by its own words or made so by explanation. *Idem*.

#### 4607. Wilfully and wrongfully opening message—Penalty—Treble damages.

SEC. 5. If any person not connected with any telegraph office shall, with-

out the authority or consent of the person or persons to whom the same may be directed, wilfully and unlawfully open any sealed envelope inclosing a telegraphic message and addressed to any other person or persons, with the purpose of learning the contents of such message, or shall fraudulently represent any other person or persons, and thereby procure to be delivered to himself any telegraphic message addressed to such other person or persons, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable in treble damages to the party injured, for all loss and damages sustained by reason of such wrongful act.

#### 4608. Stealing message—Penalty.

SEC. 6. If any person not connected with any telegraph company shall, by means of any machine, instrument, or contrivance, or in any other manner, wilfully and fraudulently read, or attempt to read any message, or to learn the contents thereof whilst the same is being sent over any telegraph line, or shall wilfully and fraudulently or clandestinely learn, or attempt to learn, the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat, or sent therefrom, or shall use, or attempt to use, or communicate to others, any information so obtained by any person, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

#### 4609. Bribery of operator, agent or employee—Penalty.

SEC. 7. If any person shall, by the payment or promise of any bribe, inducement, or reward, procure, or attempt to procure, any telegraph agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof; or shall offer to any such agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator or employee, or shall use, or attempt to use, any such information so obtained, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

#### 4610. Injury of or obstruction to line—Penalty.

SEC. 8. If any person shall wilfully or maliciously cut, break, or throw down any telegraph pole, or any tree, or other material used in any line of telegraph; or shall wilfully or maliciously break, displace, or injure any insulator in use in any telegraph line, or shall wilfully or maliciously cut, break, or remove from its insulator any wire used as a telegraph line; or shall, by the attachment of a ground wire, or by any other contrivance, wilfully destroy the insulation of such telegraph line, or interrupt the transmission of the electric current through the same; or shall, in any other manner, wilfully injure, molest, or destroy any property or materials appertaining to any telegraph line; or shall wilfully interfere with the use of any telegraph line, or obstruct, or postpone the transmission of any message over the same; or procure, or advise any such injury, interference or obstruction, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable to the telegraph company whose property is

injured, in a sum equal to one hundred times the amount of actual damages sustained thereby.

See sec. 6752.

**4611. Civil suit for damages.**

SEC. 9. Any person offending against the provisions of sections 1, 2, 4, 6, or 7 of this act, shall, in addition to the penalties therein prescribed, be liable to the party damaged in a civil suit, for all damages occasioned thereby.

**4612. Employees exempt from military and jury duty.**

SEC. 10. All operators, clerks, and persons in the employ of any telegraph company, whilst employed in the offices of said company, or along the route of its telegraph lines, shall be exempt from militia duty and from serving on juries, and from any fine or penalty for the neglect thereof.

**4613. Contracts made by telegraph—Messages deemed communications in writing.**

SEC. 11. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph, and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

**4614. Notice by telegraph deemed sufficient.**

SEC. 12. Whenever any notice, information, or intelligence, written or otherwise, is required to be given, the same may be given by telegraph; *provided*, that the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice.

**4615. Legal instruments may be sent by telegraph—Entitled to record.**

SEC. 13. Any power of attorney, or other instrument in writing duly proved or acknowledged, and certified so as to be entitled to record, may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and the telegraphic copy, or duplicate thereof, shall, *prima facie*, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original.

**4616. Checks, notes, bills, orders and agreements may be transmitted—Legal effect—Exception—Original message preserved.**

SEC. 14. Checks, due bills, promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and, when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser, or acceptor, thereof, and shall create the same rights and equities in favor of the payee, drawer, indorsee, acceptor, holder, or bearer thereof; and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person, other than the person or drawer thereof, to cause any such instrument to be sent by telegraph, so as to charge any person thereby. Except as hereinafter in the next section otherwise provided, whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same, to prove the existence and execution of the original writing from which the telegraphic copy or duplicate was transmitted. The original message shall, in all cases, be preserved in the telegraph office from which the same is sent.

**4617. Proof as to genuineness—Prima facie evidence.**

SEC. 15. Except as hereinbefore otherwise provided, any instrument in

writing, duly certified, under his hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph, and the telegraphic copy thereof shall, prima facie, only have the same force, effect, and validity, in all respects whatsoever, as the original, and the burden of proof shall rest with the party denying the genuineness or due execution of the original.

**4618. Warrant and orders of arrest may be transmitted—Procedure—Probable cause—Original preserved.**

SEC. 16. Whenever any person or persons shall have been indicted, or accused, on oath, of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any judge of the supreme court, or of any district, county or probate court, may indorse thereon an order signed by him, and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to any marshal, sheriff, constable, or policeman; and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority, and be under the same obligation to arrest, take into custody, and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof duly indorsed thereon, had been placed in his hands, and the said telegraphic copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original. But prior to indictment and conviction no such order shall be made by any officer, unless, in his judgment, there is probable cause to believe the said accused person or persons guilty of the offense charged; *provided*, the making of such order by any officer aforesaid shall be prima facie evidence of the regularity thereof, and of all proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent; and in telegraphing the same, the original or the said certified copy may be used.

See sec. 6967.

[Sees. 17 and 18 are now part of the civil practice act, secs. 5371, 5372.]

**4619. Company may have private mark or design—Filed where—Unlawful use. penalty for.**

SEC. 19. The president or secretary of any telegraph company doing business in this state, may file in the office of the county clerk of the county in which the principal office of said company, within this state, is situated, a copy of any printed blank or envelope, picture, or device, used, or intended so to be, by said company, with his certificate that the same is commonly used, or is intended so to be, in the business of said company, as a distinguishing mark, notice or index of said business, and thereupon such blank, envelope, picture, or device, shall become the property of said company; and it shall not be lawful for any person, unless by the employment or permission of said company, to print, publish, distribute or use, or cause to be printed, published, distributed, or used, either of them, or any copy, counterfeit, similitude, or imitation thereof: Any person wilfully offending against the provisions of this section may be punished by fine, not to exceed five hundred dollars, or imprisonment, not to exceed six months.

**4620. Dispatches sent in order received—Exceptions.**

SEC. 20. It shall be the duty of any telegraph company doing business in this state to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit by the person or persons whose dispatch is postponed out of its order; *pro-*

*vided*, that communications to and from public officers on official business may have precedence over all other communications; *and, provided also*, that intelligence of general and public interest may be transmitted for publication out of its order.

See sec. 4628.

#### 4621. Meaning of certain terms.

SEC. 21. The term "telegraphic copy," or "telegraphic duplicate," whenever used in this act, shall be construed to mean any copy of a message made or prepared for delivery at the office to which said message may have been sent by telegraph.

#### 4622. California state telegraph company, provisions relating to.

SEC. 22. The California state telegraph company, a company formed within the State of California, and having its principal office in the city of San Francisco, and doing business within the State of Nevada, is hereby declared to be duly incorporated under its present corporate name, style, and organization, and the right is hereby granted to said company to acquire, own, and enjoy, and to dispose of any and all such property, real and personal, franchises and privileges, as may be proper or convenient for the transaction of its business, and for effectually carrying out the objects and purposes of said company, as fully and completely as if said company had been originally formed and duly incorporated under the laws of this state, hereby conferring upon said company as ample power to do and transact business, and maintain its rights in all courts and places, as is or may be possessed by domestic corporations or natural persons.

#### 4623. *Idem*—Privileges in Nevada.

SEC. 23. There is hereby granted to the California telegraph company the privilege of constructing and putting in operation lines of telegraph over any public lands, and along or across any streets, roads, highways, or streams within the State of Nevada; *provided*, that the same be not unnecessarily obstructed thereby.

### *An Act to provide for constructing and maintaining telegraph lines in the State of Nevada.*

Approved February 9, 1866, 61

4624. Telegraph lines may be constructed.

4625. To sign and acknowledge certificate—  
File and record in office of secretary  
of state—Library fund—Fees—  
Notice.

4626. May construct line over public or private lands—Proviso—Rates, may fix.

4627. Rates to be posted at each office—  
Higher charge a misdemeanor.

4628. Lines to be governed by the general laws of the state—Order of transmission—Exception—Public business free.

4629. Right of way—Appraisers—Tender of appraised value—Appeal may be taken.

4630. Failure to keep line in repair to forfeit franchise—Quo warranto.

#### 4624. Telegraph lines may be constructed.

SECTION 1. Any person or persons, company, association, or corporation, desiring to do so, may construct and maintain, or if already constructed, may maintain, or if partially constructed, may complete and maintain, within this state, a telegraph line or lines, by complying with section 2 of this act.

4625. To sign and acknowledge certificate—File and record in office of secretary of state—Fees—Library fund—Notice.

SEC. 2. The person, or persons, or the president or the managing agent of the company, association, or corporation mentioned in section 1, shall make, sign, and acknowledge before some officer authorized by law to take acknowledgments of deeds, a certificate in writing, setting forth the name

or names of the person or persons, company, association, or corporation (as the case may be) by whom said line is to be operated, and the names of the points or places constituting the termini of said line within this state, and a general description of the route of said line, and shall file and cause the same to be recorded in the office of the secretary of state, for which said person or persons, company, association, or corporation shall pay the secretary of state, for the benefit of the library fund, the sum of five dollars, and also twenty-five cents for each folio contained in said certificate. The record of said certificates shall give constructive notice to all persons of the matter therein contained, and the work of constructing such line, if not already commenced or completed, within thirty days after the filing of the certificate aforesaid, and shall be continued, with all reasonable dispatch, until completed.

**4626. May construct line over public or private lands—Proviso—Rates, may fix.**

SEC. 3. The person or persons, company, association, or corporation named in the certificate (provided for in section 2), and their assigns, may construct, or if constructed, maintain, or if partially constructed, complete and maintain, their line of telegraph, described in their certificate, filed as aforesaid, over and through any public or private lands, and along or across any streets, alleys, roads, highways, or streams within this state; *provided*, they do not obstruct the same; and may operate the said telegraph line between the termini of the same, and have and maintain offices and stations at any city, town, place, or point along said line, and shall be entitled to demand, receive, and collect for dispatches and messages transmitted over such line, such sum or sums as he, she, they, or the officers of the company, association, or corporation (as the case may be), may deem proper.

See sec. 4555.

**4627. Rates to be posted at each office—Higher charge a misdemeanor.**

SEC. 4. The rates of charges so established shall be written, painted, or printed, in a plain and legible manner, and posted in each office on such line; and if any person or persons, company, association, or corporation, who shall construct, put in operation, and maintain any line of telegraph, shall demand or collect any higher or greater rates of charges than those specified and so posted, he, she, or they, or the officers or agents of the company, association, or corporation so doing, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any court of competent jurisdiction, shall for each offense, be punished by fine, in any sum not exceeding one thousand nor less than one hundred dollars, and, in default of payment of such fine, may, in the discretion of the court, be committed to the county jail until such fine be paid; one-half of all such fines shall go to the informer, and one-half to the school fund of the county in which such prosecution is had, but in no case shall the county be responsible for the costs in any such prosecution.

See sec. 4555.

Disposition of fines, see sec. 355.

**4628. Liens to be governed by the general laws of the state—Order of transmission—Exception—Public business free.**

SEC. 5. Such line or lines of telegraph as may avail themselves of the provisions of this act, shall also be governed, in all respects, by the general laws of the state regulating telegraph lines; do the business of side lines, and transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, and all damages sustained thereby, to be recovered, with costs of suit, by the person or persons whose dispatch is postponed out of its order; *provided*, that arrangements may be made with publishers of newspapers for the transmission of intelligence of general and

public interest out of its order; *and provided further*, that preference may be given to official dispatches for the detection and capture of criminals; messages on public business may be sent by the State of Nevada over such lines free of charge.

See sec. 4620.

#### 4629. Right of way—Appraisers—Tender of appraised value—Appeal may be taken.

SEC. 6. Any person or persons, company, association, or corporation, or their assigns, who are constructing, or who have already constructed, or who may propose to construct a line of telegraph, as provided in this act, shall have the right of way for the same, and so much land as may be necessary to construct and maintain such line, and for this purpose may enter upon private lands along the line described in the certificate, for the purpose of examining and surveying the same; and where such lands cannot be obtained by the consent of the owner or owners, possessor or possessors thereof, so much of the same as may be necessary for the construction of said line, may be appropriated by said person or persons, company, association, corporation, or their assigns (as the case may be), after making compensation therefor, as follows, to wit: Said person or persons, company, association, corporation, or the president or managing agent thereof, shall select one appraiser, and said owner or owners, possessor or possessors, shall select one, and the two so selected shall select a third, and the three shall appraise the lands sought to be appropriated, after having been first sworn before some officer authorized by law to administer oaths, to make a true appraisement thereof, according to the best of their knowledge and belief. If such person or persons, company, association, corporation, or its agent, shall tender to such owner or owners, possessor or possessors, the appraised value of such lands, appraised as aforesaid, he, she, or they, or the agent, officers, or employees of such company, association, or corporation, shall be entitled to proceed in the construction, or, if constructed, in the use of the line over the land so appraised, and may maintain said line over and upon said land, and at all times enter upon the same and pass over all adjoining lands, for the purpose of constructing, maintaining, and repairing said telegraph line, notwithstanding such tender may be refused; *provided*, that such tender shall always be kept good by such person or persons, company, association, corporation, or its agent; *and, provided further*, that an appeal may be taken by either party from the finding of the appraisers, to the district court of the district within which the land so appraised shall be situated, at any time within three months after such appraisement.

See secs. 5606-5629.

#### 4630. Failure to keep line in repair to forfeit franchise—Quo warranto.

SEC. 7. The owner or owners of any line or lines constructed and maintained under, or availing himself, or themselves, or itself, of the provisions of this act, shall at all times keep the same in as good condition and repair as may be practicable; and if such owner or owners shall fail to keep the same in such condition and repair, such failure shall work a forfeiture of all rights, privileges, and franchise belonging to such owner or owners, or any person having any interest therein. Such franchise may be also declared forfeited on information in the nature of a quo warranto, in the manner provided by law.

## TELEPHONE

To define rights and responsibilities of owners of telephone lines, sections 4631, 4632.

To authorize county commissioners to purchase or construct telephone lines, sections 4633, 4634.

*An Act to define the rights and responsibilities of owners of telephone lines in the State of Nevada.*

Approved March 1, 1897, 28

### 4631. Telephone privileges same as telegraph.

SECTION 1. All persons or corporations owning telephone lines now in operation, or who may hereafter construct and operate such lines in the State of Nevada, shall be entitled to all the rights and privileges and be subject to all the restrictions and responsibilities provided for in an act entitled "An act for the regulation of the telegraph, and to secure secrecy and fidelity in the transmission of telegraphic messages," approved February 16, 1864, and in an act entitled "An act to provide for constructing and maintaining telegraph lines in the State of Nevada," approved February 9, 1866, and all acts and parts of acts amendatory of or supplementary to said two acts mentioned herein, so far as the same shall be applicable to telephone companies. *As amended, Stats. 1905, 151.*

See secs. 4603-4630.

### 4632. Penalty for damage or interruption.

SEC. 2. Any person who shall wilfully or maliciously damage or destroy any telephone line, or in any manner interrupt communication over any telephone line, shall be liable for damages and criminal prosecution in the same manner and to the same extent as if the same were a telegraph line.

See secs. 4610, 6752.

*An Act to authorize the county commissioners of any of the counties of the State of Nevada to purchase or construct telephone lines.*

Approved March 14, 1899, 93

### 4633. County commissioners empowered to acquire telephone lines.

SECTION 1. The county commissioners of any of the counties of this state are hereby authorized, upon there being filed with them a petition signed by two-thirds of the taxpayers of the county, requesting them so to do, to purchase or construct a telephone line, or lines, within the limits of the county, if in their judgment it would be to the interest of the county to do so, and to pay for the same out of the general fund of the county.

### 4634. Title, how vested.

SEC. 2. The title to any telephone line or lines constructed or acquired by or under the authority of any board of county commissioners in this state as provided in this act, shall be vested in said county, and under its control and management.

## TRADEMARKS

*An Act to protect persons, associations and unions of workingmen and others in their labels, trademarks and forms of advertising, and to provide a penalty for the violation of the provisions of this act.*

Approved March 29, 1907, 374

### 4635. Trademark and union labels protected—Filing fee—Evidence.

SECTION 1. Every person or association or union of workingmen or others

that has adopted or shall adopt for their protection any label, trademark or form of advertisement, may file the same for record in the office of the secretary of state by leaving two copies, counterparts or facsimiles thereof with the secretary of state. Said secretary shall thereupon deliver to such person, association or union so filing the same a duly attested certificate of the record of the same, for which he shall receive a fee of two (\$2) dollars. Such certificate of record shall in all actions and prosecutions, under the following three sections be sufficient proof of the adoption of such label, trademark or form of advertisement, and the right of said person, association or union to adopt the same.

**4636. Idem—Exclusive use—Counterfeiting of may be enjoined—Damages—Attorney's fee.**

SEC. 2. Every person, association or union adopting a label, trademark, or form of advertisement, as specified in the preceding section, may proceed by action to enjoin the manufacture, use, display or sale of any counterfeit or imitation thereof; and all courts having jurisdiction of such actions shall grant injunctions to restrain such manufacture, use, display or sale and a reasonable attorney's fee, to be fixed by the court, and shall require the defendant to pay to such person, association or union the profits derived from such wrongful manufacture, use, display or sale, and a reasonable attorney's fee to be fixed by the court, and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court to be destroyed. Such actions may be prosecuted for the benefit of any association or union by any officers or members thereof.

**4637. Idem—Counterfeiting of—Penalty.**

SEC. 3. It shall be unlawful for any person or corporation to imitate any label, trademark or form of advertisement adopted as provided in the second preceding section, or to knowingly use any counterfeit or imitation thereof, or to use or display such genuine label, trademark or form or advertisement or the name or seal of such person, union, or association, or of any officer thereof, unless authorized so to do, or in any manner not authorized by him or it. Any person violating any provisions of this section shall be imprisoned in the county jail not more than thirty days or be fined not less than twenty-five nor more than one hundred dollars.

See secs. 6689-6694.

## UNIVERSITY OF NEVADA

To fix the name of the state university of Nevada, section 4638.

Relating to the state university, sections 4639-4650.

To provide for the election of a board of regents, section 4651.

To locate the state university, and to provide for its control, sections 4652-4654.

Acts of Congress in aid of agricultural colleges and establishing agricultural experiment stations, section 4655.

In relation to the agricultural, mining and mechanical college, sections 4656-4659.

Supplemental to an act entitled "An act relating to the state university," sections 4660-4663.

To commission officers of cadets of the state university, sections 4664, 4665.

Creating the honorary board of visitors of the Nevada state university, sections 4666-4670.

### Constitutional Provisions—

To be established, section 356.

Departments of learning in, section 356.

Fund created for support of, sections 355, 357.

Sectarian instruction in, prohibited, section 361.

First board of regents of, section 359.

See Agricultural Experiment Station, secs. 456-464, 469, 475.

*An Act to fix the name of the state university of Nevada.*

Approved March 29, 1907, 433

**4638. Legal corporate name.**

SECTION 1. The legal and corporate name of the state university shall be the University of Nevada.

*An Act relating to the state university and matters properly connected therewith.*

Approved February 7, 1887, 42

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| 4639. Normal school, mining, agriculture and mechanic arts, established—Preparatory department. | 4645. Academic degree, how issued—Normal school—Teacher's certificate—Reports to president. |
| 4640. Board of regents—Number—Term—Vacancy, governor to fill.                                   | 4646. President to manage affairs—Monthly statements to regents—Employ assistants.          |
| 4641. Powers and duties of board of regents.  | 4647. No discrimination as to students—Qualifications of.                                   |
| 4642. No compensation—Expenses—Qualifications—Salary—Records public.                            | 4648. Tuition fee.  |
| 4643. Quarterly and special meetings.   | 4649. Superintendent of public instruction.   |
| 4644. Annual report of president.   | 4650. Board of examiners to pass upon expenses.   |

**4639. Normal school, mining, agriculture and mechanic arts established—Preparatory department.**

SECTION 1. There shall be established in the state university of Nevada, a school for the instruction of teachers, in which shall be taught all the branches of instruction which are taught in the common schools of this state, together with the theory and practice of teaching, school law, botany, psychology and geology. There shall also be taught in said university, chemistry, assaying, mineralogy, surveying and geology, so far as they relate to the theory and practice of mining, agriculture and mechanic arts. There shall also be taught in the preparatory department of said university, typewriting, shorthand, telegraphy, bookkeeping and commercial law so far as they relate to the practical affairs of life. *As amended, Stats. 1891, 92.*

See constitutional provisions, art. 11, secs. 356-360.

State hygienic laboratory established at university, secs. 3941-3945.

**4640. Board of regents—Number—Term—Vacancy, governor to fill.**

SEC. 2. From and after the first day of January, A. D. 1907, the board of regents of the state university shall consist of five members; those who are elected for the term of four years to be known as "long-term regents," and those who are elected for the term of two years to be known as "short-term regents," and to hold their offices for the several periods for which they are elected, and until their successors are elected and qualified. At the general election held in 1906 there shall be elected two long-term regents, who shall hold their office for the term of four years, and two short-term regents who shall hold their office for the period of two years. Thereafter, at each general election, there shall be elected two regents for the long term and one regent for the short term in the same manner as other state officers are elected. The persons elected as regents under the provisions of this act, before entering upon the discharge of their office, shall take and subscribe to the official oath and file the same in the office of the secretary of state. In case of vacancy in said board of regents, the governor shall fill the same by appointment until the next general election, when such vacancy shall be filled by election. The term of office of each regent shall begin on the first Monday of January after his election. *As amended, Stats. 1905, 190.*

See State ex rel. Mack v. Torreyson, 21 Nev. 517, 525, under const., sec. 359, ante.

#### 4641. Powers and duties of board of regents.

SEC. 3. The powers and duties of the board of regents are as follows:

First—To prescribe rules for their own government, and for the government of the university.

Second—To prescribe rules for the reports of officers and teachers of the university.

Third—To prescribe the course of study, the time and standard of graduation and the commencement and duration of the terms, and the length of the vacations of the university.

Fourth—To prescribe the text-books, and provide apparatus and furniture for the use of pupils.

Fifth—To appoint a president of the university, who shall have a diploma from some recognized college of learning of good standing, or some state normal school, who has had at least five years of practical experience as an instructor, who is familiar with the modern methods of imparting instruction generally approved in the United States, and who shall be indorsed as to moral character and qualifications as an instructor by the president and faculty of three institutions of learning authorized by law to confer degrees.

Sixth—To prescribe the duties of the president, and fix his salary, and the salaries of all other teachers in the university.

Seventh—To require the president, under their direction, to establish and maintain training or model schools, and require the pupils of the university to teach and instruct classes therein.

Eighth—To control the expenditures of all moneys appropriated for the support and maintenance of the university, and all moneys received from any source whatsoever.

Ninth—To keep open to public inspection an account of receipts and expenditures.

Tenth—To annually report to the governor a statement of all their transactions, and of all other matters pertaining to the university.

Eleventh—To transmit with such report a copy of the president's annual report.

Twelfth—To revoke any diploma by them granted, on receiving satisfactory evidence that the holder thereof is addicted to drunkenness, is guilty of gross immorality, or is reputably dishonest in his or her dealings; *provided*, that such person shall have at least thirty days' previous notice of such contemplated action, and shall, if he or she asks it, be heard in his or her own defense.

#### 4642. No compensation—Expenses—Clerk, qualifications, salary—Records public.

SEC. 4. The board of regents shall have the power to appoint a chairman, who shall receive no compensation therefor, nor shall any member of the board of regents receive any compensation for his services, except necessary expenses in attending meetings of the board. The board of regents may employ a clerk of said board, who shall receive a salary of twenty-five dollars per month, and who shall keep a full record of all proceedings of the board, which shall at all times be open to public inspection, and said clerk shall not be a teacher in said university.

#### 4643. Quarterly and special meetings.

SEC. 5. The board must hold four regular meetings in each year, and may hold special meetings at the call of the chairman of the board.

#### 4644. Annual report of president.

SEC. 6. The president of the university must make a detailed annual report

to the board of regents, with a catalogue of pupils, and such other particulars as the board may require or he may think useful.

4645. Academic degree, how issued—Normal school—Teachers' certificates—Reports to president—Cause for revocation—Diploma of graduation.

SEC. 7. Upon the recommendation of the president of the university, the board of regents shall issue to those who worthily complete the full course of study in the school of mines or in the school of agriculture, or in the school of liberal arts, or in any equivalent course that may hereafter be prescribed, a diploma of graduation, conferring the proper academic degree, from the Nevada state university; and no diploma bearing the distinctive title, "Nevada State University," shall be issued to anyone who has not completed the full course of study as above set forth. Upon the recommendation of the president of the university, the board of regents shall issue to those who worthily complete the full four years' course of study prescribed in the Nevada state normal school, a department of the state university, a diploma of graduation, and said diploma shall bear the heading, "The Nevada State Normal School," and to all persons receiving this diploma, the state board of education shall issue a state high-school certificate of the first grade, good for five years. To the holders of the above state high-school certificates of the first grade, the state board of education shall grant a life diploma when said graduates of the Nevada state normal school shall have completed at least five years of successful instruction in the public schools of Nevada, or of any other state. Upon the recommendation of the president of the university, the board of regents shall issue to those who worthily complete the three years' course of study prescribed in the Nevada state normal school, a grammar-grade diploma of graduation, and said diploma shall bear the heading, "Nevada State Normal School, Grammar Grade Diploma," and to all persons receiving this grammar-grade diploma, the state board of education shall grant a grammar-grade state certificate good for five years. The board of regents may require said normal-school graduates, before granting the diplomas herein provided for, to sign the following obligation: "I hereby agree to report to the president of the university by letter at least twice a year for three years after my graduation and once a year thereafter, so long as I continue in the profession of teaching, and when I shall leave the profession I will report the fact to him with the cause therefor. A failure to make such reports may be considered sufficient cause for the revocation of my diploma." And further, it is hereby expressly provided that the graduates of the Nevada state normal school for the year 1895 shall receive their diplomas and state certificates according to the act of March 19, 1891, hereby amended. Upon the recommendation of the president of the university the board of regents shall issue to those who worthily complete the full course of study in any other department of the university, not equivalent to a regular university course, a diploma of graduation, but said diploma shall bear the name of the department from which it is issued, and in no case to bear the heading of the regular university diploma. *As amended, Stats. 1891, 93; 1895, 89.*

4646. President to manage affairs—Monthly statements to regents—Employ assistants.

SEC. 8. It shall be the duty of the president of the university to instruct in the university, and, under the direction of the board of regents, to manage all matters connected with the institution, to employ assistant teachers and servants, purchase supplies and make monthly statements to the board of regents of all receipts and expenditures, supported by vouchers.

**4647. No discrimination as to students—Qualifications of.**

SEC. 9. There shall be no discrimination in the admission of pupils on account of sex, race or color; but no person shall be admitted who is not of good moral character, and who has not arrived at the age of fifteen years, and passed such an examination as shall be prescribed by the board of regents, and no person under said age shall hereafter be taught in said institution.

**4648. Tuition free.**

SEC. 10. Tuition shall be free.

**4649. Superintendent of public instruction must visit quarterly and report to regents.**

SEC. 11. The state superintendent of public instruction must visit the university at least every three months, inquire into its condition and management, and report to the board of regents quarter-yearly the condition of the institution, with such suggestions as he may deem proper.

**4650. Board of examiners to pass upon expenses.**

SEC. 12. All expenses incurred, of every name and nature, involving the payment of money by or under the direction of the board of regents of the university, shall be passed upon by the board of examiners, as other accounts against the state, and be paid out of the moneys appropriated for the university.

Board of examiners, secs. 4455-4464.

*An Act to provide for the election of the board of regents, to fix their term of office and prescribe their duties.*

Approved March 5, 1869, 134

[Sections 1, 2, 3 and 5 of this act repealed, Stats. 1887, 45.]

**4651. Regents not to be interested in contracts—Penalty.**

SEC. 4. No member of said board shall be interested, directly or indirectly, as principal, copartner, agent, or otherwise, in any contract or expenditure created by the board, or in the profits or results thereof. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five thousand dollars, to which may be added imprisonment in the county jail for a period not exceeding six months.

See secs. 2827, 6331.

Cited, State ex rel. Mack v. Torreyson, 21 Nev. 52 (34 P. 879), under sec. 359, ante; same, 21 Nev. 518-525.

*An Act to locate the state university, and to provide for the control and maintenance of the same.*

Approved March 7, 1873, 166

**4652. Location at Reno.**

SECTION 1. The state university, as described in section 4 of article 11 of the constitution of this state, is hereby located at the town of Reno, Washoe County, State of Nevada. \* \* \*

[Secs. 2 and 3 of original act repealed by Stats. 1887.]

**4653. Irreducible university fund created—Land grant, sale of.**

SEC. 4. Immediate selection and sale of the seventy-two sections of land granted this state by act of Congress, approved July fourth, eighteen hundred and sixty-six, for the establishment and maintenance of a university, is hereby ordered. The moneys arising from the sale of said lands shall be

and constitute a fund to be known as the irreducible university fund. Whenever there shall be a sum in said fund sufficient for investment the board of regents shall direct the state treasurer to negotiate for investment of the same in United States securities, or in bonds of this state, at the lowest purchasable rates, and the board shall then draw their order upon the state controller, in favor of the state treasurer, for the amount to be invested. Said controller shall thereupon draw his warrant as directed, and the treasurer shall complete the purchase of the securities negotiated for by him in pursuance of this act. The interest derived from said fund, together with all moneys paid as interest on deferred installments on purchase of lands named in this act which may be sold under contract as provided in section 9 of an act entitled "An act to provide for the selection and sale of lands," etc., approved March fourth, eighteen hundred and seventy-one, shall be and constitute a fund to be known as the contingent university fund.

[Secs. 5, 6, original act, repealed by Stats. 1887, 42.]

#### 4654. Permanent establishment of—Effect of removal.

SEC. 7. In consideration of the conveyance of lands having thereon a building as provided in this act, the state university, designed ultimately to embrace departments of agriculture, mechanic arts, and mining, shall be considered permanently established as herein provided, and if removed for any cause, title to the property named shall revert to the people donating the same.

#### 4655. Acts of Congress in aid of agricultural colleges and establishing agricultural experiment stations:

*An Act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto.*

Approved March 2, 1887

**Section 1—Agricultural experiment stations—Division of appropriation.** That in order to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science, there shall be established, under direction of the college or colleges or agricultural department of colleges in each state or territory established, or which may hereafter be established, in accordance with the provisions of an act approved July second, eighteen hundred and sixty-two, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," or any of the supplements to said act, a department to be known and designated as an "agricultural experiment station"; provided, that in any state or territory in which two such colleges have been or may be so established the appropriation hereinafter made to such state or territory shall be equally divided between such colleges, unless the legislature of such state or territory shall otherwise direct.

**Sec. 2—Scope of researches.** That it shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective states or territories.

**Sec. 3—Commissioner of agriculture to advise, etc.—Reports.** That in order to secure, as far as practicable, uniformity of methods and results in the work of said stations, it shall be the duty of the United States commissioner of agriculture to furnish forms, as far as practicable, for the tabulation of results of investigation or experiments; to indicate, from time to time, such lines of inquiry as to him shall seem most important; and, in general, to furnish such advice and assistance as will best promote the purposes of this act. It shall be the duty of each of said stations, annually, on or before the first day of February, to make to the governor of the state or territory in which it is located a full and detailed report of its operations, including a statement of receipts and expenditures, a copy of which

report shall be sent to each of said stations, to the said commissioner of agriculture, and to the secretary of the treasury of the United States.

**Sec. 4—Bulletins—To be post free.** That bulletins or reports of progress shall be published at said stations at least once in three months, one copy of which shall be sent to each newspaper in the states or territories in which they are respectively located, and to such individuals actually engaged in farming as may request the same, and as far as the means of the station will permit. Such bulletins or reports and the annual reports of said stations shall be transmitted in the mails of the United States free of charge for postage, under such regulations as the postmaster-general may from time to time prescribe.

**Sec. 5—Appropriations to be made from sales of public lands—Buildings.** That for the purpose of paying the necessary expenses of conducting investigations and experiments and printing and distributing the results as hereinbefore prescribed, the sum of fifteen thousand dollars per annum is hereby appropriated to each state, to be specially provided for by Congress in the appropriations from year to year, and to each territory entitled under the provisions of section 8 of this act, out of any money in the treasury proceeding from the sales of public lands, to be paid in equal quarterly payments, on the first day of January, April, July, and October in each year, to the treasurer or other officer duly appointed by the governing boards of said colleges to receive the same, the first payment to be made on the first day of October, eighteen hundred and eighty-seven; provided, however, that out of the first annual appropriation so received by any station an amount not exceeding one-fifth may be expended in the erection, enlargement, or repair of a building or buildings necessary for carrying on the work of such station; and thereafter an amount not exceeding five per centum of such annual appropriation may be so expended.

**Sec. 6—Only amount necessary to be apportioned.** That whenever it shall appear to the secretary of the treasury from the annual statement of receipts and expenditures of any of said stations that a portion of the preceding annual appropriation remains unexpended, such amount shall be deducted from the next succeeding annual appropriation to such station, in order that the amount of money appropriated to any station shall not exceed the amount actually and necessarily required for its maintenance and support.

**Sec. 7—Legal status not affected.** That nothing in this act shall be construed to impair or modify the legal relation existing between any of the said colleges and the government of the states or territories in which they are respectively located.

**Sec. 8—Application to states having experiment stations.** That in states having colleges entitled under this section to the benefits of this act and having also agricultural experiment stations established by law separate from said colleges, such states shall be authorized to apply such benefits to experiments at stations so established by such states; and in case any state shall have established under the provisions of said act of July second, aforesaid, an agricultural department or experimental station, in connection with any university, college, or institution not distinctively an agricultural college or school, and such state shall have established or shall hereafter establish a separate agricultural college or school, which shall have connected therewith an experimental farm or station, the legislature of such state may apply in whole or in part the appropriation by this act made, to such separate agricultural college or school, and no legislature shall by contract express or implied disable itself from so doing.

**Sec. 9—Grants subject to state assent.** That the grants of money authorized by this act are made subject to the legislative assent of the several states and territories to the purposes of such grant; provided, that payment of such installments of the appropriation herein made as shall become due to any state before the adjournment of the regular session of its legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof duly certified by to the secretary of the treasury.

**Sec. 10—Federal government may withdraw assistance.** Nothing in this act shall be held or construed as binding the United States to continue any payments from the treasury to any or all the states or institutions mentioned in this act, but Congress may at any time amend, suspend or repeal any or all the provisions of this act. (1 Fed. Stats. Ann. 9; U. S. Stats. 1866-7, p. 440.)

*An Act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof.*

Approved March 16, 1906

**Section 1—Agricultural experiment stations—Annual appropriation to states and territories for, increased—Amount of annual increase.** That there shall be, and hereby is, annually appropriated, out of any money in the treasury not otherwise appropriated, to be paid as hereinafter provided, to each state and territory, for the more complete endowment and maintenance of agricultural experiment stations now established or which may hereafter be established in accordance with the act of Congress approved March second, eighteen hundred and eighty-seven, the sum of five thousand dollars in addition to the sum named in said act for the year ending June thirtieth, nineteen hundred and six, and an annual increase of the amount of such appropriation thereafter for five years by an additional sum of two thousand dollars over the preceding year, and the annual amount to be paid thereafter to each state and territory shall be thirty thousand dollars, to be applied only to paying the necessary expenses of conducting original researches or experiments

bearing directly on the agricultural industry of the United States, having due regard to the varying conditions and needs of the respective states or territories.

**Sec. 2—Payments quarterly—Report of receipts, etc.—Legislative assent necessary—Assent of governors.** That the sums hereby appropriated to the states and territories for the further endowment and support of agricultural experiment stations shall be annually paid in equal quarterly payments on the first day of January, April, July, and October of each year by the secretary of the treasury, upon the warrant of the secretary of agriculture, out of the treasury of the United States, to the treasurer or other officer duly appointed by the governing boards of said experiment stations to receive the same, and such officers shall be required to report to the secretary of agriculture on or before the first day of September of each year a detailed statement of the amount so received and of its disbursement, on schedules prescribed by the secretary of agriculture. The grants of money authorized by this act are made subject to legislative assent of the several states and territories to the purpose of said grants; provided, that payment of such installments of the appropriation herein made as shall become due to any state or territory before the adjournment of the regular session of legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof, duly certified by the secretary of the treasury.

**Sec. 3—Apportionments, when misapplied—Restriction—Annual reports to governors.** That if any portion of the moneys received by the designated officer of any state or territory for the further and more complete endowment, support, and maintenance of agricultural experiment stations as provided in this act shall by any action or contingency be diminished or lost or be misapplied, it shall be replaced by said state or territory to which it belongs, and until so replaced no subsequent appropriation shall be apportioned or paid to such state or territory; and no portion of said moneys exceeding five per centum of each annual appropriation shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings, or to the purchase or rental of land. It shall be the duty of each of said stations annually, on or before the first day of February, to make to the governor of the state or territory in which it is located a full and detailed report of its operations, including a statement of receipts and expenditures, a copy of which report shall be sent to each of said stations, to the secretary of agriculture, and to the secretary of the treasury of the United States.

**Sec. 4—Secretary of agriculture to make certain reports—Aid withheld.** That on or before the first day of July in each year after the passage of this act the secretary of agriculture shall ascertain and certify to the secretary of the treasury as to each state and territory whether it is complying with the provisions of this act and is entitled to receive its share of the annual appropriation for agricultural experiment stations under this act and the amount which thereupon each is entitled, respectively, to receive. If the secretary of agriculture shall withhold a certificate from any state or territory of its appropriation, the facts and reasons therefor shall be reported to the president and the amount involved shall be kept separate in the treasury until the close of the next Congress in order that the state or territory may, if it shall so desire, appeal to Congress from the determination of the secretary of agriculture. If the next Congress shall not direct such sum to be paid, it shall be covered into the treasury; and the secretary of agriculture is hereby charged with the proper administration of this law.

**Sec. 5—Annual reports to Congress.** That the secretary of agriculture shall make an annual report to Congress on the receipts and expenditures and work of the agricultural experiment stations in all of the states and territories, and also whether the appropriation of any state or territory has been withheld; and if so, the reason therefor.

**Sec. 6—Federal government may withdraw assistance.** That Congress may at any time amend, suspend, or repeal any or all of the provisions of this act. (34 Stats. L. 63; Fed. Stats. Ann. Supp. 1909, p. 3.)

See Agricultural Experiment Station, secs. 456–464, 469, 475.

*An Act in relation to the agricultural, mining and mechanical college  
of this state.*

Approved March 18, 1891, 72

**4656. University established.**

**SECTION 1.** The state university of this state was, and now is, established in accordance with the provisions of the constitution of the State of Nevada, and also in accordance with the provisions of an act of Congress, approved July second, eighteen hundred and sixty-two, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," and acts amendatory thereof or supplementary thereto.

**4657. Powers of regents—Proceeds of land grants.**

**SEC. 2.** The board of regents of said state university and agricultural,

mining and mechanical college are the proper trustees of same to receive and disburse all appropriations made to this state under the provisions of an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and mechanic arts, established under the provisions of an act of Congress, approved July second, eighteen hundred and sixty-two; approved August thirty, eighteen hundred and ninety, and all appropriations hereafter to be made under said act.

#### 4658. Regents to report to governor.

SEC. 3. Said board of regents shall make a report at the end of each fiscal year, in connection with its annual report to the governor, of other state university matters, including the amounts received and disbursed under the provisions of this act. The governor shall transmit all said annual reports to the legislature.

#### 4659. Land grants accepted.

SEC. 4. The legislature of Nevada hereby gratefully assents to the purposes of all grants of money made heretofore, and all which may hereafter be made to the State of Nevada by Congress, under the act of Congress, the title of which is recited in section 2 of this act, and agrees that the same shall be used only for the purposes named in said act of Congress, or acts amendatory thereof or supplemental thereof.

*An Act supplemental to an act entitled "An act relating to the state university and matters properly connected therewith," approved February 7, 1887.*

Approved March 16, 1895, 76

#### 4660. Analysis of minerals—Record of, to keep.

SECTION 1. It shall be the duty of the president of the state university, in addition to his other duties as fixed by law, to cause to be analyzed by an assistant, teacher or teachers employed at the state university, any ores, mineral, soil or water taken from within the boundaries of the State of Nevada, and sent by any citizen of said state for that purpose. Any citizen of the state may send any such substance and have the same analyzed free of charge, and the result of the same returned to him by mail with as near as possible an explanation of their uses and value in market, and there shall be kept at the state university a book of record, open for inspection, under such rules as may be made by the regents, of all mineral, ores or other matters so sent with the history of such mineral or other matters, stating the name of the person or persons from whom received, the district and county from which it came, and all other matters that may be beneficial touching the same. A duplicate of the sample analyzed, as far as practicable, shall be kept at the university properly labeled so as to correspond to the record, and properly preserved.

#### 4661. Duplicate sent, when.

SEC. 2. If the same kind of matter for analysis is sent from the same place, it shall not be necessary to analyze the same, but a duplicate of the analysis shall be sent by mail to the person desiring the same.

#### 4662. Samples analyzed in order received.

SEC. 3. Samples for analysis shall be analyzed in the order received.

#### 4663. Sample assays for gold and silver, how returned.

SEC. 4. Sample assays for gold or silver shall be made, and when the value per ton exceeds five dollars in gold, the returns shall state the fact thus, "Test for gold." And when the value per ton exceeds five dollars in

silver, the returns shall state the fact thus, "Test for silver." *As amended, Stats. 1897, 91.*

*An Act to commission the officers of the cadets of the state university by the governor.*

Approved March 17, 1903, 207

**4664. Cadet commissions, governor to issue—Revocation.**

SECTION 1. The officers of cadets, between and including the ranks of second lieutenant and major, must be selected by the chief military instructor, with the assent of the president of the university, and must be commissioned by the governor; *provided*, any commission may be revoked at any time by the governor upon the recommendation of the chief military instructor and of the president of the university.

**4665. Liable to call for service—May resign.**

SEC. 2. Upon graduating or retiring from the university, such officers may resign their commissions or hold the same as retired officers of the university cadets, liable to be called into service by the governor in case of war, invasion, insurrection or rebellion.

*An Act creating the honorary board of visitors of the Nevada state university, and other matters relating thereto.*

Approved March 11, 1895, 40

4666. Board of visitors, how composed — 4668. Duties of board—Meetings—Report to  
Term of office. governor.

4667. Governor to appoint members. 4669. Notice to honorary board of visitors.  
4670. No compensation—Expenses allowed.

**4666. Board of visitors, how composed—Term of office.**

SECTION 1. There is hereby created a board to be known as the honorary board of visitors of the Nevada state university. Said board shall consist of fifteen members. The chief justice of the supreme court shall be *ex officio* a member and the chairman of said board. In the absence of said chief justice the members of the board may elect one of their number to act as temporary chairman. The term of office of the members of said board shall be two years from the date of their appointment, and until their successors are appointed.

**4667. Governor to appoint members.**

SEC. 2. The governor shall appoint and commission, within forty days after the passage of this act, from each county, one suitable and discreet person who is interested in higher education, and who is an actual resident of said county, as a member of said board.

**4668. Duties of board—Meetings—Report to governor.**

SEC. 3. It shall be the duty of said board of visitors to meet annually at the seat of the Nevada state university during commencement week, and inspect the grounds, buildings and equipment of said university, and also inquire into the actual state of the discipline, instruction, police administration and other affairs or concerns of the university. The board of visitors shall report thereon to the governor, within thirty days after each annual meeting, for the information of the people of the state and of the next succeeding legislature of the state, their action as such visitors, with their views and recommendations concerning the university such as they shall deem wise and just and for the best interests of the university.

**4669. Notice to honorary board of visitors.**

SEC. 4. The president of the university shall cause at least thirty days'

notice to be given to the members of the honorary board of visitors of the time and place of their annual meeting.

#### 4670. No compensation—Expenses allowed.

SEC. 5. No compensation shall be made to the members of said board of visitors for their services or for their traveling expenses, but the board of regents shall pay out of the university contingent fund their expenses for board and lodging while at the university.

## VIRGINIA CITY SCHOOL OF MINES

*An Act to amend an act entitled "An act creating a school of mines, to be located at Virginia City, Nevada," approved March 20, 1903.*

Approved March 20, 1911, 281

#### 4671. Virginia mining school created—Salary of principal.

SECTION 1. There is hereby created a school of mines, to be known as the Virginia City school of mines, to be located at Virginia City, Storey County, Nevada, to be under the direction and control of the state board of education. The principal in charge of said school of mines shall receive a salary of two thousand dollars per annum, payable in twelve equal monthly installments on the first day of each and every month during the time this act and the provisions thereof shall remain in force and effect.

[Sec. 2, allowing certain expenditures for 1911 and 1912, omitted.]

Original, Stats. 1903, 211, consisted of but one section, which has been repealed by above act, wherefore original act including title has been omitted.

## WATER

### ACTS OF CONGRESS

Act of July 26, 1866, Rev. Stats. U. S., section 2339, confirming water rights for mining and other purposes, and rights of way for ditches, section 2401, ante, 7 Fed. Stats. Anntd., 1090.

Act of June 17, 1902, recognizing vested rights and state legislation, section 3105.

Act authorizing the secretary of the interior to permit the use of right of way upon the public lands for canals, reservoirs, tramways and power lines, as amended and supplemented May 14, 1896, and May 11, 1898, sections 3171, 3172.

Act of 1870, Rev. Stats. U. S., section 2340, providing for the reservation from U. S. patents of water rights, reservoirs, and rights to ditches, section 2402.

Act of August 30, 1890, 26 Fed. 391, providing for the reservation from patents of the right of way for canals constructed by the United States, section 3169.

Regarding other acts of Congress pertaining to water and rights of way, see note here appended.

Acts relating to the reclamation of arid lands under government irrigation works, sections 3098, 3114, ante, 7 Fed. Stats. Anntd., 1098.

Reclamation of arid lands under the Carey act, sections 3063, 3097.

Reclamation under desert entries, sections 3150, 3162, 6 Fed. Stat. Anntd., 392-398.

State statutes relating to water, sections 4672-4722.

#### Appropriation—

Overruling Vansickle v. Haines, 7 Nev. 249, which held that under the principles of the common law riparian proprietors had a right to a reasonable use for irrigation of the waters running through their respective lands, the later Nevada cases have uniformly held that the doctrines of the common law declaratory of the rights of riparian proprietors regarding the use of running waters

were inapplicable, except to a limited extent, to the condition of the arid states and to the wants and necessities of the people residing in them, and that prior appropriations gives the better right to the use of running water to the extent necessary for the beneficial purposes to which it is applied. Jones v. Adams, 19 Nev. 78; Reno S. Works v. Stevenson, 20 Nev. 269; State v. Brown, 16 Nev. 317; Twaddle v. Winters, 29 Nev.

88; *Lobdell v. Simpson*, 2 Nev. 274; *Proctor v. Jennings*, 6 Nev. 83; *Jerrett v. Mahan*, 20 Nev. 89; *Reno S. M. & R. Works v. Stevenson*, 20 Nev. 269, 281, 19 A. S. 364, 4 L. R. A. 60, 21 P. 317; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

The right to running waters on the public lands for mining, irrigation, and other purposes, may be acquired by prior appropriation. The right, within reasonable limits, having reference to the condition of the country and the necessities of the community, is entitled to protection. The doctrines of the common law regarding the rights of riparian appropriators are inapplicable to the Pacific coast. *Basey v. Gallagher*, 20 Wall. 670 (22 L. Ed. 452); *Achison v. Peterson*, 20 Wall. 50, and note (22 L. Ed. 414); *Jennison v. Kirk*, 98 U. S. 453. See, also, *Sturr v. Beek*, 133 U. S. 551 (33 L. Ed. 765); *S. V. W. Wks. v. Schottler*, 110 U. S. 374; *Willey v. Decker*, 11 Wyo. 520 (100 A. S. 539); *Benton v. John Cox*, 17 Wash. 289 (39 L. R. A. 110; 61 A. S. 912); *Isaacs v. Barber*, 10 Wash. 130 (30 L. R. A. 674); *Fitzpatrick v. Montgomery*, 20 Mont. 186 (63 A. S. 622); *Clough v. Wing*, 2 Ariz. 377; *Krall v. U. S.*, 79 Fed. 243; *Drake v. Eahart*, 2 Ida. 753; *R. G. W. Ry. Co. v. Power Co.*, 16 Utah, 137.

The first appropriator is only entitled to as much water as is necessary to irrigate his land, and is bound to make a reasonable use of it. What is a reasonable use depends upon the circumstances of each case. *Union M. & M. Co. v. Dangberg*, 81 Fed. 73; *Barnes v. Sabron*, 10 Nev. 217.

Where the prior appropriator of a stream had constructed ditches in order to irrigate his land, it was held that if the capacity of his ditches is greater than is necessary to irrigate his farming land, he must be restricted to the quantity needed for the purposes of irrigation, for watering his stock and for domestic purposes; but if the capacity of his ditches is not more than sufficient for those purposes, then, no change having been made in the ditches since constructed, and no question of the right of enlargement being involved, he must be restricted to the capacity of his ditches at their smallest point. *Idem*.

If the first appropriator only appropriates a part of the waters of a stream for a certain period of time, any other person may not only appropriate a part or the whole of the residue and acquire right thereto as perfect as the first appropriator, but may also acquire a right to the quantity of water used by the first appropriator at such times as not needed or used by him. *Idem*.

To maintain the right to a water course it must be made to appear that the water usually flows in a certain direction and by a regular channel, with banks or sides. It need not be shown to flow continually, and it may at times be dry, but it must have a well-defined and substantial existence. *Idem*.

The first appropriator of the water of a stream running through the public lands has the right to insist that the water flowing

therein shall, during the irrigating season, be subject to his reasonable use and enjoyment to the full extent of his original appropriation and beneficial use. To this extent his rights go, but no further; for in subordination to such rights, subsequent appropriators may appropriate the remainder of the water running in the stream. *Idem*.

The amount of water to which the first appropriator is entitled is limited to the quantity actually applied to beneficial use. *Simpson v. Williams*, 18 Nev. 432; *Dick v. Caldwell*, 14 Nev. 167; *Barnes v. Sabron*, 10 Nev. 217; *Dalton v. Bowker*, 8 Nev. 190; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

An appropriator may change the point of appropriation or take water from different places on the stream. *Hobart v. Wicks*, 15 Nev. 418; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

When water after being used is discharged into a natural stream without any intention of reclaiming it, it becomes subject to appropriation the same as water naturally flowing in the stream. *Schulz v. Sweeney*, 19 Nev. 539.

Appropriation through dry natural channel. *Doherty v. Pratt*, 34 Nev. —.

It has been held that if any work is necessary to be done to complete the appropriation, the law gives a reasonable time within which to do the work, and protects the right during that time by relation to the date when the first act in making the appropriation was performed. *Simpson v. Williams*, 18 Nev. 432; *Irwin v. Strait*, 18 Nev. 436; *Ophir M. Co. v. Carpenter*, 4 Nev. 534. See *Robinson v. Imperial S. M. Co.*, 5 Nev. 44; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

#### Acts of Congress construed—

The act of Congress of July 26, 1866, sec. 2401, ante, 7 Fed. Stats. Anntd., 1090, confirms to owners of water rights on the public lands the rights which they held under the local customs, laws, and decisions of the courts prior to its enactment. *Jones v. Adams*, 19 Nev. 78; *Twaddle v. Winters*, 29 Nev. 88; *Ennor v. Rainé*, 27 Nev. 178; *Hobart v. Ford*, 6 Nev. 77; *Shoemaker v. Hatch*, 13 Nev. 261.

Riparian proprietors—Prior appropriations. The fact that patents for defendants' lands lying along the banks of a creek were issued to defendants before adoption of act Cong. July 26, 1866 (14 Stats. 251, c. 262), providing for the appropriation of water for irrigation purposes, did not confer on the owners of such land riparian common-law rights to the waters of the creek as against prior appropriators. *Twaddle v. Winters*, 29 Nev. 88 (85 P. 280).

#### Right of way on public lands—

The act of Congress of July 26, 1866, gave a right of way over public lands for the construction of ditches and for running water for mining or agricultural purposes. *Hobart v. Ford*, 6 Nev. 66; *Shoemaker v. Hatch*, 13 Nev. 261; *Ennor v. Raine*, 27 Nev. 178.

Regarding right of way for ditches over private lands, see sec. 4711, and note.

Regarding right of appropriator of water to go upon land of upper proprietor to clean out ditch, see note 43 L. R. A., 130.

Under this act a prior appropriator is not a trespasser in going upon the land of another, and along the stream and ditches constructed by the latter, for the purpose of removing dams, by which the flow of water so previously appropriated was obstructed

and diverted. *Ennor v. Raine*, 27 Nev. 178, 213 (74 P. 1); *Ronnow v. Delmue*, 23 Nev. 29.

Under this act defendant had the right to construct his ditch across the public lands of the United States, and could not be held responsible in damages for the digging of the ditch, to any party who came into possession of the land after the ditch had been completed. *Shoemaker v. Hatch*, 13 Nev. 261, 264, 268; *Hobart v. Ford*, 6 Nev. 77.

The act of Congress of 1866 (sec. 2401, ante) may be considered in connection with the later federal acts (secs. 3105, 3170, 3171, ante) and the following federal legislation. The provisions relating to right of way in the act of March 3, 1891 (Suppl. Rev. Stats. U. S., vol. 1, 946), are as follows:

**Sec. 18—Rights of way granted through the public lands to canal companies—Not to interfere with government occupation and maps to be approved—Not to interfere with state control.** That the right of way through public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation and duly organized under the laws of any state or territory, which shall have filed, or may hereafter file, with the secretary of the interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take, from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch; \* \* \* provided, that no such right of way shall be located as to interfere with the proper occupation by the government of any such reservation, and all maps of location shall be subject to the approval of the department of the government having jurisdiction of such reservation.

And the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective states or territories.

**Sec. 19—Maps to be filed by canal or ditch company—Upon approval, future grants subject to right of way—Damages to settler.** That any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located, a map of its canal or ditch and reservoir; and upon the approval thereof by the secretary of the interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way.

Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damages.

**Sec. 20—Applicable to existing and future canals—Forfeiture for noncompletion.** That the provisions of this act shall apply to all canals, ditches, or reservoirs, heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir, has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the secretary of the interior, and with the register of the land office where said land is located, a map of the line of such canal, ditch, or reservoir, as in the case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it; provided, that if any section of said canal, or ditch, shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

**Sec. 21. Rights granted only for canal use.** That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

And the following part of "An act providing for the transfer of forest reserves from the department of the interior to the department of agriculture," approved February 1, 1905:

"Sec. 4. Rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the secretary of the interior and subject to the laws of the state or territory in which said reserves are respectively situated." (33 U. S. Stats. B. 628.)

The secretary of agriculture has issued regulations regarding permits to occupy public

lands in forest reserves which provide that applications shall be filed with the district forester, and that he may grant, extend and renew permits for noncommercial water-power works of one thousand horsepower capacity or less.

#### Reservoirs, other acts of Congress in relation to.

Paragraph 4 of the act of Congress entitled "An act making appropriations for sundry expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," approved October 2, 1888 (25 Stats. L. 505, Suppl. U. S. Rev. Stats., vol. 1, 626), provided that:

"For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation, and the segregation of the irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and the prevention of floods and overflows, \* \* \* the work to be performed by the geological survey under the direction of the secretary of the interior. \* \* \* And all the lands which may hereafter be designated or selected by such United States surveys for sites for reservoirs, ditches or canals for irrigation purposes and all the lands made susceptible of irrigation by such reservoirs, ditches or canals, are from this time henceforth hereby reserved from sale as the property of the United States, and shall not be subject after the passage of this act to entry, settlement or occupation until further provided by law; provided, that the president may at any time in his discretion, by proclamation, open any portion or all of the lands reserved by this provision to settlement under the homestead laws."

Paragraph 3 of the act of Congress entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," approved August 30, 1890 (26 Stats. L. 371, Suppl. U. S. Rev. Stats., vol. 1, 791), repealed the act of October 2, 1888, in so far as it provided for the withdrawal of public lands from entry, occupation and settlement, and provided: "All entries made or claims initiated in good faith and valid but for said act, shall be recognized and may be perfected in the same manner as if said law had not been enacted, except that reservoir sites heretofore located or selected shall remain segregated and reserved from entry and settlement as provided by said act, until otherwise provided by law, and reservoir sites hereafter located or selected on public lands shall in like manner be reserved from the date of the location or selection thereof."

The remainder of the paragraph limits the amount of land to be acquired by one person, and is the same as section 3169, ante.

Artesian wells and bounties, secs. 702-707, et seq.

Beneficial use, see ownership in this note and secs. 3105, 4674.

Certainty in decree. *Authors v. Bryant*, 22 Nev. 242; *Walsh v. Wallace*, 26 Nev. 299; *Twaddle v. Winters*, 29 Nev. 88; *Ronnow v. Matthews*, 23 Nev. 29.

Contract to keep flume in repair not a covenant running with a millsite. *Wheeler v. Schad*, 7 Nev. 204.

Conveyance, failure to obtain from first appropriator. *Chiatovich v. Davis*, 17 Nev. 133.

Counterclaim, waiver of: Where in an action for injuries to water rights, the district court in which the action was brought had jurisdiction of the subject-matter of a counterclaim by defendant, claiming to be a prior appropriator of the water, alleging damages from plaintiff's alleged diversion thereof, plaintiff's failure to object in the trial court by demurrer or otherwise that the facts alleged in the answer did not constitute a proper counterclaim, constituted a waiver of his objection thereto. *Ennor v. Raine*, 27 Nev. 178, 213 (74 P. 1).

Damages for floating timber on river. *Mandelbaum v. Russell*, 4 Nev. 551.

Damages for overflow and to crops. *Malmstrom v. People's Drain Ditch Co.*, 32 Nev. 246.

Damage to crops. *Candler v. Ditch Co.*, 28 Nev. 167, 6 Ann. Cases, 949, and note; *Roeder v. Stein*, 23 Nev. 92.

Decree and costs recoverable irrespective of damages. *Brown v. Ashley*, 13 Nev. 251.

Decree for more water than claimed in pleading. *Doherty v. Pratt*, 34 Nev.—.

Deed conveying interest in ditch and right to run water therein, does not convey water. *Twaddle v. Winters*, 29 Nev. 88.

Diversion, point of, may be changed. *Hobart v. Wicks*, 15 Nev. 418, 421; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73; see *Roeder v. Stein*, 23 Nev. 92.

Drainage: The prevailing doctrine is that when two tracts of land are adjacent, and one is lower than the other, the owner of the upper tract has an easement in the lower land to the extent of the water naturally flowing from the upper land to the lower tract, and is not liable for such flow; but the courts have generally declared that the servitude of the lower land cannot be augmented or made more burdensome by the acts of man; and the upper land owner, while having the right to make a reasonable use of the water for irrigation, must so use and control it as not to injure his neighbor's land. *Boynton v. Longley*, 19 Nev. 69.

Drainage of mine through tunnel not natural stream. *Cardelli v. Comstock T. Co.*, 26 Nev. 284.

Errors, assignment of, on appeal. *Diek v. Bird*, 14 Nev. 161.

Findings of jury, when sufficient without new trial. *Jerrett v. Mahan*, 20 Nev. 89.

When not sufficient. *Winters v. Fulstone*, 20 Nev. 260.

Indefinite decree as to quantity invalid. *Walsh v. Wallace*, 26 Nev. 299.

Injunction, award by. *Twaddle v. Winters*, 29 Nev. 88.

Irrigating season. *Twaddle v. Winters*, 29 Nev. 88.

Measurement of water by ditch at smallest point. *Ophir S. M. Co. v. Carpenter*, 6 Nev. 393; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

Nuisance. *Bliss v. Grayson*, 24 Nev. 422. Obstruction placed in stream, when cannot be abated. *Proctor v. Jennings*, 6 Nev. 83.

Overflow—Burden of proof—Contributory fault. *Malmstrom v. People's Drain Ditch Co.* 32 Nev. 246.

Ownership, water not subject to private—Only the right to use beneficially may be acquired. *Dalton v. Bowker*, 8 Nev. 190; *Roeder v. Stein*, 23 Nev. 92; *Gotelli v. Cardelli*, 26 Nev. 382; *Twaddle v. Winters*, 29 Nev. 88; *Berry v. Equitable G. M. Co.*, 29 Nev. 451; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

The same is true under the reclamation act, sec. 3105.

Parties to action. *Ronnow v. Delmue*, 23 Nev. 29; *Bliss v. Grayson*, 24 Nev. 422; *Doherty v. Pratt*, 34 Nev. —.

A flume company diverted the waters of the stream above the lands of the parties to this action, but the waters thus diverted were returned to the stream for plaintiff's use, undiminished in quantity: Held, that the flume company was not, therefore, a necessary party to the suit. *Smith v. Logan*, 18 Nev. 149.

Idem—Who may maintain action. A party to whom certain lands are granted for the purpose of bringing an action for water rights connected therewith, there being an oral agreement between the parties that upon the termination of the litigation the lands should be reconveyed, may prosecute and maintain the action in his own name. Such suit is founded on the legal title. *Idem.*

Patented lands subject to water rights and rights of way. In *Barnes v. Sabron*, 10 Nev. 217, it was held that land obtained by patent from the government subsequent to the act of Congress of 1870 (16 U. S. Stats., sec. 17), is under the provisions of that act held subject to water rights and rights of way vested or previously acquired under the act of 1866.

Percolating waters. No distinction exists between waters running under the surface in defined channels and those running in distinct channels upon the surface; but a distinction is made between percolating waters and waters running in distinct channels, whether upon the surface or subterranean. *Strait v. Brown*, 16 Nev. 317.

Regarding percolating waters, see *Howard v. Perrin*, 200 U. S. 71, L. Ed. 50, 319, and note, 30 L. R. A. 186.

Use of water percolating in one's own soil. It was held that the use of water percolating in one's own soil was not actionable, and that a person may lawfully dig a well upon his own land. *Moser v. Caldwell*, 7 Nev. 363.

Pleadings, when sufficient. *Jerrett v. Mahan*, 20 Nev. 89.

Power to regulate. *Roeder v. Stein*, 23 Nev. 92; *Twaddle v. Winters*, 29 Nev. 88.

Prescriptive rights. Authors v. *Bryant*, 22 Nev. 242; *Smith v. Logan*, 18 Nev. 149; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

The right acquired by prescription is only commensurate with the right enjoyed, and a mere acquiescence or permission on the part of the lower land owner to allow the flow of waste or surplus water in such limited quantities as did his land no injury, does not give the upper land owner the prescriptive right to increase the flow so as to damage the lower land owner. *Boynton v. Longley*, 19 Nev. 69.

A party claiming a prescriptive right for five years who, within that time, enlarges the same, cannot at the end of that time claim the use as enlarged within that period. The acts by which the right is sought to be established must be such as to operate as an invasion of the right claimed to such an extent that during the whole period of use the party whose estate is sought to be charged with the servitude could have maintained an action therefor. *Idem.*

The owner of upper land, who has for more than five years enjoyed the privilege of running the waste water used from artificial sources for the purpose of irrigating his land, does not acquire an easement to run the same over the lower lands in such unreasonable or unnatural quantities as to damage the property of such lower land owners, and an injunction will issue to prevent such injury, although the parties enjoined are not jointly liable for the damages. *Blaisdell v. Stephens*, 14 Nev. 17.

Action for diversion of water—Vindication and preservation of a right—Adverse right. Where the act complained of is committed under a claim of right, which, if allowed to continue for a certain length of time, would ripen into an adverse right, and deprive the plaintiff of his property, he is not only entitled to an action for the vindication of his right, but also for its preservation. *Brown v. Ashley*, 16 Nev. 311.

Rates chargeable for water—Valuation of tangible property. It has been held that a mere appropriator and carrier of water for rental or sale and distribution to consumers is entitled to an income upon its plant, but is not entitled to charge for the so-called water right, nor to be allowed for the water itself, in the fixing of the rate. Act of Congress of June 17, 1902, construed and compared with state legislation. Opinion by *Morrow, J.*, *San Joaquin and Kings River C. & I. Co. v. County of Stanislaus*, U. S. Circuit Court, Ninth Circuit, Northern District of California, decision filed September 18, 1911.

Rates for water—Valuation of plant. Regarding rules for valuation of property for fixing rates for water distributed by a public service corporation, see decisions by *Farrington, J.*, U. S. District Judge for Nevada, in *S. V. W. Wks. v. City of San Francisco*, 165 Fed. 667, and *S. V. W. Wks. v. City of San Francisco*, filed October 21, 1911, in the U. S. Circuit Court, Ninth Cir-

cuit, Northern District of California. *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 53 L. Ed. 371; *Kennebec Water District v. City of Waterville*, 54 Atl. 6, 60 L. R. A. 856. *Wiel on Water Rights* (3d ed.), sec. 1305.

Repair of ditches—Liability in proportion to amount of water conveyed. *Brown v. Evans*, 18 Nev. 141.

Reservoirs. See references to acts of Congress, above in this note.

Riparian doctrine does not prevail. *Walsh v. Wallace*, 26 Nev. 299; *Twaddle v. Winters*, 29 Nev. 88; see Appropriation, above.

Seepage and evaporation, effect of. *Tonkin v. Winzell*, 27 Nev. 88.

State legislation authorized. State legislation regulating the use of public waters was authorized by the acts of Congress of March 3, 1891 (26 Stats. L. 1095, U. S. Comp. Stats. 1901, 1570) and July 26, 1866 (sec. 2401, ante), recognizing the validity of local customs and the decisions of courts in respect to the appropriation of water. *Gutierrez v. Albuquerque L. & I. Co.*, 188 U. S. 545 (23 Sup. Ct. Rep. 338, 47 L. Ed. 588). For act

of Congress of June 17, 1902, recognizing vested rights and state legislation, see sec. 3105 and Stats. 1903, p. 24.

Trespasser. Appropriation by trespasser does not become appurtenant to the land. *Smith v. Logan*, 18 Nev. 149.

Appropriation by removing dam of earlier appropriator. *Doherty v. Pratt*, 34 Nev. —.

Tunnel—Drainage through not natural stream. *Cardelli v. Comstock Tunnel Co.*, 26 Nev. 284.

Valid appropriation, what constitutes. *Roeder v. Stein*, 23 Nev. 92; *Walsh v. Wallace*, 26 Nev. 299; *Gotelli v. Cardelli*, 26 Nev. 382; *Twaddle v. Winters*, 29 Nev. 88; *Union M. & M. Co. v. Dangberg*, 81 Fed. 73.

Vested rights recognized by federal and state legislation, secs. 2401, 3105 (Stats. 1903, p. 24).

Wrongful diversion. *Roeder v. Stein*, 23 Nev. 92; *Bliss v. Grayson*, 24 Nev. 422; *Twaddle v. Winters*, 29 Nev. 88; *Ennor v. Raine*, 27 Nev. 178; *Gotelli v. Cardelli*, 26 Nev. 382; *Tonkin v. Winzell*, 27 Nev. 88.

#### STATE STATUTES

General act in relation to water of February 26, 1907, sections 4672–4705.

Act of March 16, 1901, creating state board of irrigation, section 4706.

Act requiring water users to install headgates and measuring weirs, approved March 10, 1909, sections 4707–4709.

Act to allow the running of water through any ditch or flume and to provide for right of way, approved March 3, 1866, sections 4710–4713.

Act relating to the construction of waste ditches and to provide right of way, approved February 26, 1887, section 4714.

Act to provide for turning stored water into channels or streams and for reclaiming the same, approved March 9, 1899, section 4715.

Act authorizing boards of county commissioners to institute and maintain suits against parties depositing sawdust in rivers or streams and providing for a tax to pay the expense of the same, approved March 5, 1887, sections 4716, 4717.

Act to provide for the protection of agricultural lands and relating to the obstruction and pollution of waters and streams, approved February 19, 1862, sections 4718–4720.

“Act defining and prohibiting unlawful diversion and waste of water,” approved February 28, 1889, sections 4721, 4722.

Act to provide for drainage, irrigation, and water storage districts for the acquisition of water and property and relating to other matters connected therewith, approved March 20, 1911, sections 4723–4791.

Artesian wells and bounties, sections 702–707, et seq.

Furnishing impure water, section 6540.

Injury to dam, bridge, or flume, section 6757.

Injury to rafts or water craft, section 6756.

Polluting waters, section 6547.

Running water on highway, section 6770.

The act of March 9, 1889 (Stats. 1889, 107), providing for the recording of statements by water claimants for the determination of priorities, and other matters, was repealed by the act of February 3, 1893 (Stats. 1893, 131).

The act of February 16, 1903 (Stats. 1903, 18), and the act supplementary thereto of 1905 (Stats. 1905, 67), providing for a state engineer for determining the priorities to vested water rights, and for acquiring by application to his office rights to water not already vested, have been expressly repealed and superseded by the act of February 26, 1907.

*An Act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer, an assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties.*

Approved February 26, 1907, 30

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#### 4672. Certain waters subject to appropriation.

SECTION 1. All natural watercourses and natural lakes and the waters thereof which are not held in private ownership, belong to the state and are subject to appropriation for beneficial uses.

#### 4673. Existing rights to be respected.

SEC. 2. All existing rights to the use of water, whether acquired by appropriation, or otherwise, shall be respected and preserved, and nothing in this act shall be construed as enlarging, abridging or restricting such rights.

#### 4674. Use of water limited to beneficial purposes.

SEC. 3. There is no absolute property in the waters of a natural water-

course or natural lake. No right can be acquired to such waters, except an usufructuary right—the right to use it, or to dispose of its use for a beneficial purpose. When the necessity for the use of water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters of a natural watercourse or lake, except at such times as the water is required for a beneficial purpose.

See sec. 3105 and note preceding sec. 4672.

#### 4675. No waste of water permitted.

SEC. 4. No person shall be permitted to divert or use any more of the waters of a natural watercourse or natural lake than sufficient, when properly and economically used, to answer the purpose for which the diversion is made; nor shall any person be permitted to waste any such water, and all surface water remaining after use, unavoidable wastage excepted, shall be returned to the channel by the persons diverting the same, without unreasonable delay or detention.

#### 4676. Maximum appropriation allowed.

SEC. 5. The maximum quantity of water which may hereafter be appropriated for irrigation purposes in the State of Nevada, shall be as follows: In all parts of the state where water cannot be beneficially used for irrigation for a greater period than six months each year, the maximum quantity appropriated for each acre shall not exceed three (3) acre-feet per annum. In all parts of the state where water is beneficially used for irrigation for a period of nine months or more in each year, the maximum quantity of water that may be appropriated shall not exceed three (3) acre-feet for the five months beginning May 15th and extending to October 15th of each year, for each acre of land supplied, and the maximum quantity of water that may be appropriated for each acre during the remainder of each year shall not exceed one-half of one acre-foot multiplied by the number of months of each year other than the five months hereinbefore named, during which water is so beneficially used. *As amended, Stats. 1909, 31.*

#### 4677. Standard of measurement.

SEC. 6. In all measurements of water in this state a cubic foot of water per second of time shall be the standard of measurement.

#### 4678. Prior right, how acquired.

SEC. 7. The prior right to the use of the unappropriated waters of the natural watercourses and natural lakes, as defined in this act, may be acquired in the manner provided in this act, and not otherwise.

#### 4679. Office of state engineer created—Salary, duties, qualifications.

SEC. 8. The office of state engineer is hereby created. The state engineer shall be appointed by the governor, and shall receive a salary of thirty-six hundred dollars (\$3,600) per year, payable in equal monthly installments by the state treasurer, on warrants drawn by the state controller. He shall keep his office at the state capitol. No person shall be appointed as state engineer who does not have such training in hydraulic engineering, and such practical skill and experience as shall fit him for the position. He shall hold his office at the pleasure of the governor, but his successor shall in all cases have the foregoing qualifications and recommendations. *As amended, Stats. 1909, 32.*

#### 4680. Oath and bond of state engineer.

SEC. 9. Before entering upon the duties of his office the state engineer shall take and subscribe an official oath, such as is provided by law for state officers, before some officer authorized by the law of the state to administer oaths, and shall file with the secretary of state said oath and his official bond

in the penal sum of five thousand dollars, with not less than two sureties, to be approved by the governor of the state, and conditioned for the faithful discharge of his official duties, and for the delivery to his successor, or other person appointed by the governor to receive the same, all moneys, books and other property belonging to the state then in his hands and under his control, or with which he may be chargeable as such officer.

#### 4681. Further duties of state engineer.

SEC. 10. The state engineer shall perform such duties as are prescribed herein. He shall become conversant with the state and the needs of the state as to irrigation matters, and in his reports to the governor he shall make such suggestions as to the amendment of existing laws, or the enactment of new laws, as his information and experience shall suggest; and he shall keep in his office full and proper records of his work, observations and calculations; all of which shall be the property of the state. He shall cooperate with the secretary of the interior in all work of construction, operation, maintenance and management of irrigation works constructed by the secretary of the interior in and for the benefit of Nevada, under an act of Congress of the United States, approved June 17, 1902, entitled "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," and shall in every way facilitate the work of the secretary of the interior in carrying out the provisions of said act in the State of Nevada.

#### 4682. Assistant state engineer—Salary—Other assistants.

SEC. 11. The state engineer shall, when necessary, have power to employ one assistant engineer at a salary of twenty-four hundred dollars (\$2,400) per annum, one clerk at a salary of twelve hundred dollars (\$1,200) per annum, one stenographer at a salary of nine hundred dollars (\$900) per year, and two field engineers at a salary of one hundred and fifty (\$150) per month, each. The several respective salaries hereinabove mentioned are hereby made payable in equal monthly installments by the state treasurer upon warrants drawn by the state controller. The state engineer shall, when necessary, also have the power to employ six field men at a compensation not exceeding two dollars and fifty cents (\$2.50) per diem each, and such other assistants as may from time to time be necessary, at a total additional expense not exceeding one thousand dollars (\$1,000) per annum. The compensation for such field men and such additional assistants shall be paid on the certificates of the state engineer and the approval of the state board of examiners, upon the warrants drawn by the state controller upon the state treasurer. The state engineer may also appoint as assistant engineers and as additional assistants, such other persons in the service of the United States reclamation service as may be designated by the secretary of the interior, or director of the United States reclamation service, but such other assistant engineers, and such other additional assistants, shall be entitled to no compensation whatever from the State of Nevada for any service or services that may be rendered by them, and no expense shall be incurred nor paid therefor by the state engineer. *As amended, Stats. 1909, 32.*

#### 4683. Expenses of state engineer and assistant.

SEC. 12. When the state engineer, the assistant engineer, field engineers, or field men are called away from the office in the performance of official duty, each of them shall be entitled to his actual traveling and other necessary expenses, which shall be paid on the certificate of the state engineer, approved by the state board of examiners, and the state controller shall draw his warrant on the state treasurer for the payment of such expenses. *As amended, Stats. 1909, 33.*

4684. To make reports.

SEC. 13. The state engineer shall prepare and render to the governor, biennially, and oftener if required, full and true reports of his work, touching all the matters and duties devolving upon him by virtue of his office, which report shall be delivered to the governor on or before the 31st day of December of the year preceding the regular session of the legislature.

4685. State engineer to prepare a list of appropriators—Claimants to present particulars.

SEC. 14. Such state engineer shall prepare for each stream in the State of Nevada a list of the appropriations of water according to priority, and in order to make such list, he shall enclose to each person having a claim to the waters of such stream a blank form, on which said claimant shall present in writing all the particulars showing the amounts and dates of appropriations to the use of water of said stream to which he lays claim; the said statement to include the following:

His best information concerning:

The name and address of the claimant.

The nature of the use on which the claim for an appropriation is based.

The time of the commencement of such use, and if distributing works are required.

The year of beginning of survey.

The year of beginning of construction.

The year when completed.

The year of beginning and completion of enlargements.

The dimensions of the ditch as originally constructed and as enlarged.

The year when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed or irrigated the first year; the amount in subsequent years, with the dates of reclamation, and the amount of land such ditch is capable of irrigating. The character of the soil and the kind of crops cultivated, and such other facts as will show a compliance with the law in acquiring the appropriation and the rank of priority claimed.

This and following sections supersede certain sections of the act of 1903.

4686. Oath of claimant.

SEC. 15. Each of said claimants shall be required to certify to his statements under oath, and any officer authorized to administer oaths is hereby authorized to administer such oaths.

4687. Claimant must make statement within ninety days—Misdemeanor.

SEC. 16. The failure of any claimant to make such a sworn statement within ninety days after notice that such statement is required by the state engineer, shall be punishable as a misdemeanor on the complaint of the state engineer or any of his assistants.

4688. State engineer to make measurement and plat of ditches and irrigable lands.

SEC. 17. It shall be the duty of the state engineer, or some qualified assistant, as soon as practicable, to make an examination of such stream and the works diverting therefrom, said examination to include the measurement of the discharge of said stream unless adequate proof is available from the measurements made by the United States government, and of the carrying capacity of the various ditches and canals diverting water therefrom; an examination of the irrigated lands, and an approximate measurement of the lands irrigated, or susceptible of irrigation, from the various ditches and canals, which said observations and measurements shall be reduced to





The information obtained from the hydrographic survey will be available by each water user, and the state engineer will give all possible aid in the filling out of proofs when called upon to do so.

When the proof of every user is filed a compilation of the proofs will be mailed to each and every user. Should it be found that any proof or claim does not agree with the facts a protest may be entered against such claim. Such protest will be made a matter of record and a hearing held to determine the facts upon which to make a finding.

The findings of the state engineer may be appealed from, within the time provided by statute, and tried de novo by the district court, the same as other civil suits.

See sec. 4690.

#### 4689. State engineer to issue certificates to appropriators and county recorders—Recording at state expense.

SEC. 18. Within thirty days after the preparation of the list of priorities of appropriation of the use of waters of any stream, it shall be the duty of the state engineer to issue to each person, association or corporation, represented in such list, a certificate to be signed by the state engineer, setting forth the name and postoffice address of the appropriator, the priority number of such appropriation, the amount of water appropriated and the amount or prior appropriations, and if such appropriations be for irrigation, a description of the legal subdivisions of the lands to which said water is to be applied. And he shall also send such certified list, by registered mail, to the county recorder of the county in which such appropriations shall have been made, as well as to the county recorder of the county in which the waters appropriated are used, and it shall be the duty of said county recorder, within ten days after the receipt of such certificate, to record the same in a book specially prepared and kept for that purpose, and the fee for such record shall be fixed by the governor, and shall be allowed and paid by the board of examiners out of funds in the treasury applicable thereto.

#### 4690. Parties aggrieved may bring action—Court may employ expert—Costs.

SEC. 19. Any party, or number of parties acting jointly, who may feel themselves aggrieved by the determination of the state engineer, may bring an action in any court having jurisdiction against such state engineer and all persons having interests adverse to the party or parties bringing the action, to have their respective rights determined. Such action must be brought within one year after the record of such list of priorities of appropriation has been recorded. Such action shall be tried as speedily as possible, and the court is hereby authorized to employ a hydraulic engineer or other expert to examine and make report under oath upon any subject-matter in controversy, the cost of such employment to be equitably apportioned by the court and charged against the parties to the suit as costs.

#### 4691. Water commissioners to apportion water—Priorities—Judgment.

SEC. 20. The water commissioners hereafter provided shall make apportionment of the waters of such stream according to the list of priorities recorded as aforesaid, unless such list be corrected by the judgment of some court having jurisdiction of the subject-matter.

#### 4692. State engineer a member and secretary state board of irrigation.

SEC. 21. The state engineer shall be a member of the state board of irrigation created by an act of the legislature of the State of Nevada, approved March 16, 1901, entitled "An act to provide for the measurement of streams, the survey of reservoir sites, the determination of irrigation possibilities, and for the best methods of controlling and utilizing the water resources of the State of Nevada in cooperation with the United States geological survey and the United States department of agriculture, and the Nevada experiment

station." The said state engineer shall be the secretary of said board of irrigation, and shall keep the record thereof in his office.

See sec. 4706, creating a state board of irrigation.

#### 4693. Powers and duties of state board and water commissioners.

SEC. 22. The said board of irrigation shall divide the State of Nevada into such water divisions or water districts as seem to it advisable, and may change the same from time to time. It may appoint water commissioners, whose duty it shall be to measure and divide amongst the appropriators the water of such streams according to priority of right and the amount to which each is entitled. It may make such rules and regulations as it shall deem advisable for the proper and economical administration of the waters of such streams.

#### 4694. Number and compensation of water commissioners under state engineer.

SEC. 23. The board of irrigation shall determine the number and compensation of the water commissioners appointed under this act, and said water commissioners shall be and act under the direction of the state engineer. The compensation of said water commissioners shall be paid upon the approval of the board of irrigation, by the county in which the work of such commissioners is performed, in the same manner as other county bills are presented and allowed.

#### 4695. Appropriators to obtain permission from state engineer—Application to contain—Defective application corrected—Priority.

SEC. 24. Any person, association or corporation desiring to appropriate any of the public waters, or to change the place of diversion or manner of use of water now appropriated, shall before performing any work in connection with such appropriation make an application to the state engineer for permission to make the same. Said application shall set forth the name and postoffice address of the applicant, the source from which said appropriation shall be made, the amount thereof, location of proposed works in connection therewith, the purpose for which the appropriation is desired, and if for irrigation a description of the land to be irrigated and the area thereof, and any additional facts required by the state engineer. On receipt of this application, which shall be of a form prescribed by the state engineer and to be furnished by him without cost to the applicant, it shall be his duty to make a record thereof in his office, and to carefully examine the same to ascertain whether it sets forth all facts necessary to determine the nature and amount of the proposed appropriation. If the application be defective it shall be the duty of the state engineer to return the same to the applicant for correction, and sixty days shall be allowed for the refiling thereof. If refiled, corrected in proper form, within such time, the application shall, upon being accepted, take priority as of date of original filing subject to compliance with the further provisions of the law and the regulations thereunder.

This and following sections supersede certain sections of the act of 1905, supplementary to the act of 1903.

The state engineer has issued the following rules regarding applications:

Application should be made out in detail on the form prescribed by the state engineer. (See form in appendix.)

An application is not a permit to appropriate water until after its approval by the state engineer. Upon approval (or rejection) of any application, the original application, with such approval or rejection endorsed thereon, will be returned to the applicant. The terms of the permit will show on the endorsement, and be a guide for the applicant.

The following rules should be complied with in making application:

**Rule 1—Under Question No. 1.** Where the source of the water desired is from more than one stream, lake, spring or other body of water, separate applications must be made out for each source; provided, however, that when the numerous sources have their confluence above the point of diversion one application will serve to appropriate the water,

by giving the name of the main stream at the point of diversion. The application should state the name of the stream, including its tributaries.

**Rule 2—Under Question No. 2.** The amount of water applied for should be limited to the amount that can be put to beneficial use. The statute provides that this amount shall not exceed three acre-feet per annum in districts where irrigation is carried on for the six months beginning April 15th and ending October 15th of each year; and where irrigation is carried on for a longer period each year, one-half of one acre-foot per month for each additional month is the maximum quantity allowed. Therefore, there shall be allowed a continuous flow of one second-foot of water for each one hundred acres of land irrigated. The amount should be stated in cubic feet per second instead of in miners' inches. (One cubic foot per second equals forty miners' inches.) (One acre-foot of water is equal to 43,560 cubic feet, or the amount of water necessary to cover an acre of ground one foot deep.)

**Rule 3—Under Question No. 3.** Ordinarily only one use for water can be named in each application. If domestic purposes is included, however, two uses can be named. For instance if the application stated "For Irrigation and Domestic Purposes" it shall be allowed; but if "Power and Irrigation" are named in one application it shall not be allowed, but the application will be returned for correction. In certain cases where water is to be stored in a reservoir, and where the water is conveyed from the reservoir in a ditch owned by the same party, two uses, "Power and Irrigation," might be named, where power can be generated from the ditch, but in such cases it must be clearly shown how the two uses can be completed.

**Rule 4—Under Question No. 4.** The point of diversion is one of vital importance in the application, as upon the location of the point of diversion depends the question of interference with prior rights. The point of diversion must be stated as being within a forty-acre legal subdivision, or, if on unsurveyed land, it must be tied by course and distance to the nearest corner of a legal subdivision, if such corner is within six miles. If no corner is found within six miles, the point of diversion should be tied to some definite and fixed monument or object.

**Rule 5.** There shall be named but one point of diversion in each application. The application must be considered as a whole and by reason of the fact that one point of diversion may interfere with prior rights the application would necessarily have to be denied.

**Rule 6.** The total number of acres of land should be stated with reasonable accuracy. The quantity of water allowed in the application, endorsed thereon by the state engineer is determined by the number of acres to be irrigated as well as the amount of unappropriated water in the stream.

**Rule 7.** Under description of proposed works, state by what means the water is to be diverted from the stream, whether by dam, ditches, pipe lines or other conduit. Give the size of such ditches, pipe lines, etc., and the proposed grade that each will have from the point of diversion to enable this office to determine the capacity of each. The size of the ditch should be consistent with the amount of water applied for under question No. 2.

If the water is to be stored in a reservoir, give its location with reference to the legal subdivision or subdivisions. If the reservoir is to be located on unsurveyed lands, the rules and regulations of the department of the interior should be followed precisely. Such rules and regulations are embodied in a pamphlet furnished by the department of the interior, called "Regulations Concerning Right of Way Over Public Lands and Reservations for Canals, Ditches, and Reservoirs," approved by the secretary of the interior, June 6, 1908. The maps and field notes of such reservoir should conform strictly with these regulations and a copy filed with the office of the state engineer.

**Rule 8.** The time required to construct the works of diversion should be commensurate with the expenditure, in order to be construed as reasonable diligence in the prosecution of the work. The time allowed for completion endorsed on the permit by the state engineer will be based upon the estimate made by the applicant, if such be commensurate with the expenditure.

**Rule 9.** The affidavit required under section 26, Statutes of 1909, must be filed according to the statute. The permit will be canceled unless good cause can be shown for failure to file this affidavit.

#### MAPS

Within six months after the approval of a permit a map must be filed showing the location of the works necessary to perfect the appropriation, the source of appropriation, and, if for irrigation, the land upon which the water is to be applied. (Sec. 28, Stats. 1907.)

These maps must be neatly and accurately drawn with India ink, to some convenient scale, on sheets of uniform size, twenty-four by thirty-two inches, two inches on the left of each sheet being left for binding. If the scale must be reduced to such an extent that it does not show the details of the drawing, separate sheets of the same size should be used.

The maps must show the location of the point of diversion by course and distance from some government corner. They must show the location of the headgate, also the traverse of the ditch or canal; and, where the government survey lines are crossed, ties to section corners must be shown. Where the appropriation is made to irrigate specific lands, the estimated acreage that can be cultivated should be placed on the map within each forty-acre subdivision. Where the lands are unsurveyed the outline should be shown by traverse,

and tied by course and distance to the point of diversion, which in turn is tied to some government corner.

The maps must show the location and name of the stream or water source from which the appropriation is to be made. The areas to be irrigated should be colored and notated.

All crossings of other canals and ditches and streams should be noted. Different colored ink should be used to show these lines.

Maps must show the name of the ditch, canal or reservoir and the certificate of the engineer or surveyor must be attached to the map. The certificate must state that the survey was made by him in person and at the instance of the applicant.

The maps of reservoirs must show the area that will be submerged and the intersections with the government section lines, together with sufficient data to compute its capacity.

If water power is to be developed the profile of the river or stream from the point of diversion to the point of use must be platted on profile paper (the size of sheet to be 24x32, the same as mentioned above for filing in connection therewith) to be transmitted with the maps first mentioned. If the data can be shown on one map, separate maps will not be required.

The coloring placed on the tracing cloth should be on the rough side. In case of extensions of beneficial use the new lands should be shown in a different color.

Copies of the detail drawings of the dams, headworks, outlet and wasteways must be filed with the state engineer. A copy of the longitudinal and cross-section of dams must be submitted.

The lettering on the map should set forth the title of the proposed works and refer by number to the application under which it is to be prosecuted.

For fees chargeable by the state engineer, see sec. 4698.

Remittance should be made by draft or postal money order to the State Engineer, Carson City, Nevada. Where personal check is sent the exchange or charge, if any, of the local bank should be added.

Applications should not be made for more water than can be put to beneficial use.

The commencement of the work, the completion of the work, and the application of water to beneficial use, must be finished within the time set in the permit.

APPENDIX A

Certificate of Engineer or Surveyor

State of Nevada, County of....., ss.

I,.....of.....County of....., State of Nevada, hereby certify that the above map is a true and accurate plat of the.....irrigation or power works, as taken from the field notes of a survey made by me (or under my personal supervision) on.....191..., and at the instance of.....; that it represents the works described in application No....., together with the location of streams and ditches in the immediate vicinity.

.....Surveyor.

APPENDIX B

Rulings of the State Engineer with Respect to Applications to appropriate the Underground Waters of the State.

The following rulings of this office, approved by the state board of irrigation, as applying to general applications to appropriate the underground public waters of the state; and by the state commission of industry, agriculture and irrigation, as applying to like applications for the reclamation of Carey act lands, shall be hereafter in force:

**Rule 1.** In all applications to appropriate the underground public waters of the state, the state engineer will assume the existence of such waters by virtue of the application and such examination as he may make, but the quantity thereof, subject to appropriation, being invisible and incapable of measurement, will not be definitely declared or stated in any approval of the application. The applicant may apply for as many second-foot flow from such underground watercourse or lake as he may be able to put to beneficial use, and each second-foot flow, or fraction thereof, which he may demonstrate from time to time upon the surface, by means of artesian wells or pumped wells tapping the supply, will be deemed a perfected unit of the application. Upon satisfactory proof of the measurement of the flow of such perfected unit, together with satisfactory proof of beneficial use, the state engineer will issue the applicant a certificate therefor, under the provisions of section 29 of the act approved February 26, 1907; and from time to time as such units are perfected, including proof of beneficial use, the state engineer will issue such certificates, and the priority of all such water right units of the application shall date uniformly from the filing of the application in the state engineer's office. The state engineer, in approving an application to appropriate such underground waters, will reserve to his office full authority to determine when the unappropriated waters of such underground watercourse or lake are exhausted, and on notification thereof to the applicant, the several perfected units of irrigation works, on the date such notification takes effect, will be deemed to comprise the complete perfected application, and all further authority of the applicant to appropriate water from such underground natural watercourse or lake, by virtue of such application, shall terminate.

**Rule 2.** Where more than one application is approved to appropriate the waters of a

common underground natural watercourse or lake, the notification by the state engineer that the unappropriated waters thereof are exhausted shall be served upon each of such appropriators and shall take effect simultaneously, whereupon the priority of the perfected water rights of each applicant shall be in the order of the filing of the respective applications in the state engineer's office.

**Rule 3.** The state engineer, from such determinations as may be made by measurements of the flow of artesian and pumped wells, withdrawing water from a common underground watercourse or lake, and from all other information as seems to him pertinent, will estimate the quantity of water that may be annually withdrawn therefrom, without diminishing the quantity available for succeeding seasons; and where in his opinion the annual supply is adequate for all existing, or for additional, wells, a junior applicant will not be enjoined from the enjoyment of the flow of his wells, in the first instance, or from sinking additional wells, in the second instance, even though the same may diminish the natural flow of the wells of a senior applicant; for the reason that a diminution of the natural flow of a senior artesian well must be expected as additional wells are sunk, even prior to the time of the actual appropriation of all the available waters of such underground watercourse or lake—the state assuming, as a matter of public policy, to insure the largest beneficial use of the natural supply, that the burden is upon the owner of the artesian well, ultimately, to protect its flow by means of some artificial lift.

**Rule 4.** The approval by the state engineer of any application to appropriate the underground waters of the state shall contain a stipulation that all bored or driven wells must be encased with such kind and quality of pipe, and to such relative depth in each well, as he may require, in order to conserve the underground supply from waste due to a run-off or leakage through any intervening sand or gravel stratum between the source of the underground waters and the surface, as well to enable such wells to be capped during the nonirrigation season.

#### APPENDIX C

##### Sample form of Application for Permit to appropriate the Public Waters of the State of Nevada.

Serial No.....

Date of first receipt and filing in state engineer's office.....

Returned to applicant for correction.....

Corrected application filed.....

The undersigned, John Doe of Carson City, County of Ormsby, State of Nevada, hereby makes application for permission to appropriate the public waters of the State of Nevada, as hereinafter stated. (If applicant is a corporation give date and place of incorporation.)

1. The source of the proposed appropriation is Carson river.
2. The amount of water applied for is two second-feet.
3. The water is to be used for irrigation and domestic purposes.
4. The water is to be diverted from its source at the following point: N 20 degrees 10 minutes E 2550 feet from the S. E. cor. of section 10, T. 15 N, R. 20 E, Mount Diablo base and meridian.

If the water is to be used for irrigation, supply the following information:

- (a) Number of acres to be irrigated is two hundred (200).
- (b) Description of land to be irrigated: NE $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of section 11, T. 15 N, R. 20 E, Mount Diablo base and meridian.
- (c) Irrigation will begin about May 15th, and end about October 15th, of each year.

If water is to be used for power, mining, transportation, or other use, supply the following information:

- (d) Power to be developed is: None horsepower.
- (e) Works to be located: None.
- (f) Point of return of water to stream: None.
- (g) Remarks: There is at the present time at least two second-feet of unappropriated water in the Carson river that can be put to beneficial use. No prior appropriators will be injured if this application is granted.

**Description of Proposed Works:** The water is to be diverted by means of a small concrete dam placed in the channel of the river. Suitable headgates are to be placed to control the flow of water into a ditch, two feet wide on the bottom; side slopes 1 $\frac{1}{2}$  to 1, with an average grade of five feet per mile. The length of the ditch will be two miles from point of diversion to point of use.

5. Estimated cost of works: \$1,000.
6. Estimated time required to construct works: 60 days.
7. Remarks: After the works of diversion have been constructed it will require two years to put the water to beneficial use.

JOHN DOE, Applicant.

4696. Notice of application published at expense of applicant—Protest, reasons stated—Evidence—Vested rights reserved.

SEC. 25. If said application is not corrected and refiled within said sixty

days, no further proceedings shall be had on such application, in which event the state engineer shall have the power, and it is hereby made his duty, to cancel the said application and all proceedings thereunder. When any application is filed in compliance with this act, the state engineer shall, within thirty days, at the expense of the applicant, to be paid in advance as herein provided, publish or cause to be published, in some newspaper having a general circulation, and printed and published in the county where such water is sought to be appropriated, a notice of the application, showing by whom made, the quantity of water sought to be appropriated, the stream from which, and the point at which such appropriation is to be made, the use for which and by what means said water is to be appropriated, which notice shall be published in said newspaper once a week for a period of at least four successive weeks; and within ninety days from the time of filing such application there shall be filed in the office of the state engineer an affidavit from the publisher or manager of said newspaper, stating that such publication was had in compliance with said act, the dates of the issues of said newspaper wherein such publications were made, and that such newspaper is a newspaper having a general circulation, and that the affiant is the publisher or manager thereof, as aforesaid. Any person, corporation, or association interested may, at any time within thirty days after the completion of the publication of said notice, file with the state engineer a written protest against the granting of said application, stating the reasons therefor, and thereupon the state engineer shall fix a time for the hearing of such application and protest, and the time so fixed shall not be less than fifteen days after the filing of such protest. Upon such hearing the state engineer may, in his discretion, hear evidence in support of or against such application, and shall take such action thereon as he may deem proper and just; but vested rights to the use of such waters shall in no wise be lost, prejudiced or impaired by failure to protest against an application to appropriate under the provisions of this act. *As amended, Stats. 1909, 33.*

4697. Application, when to be refused, when to be approved—Approval for less amount—Change of place of diversion—Evidence of work—Cancellation of permit.

SEC. 26. If there is no unappropriated water in the source of supply, or if such change of place of diversion or manner of use will in any substantial way invade or impair the rights of other appropriators, the state engineer shall refuse such appropriation, endorse his refusal upon the application, make a record of his refusal and endorsement in his office, and return the application so endorsed to the applicant, who shall not prosecute the work under his application so long as such refusal shall be in force, under penalty of being deemed guilty of and punished for a misdemeanor. If there is unappropriated water in the source of supply named, and the appropriation is not detrimental to the public welfare, or the proposed change of place of diversion and manner of use will not invade or impair the rights of other appropriators, the state engineer shall approve the application, and set a date prior to which work of diversion and appropriation must be begun, and a date prior to which such work must be completed, endorse such approval upon the application, make a record of such approval and endorsement in his office, and return the application so endorsed to the applicant, who shall, on receipt thereof, be authorized to take such measure as may be necessary to perfect such appropriation; *provided, however*, that the state engineer may approve an application for a less amount of water than that named in the application. Any person changing his place of diversion or manner of use, as specified in this act, shall not thereby lose any priority of right upon the stream he may have heretofore acquired. Any person, association or corporation, who shall receive a permit to appropriate any of the public waters of this state, under the pro-

visions of this act, shall file with the state engineer, within thirty days after the time required by such permit for the commencement of work thereunder, an affidavit stating the time when, the place where, and the amount of such work which has been done under said permit. If such affidavit shall not be so filed, the state engineer shall, unless good cause for extension of time within which to file such affidavit be shown, cancel said permit. *As amended, Stats. 1909, 34.*

#### 4698. Fees and charges—Publication—Fees to go to state treasury.

SEC. 26a. It is hereby made the duty of the state engineer to charge, and he shall charge, for all services rendered under the provisions of this act, the following fees:

1. For filing application for permit, twenty-five dollars (\$25), which shall include the expense of publication and the issuance of such permit, if the same shall issue, and such expense of publication is hereby fixed at the sum of ten dollars (\$10), which sum shall be paid on the certificate of the state engineer, approved by the state board of examiners, and the state controller shall draw his warrant on the state treasurer for the payment of such expense of publication.

2. For filing proof of beneficial use, two dollars, which shall include certificate thereof, if the same shall issue.

3. For filing each transfer, agreement, assignment, waiver, release, relinquishment, deed, affidavit (other than affidavit of proof of appropriation) or other paper, one dollar (\$1).

4. For copying papers on file or of record in his office, ten cents (10c) per folio, and for each certification under seal, fifty cents (50c).

All fees collected under the provisions of this act by the state engineer shall be paid by him into the state treasury at least once in each month, and the same shall become a part of the general fund; and at the time of such payment the state engineer shall deliver to the state treasurer an itemized account, duly certified by him, showing the names of the persons by whom such fees are paid, and the purposes for which such payments were made. *As supplemented, Stats. 1909, 35.*

#### 4699. State engineer to issue certified copies of records—Copies evidence.

SEC. 26b. The state engineer acting for himself or by his assistant, shall have the power, and it is hereby made his duty, upon application of any person, persons, association or corporation, to issue under the seal of his office, at the expense of the applicant, certified copies of all papers or records which may be on file or of record in his office, and when so certified the same shall be admissible in evidence and shall be prima facie evidence of the facts stated therein. *As supplemented, Stats. 1909, 35.*

#### 4700. Seal for state engineer.

SEC. 26c. The state engineer is hereby empowered and directed to procure, for his said office, a seal upon which shall appear his official title, and such other suitable inscription as he may deem proper, and such seal shall be affixed upon all official permits, certificates and other documents issued by him under the provisions of this act. *As supplemented, Stats. 1909, 35.*

#### 4701. Parties may sue within sixty days—Necessary defendants—Appeal.

SEC. 27. Any party feeling himself aggrieved by the action of the state engineer in refusing his application in whole or in part, or in allowing such application against his protest, may bring an action, in any court having jurisdiction of the matter, against the state engineer to compel him to reverse or modify his decision, and all persons having interests adverse to the party or parties bringing such action shall be joined therein with the state engineer as defendants. Such action must be commenced within sixty days after

notice in writing of the decision by the state engineer complained of, and shall be begun and prosecuted in all respects like the ordinary civil action in this state, and shall be tried de novo by the court. Any party feeling himself aggrieved by the decision of the court may have the same reviewed, in any court having appellate jurisdiction of such decision, by appeal or writ of error in the manner provided by law.

#### 4702. Applicant must furnish map.

SEC. 28. Upon approval of an application in whole or in part, the applicant shall send to the state engineer within six months thereafter a map on a scale of not less than two inches to the mile, showing the location of the works necessary to perfect the appropriation, the source of appropriation, and if for irrigation, the land upon which the water is to be applied, which map shall be filed in his office.

#### 4703. State engineer to issue certificate — Recording — Fee — Date of priority.

SEC. 29. Upon satisfactory proof being made to the state engineer that any application to appropriate water has been perfected in accordance with the provisions of this act, said state engineer shall issue to the applicant a certificate setting forth the name of the appropriator, date, source, purpose and amount of the appropriation, and if for irrigation, a description of the land to be irrigated, which certificate shall within thirty days after its issuance be recorded in the county in which the point of diversion of the appropriation is, as well as in the county where the water is used, in books specially kept for that purpose, and the fee for such records shall be one dollar (\$1), payable by the party in whose favor the certificate is issued. The priority of such new appropriation shall date from the filing of the application in the state engineer's office.

#### 4704. Misdemeanor for interfering with water officers.

SEC. 30. Any person interfering with, obstructing or resisting the state engineer, assistant engineer or any water commissioner, in the performance of his duty or duties as prescribed by this act, or by the rules or regulations adopted by the board of irrigation, shall be deemed guilty of a misdemeanor.

#### 4705. Punishment.

SEC. 31. Any act which is made a misdemeanor by this statute shall be punishable by fine not exceeding five hundred dollars (\$500), or by imprisonment in the county jail not more than three (3) months, or by both such fine and imprisonment in the discretion of the court.

[Sec. 32 repeals the water act of February 16, 1903, the act amendatory thereof and supplemental thereto, approved March 1, 1905, and all acts and parts of acts in conflict.]

See note preceding sec. 4672.

*An Act to provide for the measurement of streams, the survey of reservoir sites, the determination of the irrigation possibilities, and of the best methods of controlling and utilizing the water resources of the State of Nevada in cooperation with the United States geological survey and the United States department of agriculture and the Nevada experiment station.*

Approved March 16, 1901, 72

[Section 1 made an appropriation for the measurement of streams and the survey of sites for storage reservoirs during the years 1901 and 1902.]

#### 4706. Creation of state board—To direct expenditures.

SEC. 2. A state board of irrigation is hereby created, to consist of the governor, the surveyor-general and the attorney-general of the State of Nevada, who shall direct the expenditure of the money appropriated by section 1 of

this act, upon plans approved by said board, which the representatives of the United States geological survey in charge of hydrography, and of the United States department of agriculture in charge of irrigation investigation shall supply.

See sec. 4692, making the state engineer a member of this board.

[Sec. 3 provides that the governor shall be chairman and the surveyor-general shall be secretary of the state board of irrigation.]

[Sec. 4 relates to surveys and the payment of expenses thereof out of the appropriation made by section 1.]

[Secs. 5, 6 and 7 and subsequent acts relate to reports of surveys and publication thereof.]

*An Act requiring any person, firm, company, or corporation now or hereafter using or diverting the public waters of this state, pursuant to law, to install and maintain at or near the point of use or diversion thereof, headgates and measuring weirs, according to the plan and specifications of the state engineer, and prescribing certain duties for said officer, and fixing certain penalties for failure, neglect or refusal to comply with, or the violation of this act, and other matters relating thereto.*

Approved March 10, 1909, 86

#### 4707. Water-users to install headgates and weirs—Plans by state engineer.

SECTION 1. Within ninety days after the passage of this act, it shall be the duty of any person, firm, company or corporation, who is now using or diverting, or may hereafter use or divert any of the public waters of this state under any certificate or permits to appropriate the same, issued by the state engineer, or under any provision of law, to install and maintain at or near the point of use or diversion of said waters, a good and substantial headgate and measuring weir, through which said waters shall flow, and constructed according to uniform plan and specifications prepared and furnished, free of charge, by the state engineer, and it is hereby made the duty of the state engineer forthwith, to prepare and furnish, free of charge on application therefor, said uniform plan and specifications, accordingly.

#### 4708. State engineer may install if water-users do not.

SEC. 2. If any person, firm, company, or corporation mentioned in section 1 of this act, shall fail to comply with the provisions of this act, the water commissioner, acting under the instructions of the state engineer, shall have, and is hereby given, the right to enter in, upon or over any private lands that may be necessary for the purpose of installing any or all such headgates and measuring weirs, as hereinbefore provided for.

#### 4709. Water-user failing to install guilty of misdemeanor.

SEC. 3. If any person, firm, company, or corporation mentioned in section 1 of this act, shall fail, neglect or refuse to comply with, or shall fail in any of the provisions of this act, he, she or it shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

*An Act to allow any person or persons to divert the waters of any river or stream, and run the same through any ditch or flume, and to provide for the right of way through the lands of others.*

Approved March 3, 1866, 202

4710. Certificate for building ditch or flume.  
4711. Rights conferred to enter and appropriate private lands—Compensation, how made—Duty of appraisers—Appeal.

4712. Undisturbed right to ditch and flow.  
4713. Act to apply to ditches and flumes already constructed and extensions.

#### 4710. Certificate for building ditch or flume—Commencement of work.

SECTION 1. Any person or persons desiring to construct and maintain a ditch or flume, within any one or more of the counties of this state, shall make, sign, and acknowledge, before some officer entitled to take acknowledgments of deeds, a certificate, specifying: First, the name by which the ditch or flume shall be known; and, second, the names of the places which shall constitute the termini of said ditch or flume. Such certificate shall be accompanied with a plat of the proposed ditch or flume, and shall be recorded in the office of the county recorder of the county or counties within or through which such ditch or flume is proposed to be located; and the record of such certificate and plat shall give constructive notice to all persons of the matters therein contained. The work of constructing such ditch or flume shall be commenced within thirty days of the time of making the certificate above mentioned, and shall be continued with all reasonable dispatch until completed.

#### 4711. Right conferred to enter and appropriate private lands—Compensation, how made—Duty of appraisers—Appeal.

SEC. 2. Any person or persons proposing to construct a ditch or flume, under the provisions of this act, shall have the right to enter upon private lands for the purpose of examining and surveying the same; and where such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of said ditch or flume, may be appropriated by said person or persons, after making compensation therefor, as follows: Said person or persons shall select one appraiser, and said owner or owners shall select one, and the two so selected shall select a third. In case the owner or owners shall from any cause fail, for the period of five days, to select an appraiser, as hereinbefore provided, then it shall be the duty of the appraiser selected by the person or persons proposing to construct said ditch or flume to select a second appraiser, and the two so selected shall select a third; and in either case the three selected shall, within five days after their selection, meet and appraise the lands sought to be appropriated, after having been first duly sworn by some officer entitled to administer oaths, to make a true appraisalment thereof, according to the best of their knowledge and ability. If such person or persons shall tender to such owner or owners the appraised value of such land, they shall be entitled to proceed in the construction of the ditch or flume over the lands so appraised, notwithstanding such tender may be refused; *provided*, that such tender shall always be kept good by such person or persons; *and, provided further*, that an appeal may be taken by either party from the findings of the appraisers to the district court of the district within which the lands so appraised shall be situated, at any time within ten days after such appraisalment. *As amended, March 5, Stats. 1869, 129.*

The above section applies only to cases where persons are desirous of constructing and maintaining a ditch or flume through or over the lands of another and to provide for a right of entry upon such lands for the purpose of surveying such ditch or flume, and to declare how such lands may be condemned where the same could not be obtained by the consent of the owner. *Barnes v. Sabron, 10 Nev. 217.*

Where a patent to land was obtained subsequent to the act of Congress of 1870 (16 U. S. Stats., sec. 17), it must, under the provisions of that act, be held subject to such vested and accrued water rights as were previously acquired by other parties under the ninth section of the act of 1866. *Idem.*

Under this act there is no question of taking private property either for public or private use, the land being public land the government has the absolute control over it. *Hobart v. Ford, 6 Nev. 77.*

It is within the power of the legislature to pass an act for the condemnation of land for the purpose of bringing water into cities and towns. Such a taking would be for a public use within the meaning of that term as used in the constitution, sec. 237, ante). *Thorn v. Sweeney, 12 Nev. 255.*

The construction of a ditch across rocky, barren and uncultivated lands is not an irreparable injury. *Idem.*

Regarding proceedings for condemnation of land and rights of way, see sec. 5606.

For act of Congress of 1866, confirming rights of way for ditches on public lands, see sec. 2401, and annotations preceding sec. 4672. *Ennor v. Raine*, 27 Nev. 178.

For act of Congress authorizing the secretary of the interior to permit the use of right of way upon the public lands for canals, reservoirs, tramways and power lines, see secs. 3171, 3172. 28 Stats. L., 29 Id. 120, 30 Id. 404, Morrison's Mining Rights, 14th ed. 222.

Regarding the foregoing and other acts of Congress pertaining to water and rights of way over public lands, see note preceding sec. 4672.

For acts of Congress regarding reservations of rights of way in patents, see secs. 2402, 3169.

#### 4712. Undisturbed right to ditch and flow.

SEC. 3. The person or persons constructing or maintaining a ditch or flume, under the provisions of this act, shall have the undisturbed right and privilege of flowing water through the same, to the full extent of its capacity, for mining, milling, manufacturing, agricultural and other domestic purposes, and to use the same at any necessary and convenient point or points along the line thereof; *provided*, that nothing in this act contained shall be so construed as to interfere with any prior or existing claim or right. *As amended, Stats. 1889, 96.*

#### 4713. Act to apply to ditches and flumes already constructed, and extensions.

SEC. 4. This act shall apply, and the rights and privileges herein conferred shall inure, to the benefit of all persons or corporations who have heretofore constructed, and now maintain, ditches, flumes, or aqueducts in this state, from whatever source they may have procured water, such persons or corporations being required to make and file the certificate mentioned in section 1 of this act, and upon such filing, the party or parties filing the same shall be authorized, from time to time, to extend his or their ditch or flume, and proceed to condemn private property for such ditch or flume, or for any reservoir or reservoirs connected, or to be used in connection, with such ditch or flume, as provided in section 2 of this act.

Location of ditch and water right for millsite—Sufficiency of appropriation and possession. *Robinson v. Imperial S. M. Co.*, 5 Nev. 44.

*An Act to provide for any person or persons owning or controlling any ditches, diverting the waters of any river or stream in and on to lands for the purpose of irrigation; to construct and maintain waste ditches and flumes, and to provide the right of way through the lands of others.*

Approved February 26, 1887, 83

#### 4714. Right of way and condemnation for waste ditches.

SECTION 1. Any person or persons who have constructed, or who may construct any ditch or flume for the purpose of diverting the water of any river or stream in and on to their lands for the purpose of irrigating and cultivating the same, or who owns or controls or may own and control any such ditch or flume; and who have no natural or artificial ditch or way for conveying off any or all surplus water from such lands, shall have the right to enter upon private lands for the purpose of examining and surveying the same for the purpose of constructing and maintaining a waste ditch and the necessary flumes connected therewith, and when such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of the said waste ditch and flumes may be appropriated therefor in the same manner as is provided for the appropriation of lands of others in an act to amend an act entitled "An act to allow any person or persons to divert the waters of any river or stream, and run the same through any ditch or flume, and to provide for the right of way through the lands of others," approved March 3, 1866; approved March 5, 1869.

See sec. 4712.

*An Act to provide for turning water stored for irrigation or other beneficial purposes into the channel of any stream and for reclaiming the same.*

Approved March 9, 1899, 64

**4715. Stored water may be conveyed through streams and reclaimed.**

SECTION 1. Any water stored for irrigation or other beneficial purposes may be turned into the channel of any natural stream or watercourse, and mingled with its waters, and then be reclaimed, but in reclaiming it, water already appropriated by others shall not be diminished in quantity.

*An Act authorizing boards of county commissioners of any county in this state to institute and maintain suit against persons, firms, companies, associations or corporations depositing sawdust in any river or stream of this state, and providing for the levy of a tax to pay the expenses of the same.*

Approved March 5, 1887, 125

**4716. County commissioners may institute suit to prevent pollution of streams.**

SECTION 1. The board of county commissioners of any county in this state are hereby authorized and empowered to institute and maintain suit in any court of competent jurisdiction against any persons, firm, association or corporation depositing sawdust in any river or stream, the waters of which run partly or wholly in this state.

**4717. Tax may be levied for enforcement of this act.**

SEC. 2. The boards of county commissioners of any and all counties of this state are hereby authorized and empowered to levy annually such tax as in their discretion may be necessary to carry out the provisions of this act.

*An Act for the protection of agricultural lands.*

Approved December 19, 1862, 107

**4718. Obstruction and pollution of streams.**

SECTION 1. It shall be and is hereby declared unlawful for any person or persons being the owner or owners of or being in possession of any sawmill, or mills used for the making of lumber, or the owner or owners of any slaughter house, brewery, or tannery, to injure or obstruct the natural flow of water in any river, creek, or other stream, or to permit any sawdust, chips, shavings, slabs, offal, refuse, tanbark, or other offensive matter, to enter therein, so as to damage or corrupt the purity of the water of such stream or streams.

Regarding pollution of water, see sec. 6547; furnishing impure water, sec. 6540; injury to dam, bridge or flume, sec. 6757; running water on highway, sec. 6770.

**4719. Action for damages.**

SEC. 2. Any city or county government, or any person or persons, being the owner or owners of or in the possession of any agricultural lands, who may be injured by reason of the violation on the part of any person or persons of the provisions contained in the preceding section, shall have the right to commence and maintain an action against such person or persons for any damage sustained, in such manner as may be provided by law.

**4720. Penalty.**

SEC. 3. Any person who shall wilfully and knowingly violate the provisions of this act, shall be guilty of a misdemeanor, and may be punished by a fine not exceeding five hundred dollars.

*An Act defining and prohibiting the unlawful diversion and waste of water.*

Approved February 28, 1889, 51

**4721. Unlawful diversion and waste of water.**

SECTION 1. Any person or persons who shall, during the irrigating season, divert and conduct the water, or portion thereof, of any river, creek or stream into any slough or sloughs, dam or dams, pond or ponds, and retain, or cause the same to be held or retained therein without making any other use of such water, or who shall, during the irrigating season, divert and conduct the water, or portion thereof, away from any such river, creek or stream, and run, or cause or allow the same to run to waste on sagebrush or greasewood land, such diversion shall be deemed an unlawful use and waste of water.

See Comstock M. & M. Co. v. Allen, 21 Nev. 327 (31 P. 434).

**4722. Penalty.**

SEC. 2. Any person or persons, company, corporation or association who shall, during the irrigating season, divert and conduct, or any person or persons aiding, abetting or assisting any such person or persons, company, corporation or association in diverting and conducting, during the irrigating season, the water, or portion thereof, of any river, creek or stream into any slough or sloughs, dam or dams, or pond or ponds, and retain, or cause the same to be retained therein without making any other use of such water, or who shall, during the irrigating season, divert and conduct the water, or portion thereof, away from any river, creek or stream, and run, or cause or allow the same to run to waste, contrary to and in violation of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction in this state, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail of the county not exceeding six months, or by both such fine and imprisonment.

*An Act entitled "An act to provide for the organization and government of drainage, irrigation and water storage districts, to provide for the acquisition of water and other property, and for the distribution of the water thereby for irrigation purposes, and for other matters properly connected therewith."*

Approved March 20, 1911, 248

**CHAPTER 1—ORGANIZATION OF DISTRICT**

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| 4723. Irrigation districts, how organized.   | 4728. Directors—Election notice.   |
| 4724. Petition for organization—Notice published.  | 4729. Election conducted same as general election—Canvass of returns—Certificates of election—Vacancies, how filled. |
| 4725. Commissioners to define boundaries of districts—Proviso—Duties of county commissioners—Popular election—Ballots—Precincts—Officers of district—Qualifications of voters. | 4730. Voting—Count of ballots.   |
| 4726. Election conducted regularly—Canvass of votes.   | 4731. Ballots, how disposed of.  |
| 4727. Subsequent elections regularly held—Terms of office—Official bonds.  | 4732. Informalities disregarded—Canvass made public.   |
|  | 4733. Statement of result—What statement must show.  |

**4723. Irrigation districts, how organized.**

SECTION 1. Whenever a majority of the holders of title, or evidence of title, to lands susceptible of one mode of irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, or, when for drainage purposes and other reasons, they desire to organize the proposed territory into one district, they may propose the organization of an irrigation district under this act; *provided*, said holders of title, or

evidence of title, shall hold such title, or evidence of title, to at least one-fourth part of the total area of the land in the proposed district; *provided, further*, that no person shall be a competent signer of a petition provided in this act for the formation of an "irrigation district" who is not the holder of title or evidence of title to not less than five acres of land irrigated or susceptible of irrigation from the said common source of water supply, which shall be accessible for the purpose of the district. The equalized county assessment roll next preceding the presentation of a petition for the organization of an irrigation district shall be sufficient evidence of title for the purpose of this act, but other evidence may be received, including receipts or other evidence of rights of entrymen on land under any law of the United States or this state, and such entrymen shall be competent signers of such petition, and the land on which they have made such entries shall, for the purpose of said petition, be considered as owned by them.

#### 4724. Petition for organization—Notice published.

SEC. 2. Whenever it is proposed to form an irrigation district, a petition shall first be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, signed by the required number of freeholders of such proposed district, possessing the qualifications provided for in section 1 of this act, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the same may be organized under the provisions of this act. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the said board of county commissioners, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all said costs in case said organization shall not be effected. Such petition shall be presented at a regular meeting of said board, and a notice thereof shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where said petition is presented, which newspaper shall be designated by said board as the paper most likely to impart notice of the hearing of said petition, the said notice to set forth that said petition has been filed, the time of the meeting of said board to consider said petition, and a description of the territory to be embraced in such proposed district.

#### 4725. Commissioners to define boundaries of districts—Proviso—Duties of county commissioners—Popular election—Ballots—Precincts.

SEC. 3. When such petition is presented, and it shall appear that the notice of the presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of petitioners as required by this act, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such applications for the exclusion of lands therefrom and inclusion of lands therein as may be made in accordance with the provisions of this act. The said commissioners may adjourn such examination from time to time not exceeding three weeks in all and shall, by final order duly entered, define and establish the boundaries of such proposed district; *provided*, that said board shall not modify such proposed boundaries described in the petition so as to change the object of said petition or so as to exempt from the operation of this act any land within the boundaries proposed by the petition susceptible to irrigation by the same system of water-works applicable to other lands in such proposed district; nor shall any land be included in such district if the owner thereof shall make application at such hearing to withdraw the same; *provided, also*, that contiguous lands not included in such proposed district, as described in the petition, may, upon application of the owner or owners thereof, be included in such district upon such

hearing; *provided*, that in the hearing of any such petition the board of county commissioners shall disregard any informalities therein, and in case they deny the same, or dismiss it for any reasons on account of the provisions of this act not having been complied with, which are the only reasons upon which they shall have a right to refuse or dismiss the same, they shall state their reasons in writing therefor in detail, which shall be entered upon their records, and in case the reasons are not well founded, a writ of mandamus shall, upon proper application therefor, issue out of the district court of said county, compelling them to act in compliance with this act, which writ shall be heard within twenty days from the date of issuance, and which twenty days shall be excluded from the forty days given the commissioners herein to act upon said petition.

When the boundaries of any proposed district shall have been examined and defined as aforesaid, the county commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and of designing the name of such proposed district, and also divide such district into three divisions, as nearly equal in size as may be practicable, and one director, who shall be a freeholder and qualified elector in the division, shall be elected as a director, from such division, by the freeholders who are also qualified electors in the proposed district at large. No more than one person shall be elected as a director from one and the same division of such district. Thereupon the said commissioners shall by further order duly entered upon their record call an election of the freeholders, who are also qualified electors of said district, to be held for the purpose of determining whether such district shall be organized under the conditions of this act, and by such order shall submit the names of one or more persons from each of the three divisions of said district, as herein provided, to be voted for as directors therein. Each of said divisions shall constitute an election district for the purpose of this act. Said board of county commissioners shall then give notice of such election to be held in such proposed district, which notice shall be published for three weeks prior to such election in a newspaper within the county or counties within which such proposed district lies. Such notice shall require the said electors to cast ballots which shall contain the words "Irrigation District—Yes" or "Irrigation District—No," or words equivalent thereto, and also the names of persons to be voted for to fill the various elective offices by this act provided for. For the purpose of this election above provided for, the said board of county commissioners must establish a convenient number of election precincts and polling places in said proposed districts and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such district, and shall also appoint the judges of election for such precinct, one of whom shall act as clerk of the election.

The officers of such district shall consist of three directors, as aforesaid, a secretary and a treasurer, who shall be appointed by the board of directors.

At said election and all elections held under the provisions of this act, all persons who are qualified electors within the proposed district, and who are as well competent signers of the petition as provided in section 1 of this act, who shall be entitled to vote and none others.

#### 4726. Election conducted regularly—Canvass of votes.

SEC. 4. Except as in this act otherwise provided, all such elections shall be conducted as nearly as practicable in accordance with the general election laws of this state. The said board of county commissioners shall meet on the second Monday succeeding such election and proceed to canvass the votes cast thereat, and if, upon such canvass it appears that at least a majority of said legal electors in said district have voted "Irrigation Dis-

trict—Yes,” the said board shall, by an order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices, to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district duly certified by the clerk of the board of county commissioners to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and no board of county commissioners of any county, including any portion of such district, shall, after the date of organization of such district, allow another district to be formed, including any of the lands of such district, without the consent of the board of directors thereof, and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying, in accordance with the law, and shall hold such offices, respectively, until their successors are elected and have qualified.

#### 4727. Subsequent elections regularly held—Term of office—Official bonds.

SEC. 5. The regular election of said district shall be held on the first Tuesday after the first Monday in April of each year thereafter, at which shall be elected three directors by the electors of the district at large. The terms of the office of the directors shall be as follows: The directors shall, immediately after the first regular election following such organization, be selected by lot so that one shall hold his office for the term of one year, one for the term of two years, and one for the term of three years, and an election shall be held in each district on the first Tuesday after the first Monday in April of each year thereafter, at which one director shall be elected for a term of three years, or until his successor is elected and qualified. Such director must be a qualified elector and a freeholder of the division of the director whom he is to succeed in office. Within ten days after receiving the certificates of election hereinafter provided for, such officer shall take and subscribe to an official oath and file the same in the office of the board of directors, and execute the bond hereinafter provided for. Each member of said board of directors shall execute an official bond in the sum of fifteen thousand dollars (\$15,000), which said bonds shall be approved by the judge of the district court in and for said county where such organization is effected, and shall be recorded in the office of the county recorder thereof and filed with the secretary of said board. All official bonds provided for in this act shall be in the form prescribed by law.

#### 4728. Directors—Election notice.

SEC. 6. The office of the board of directors shall be located in the county where the organization was effected. Fifteen days before any election held under this act subsequent to the organization of the district, the secretary, who shall be appointed by the board of directors, shall cause notice specifying the polling places in each election precinct to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notice, the board must appoint from each precinct from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an

absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held. At least four weeks before any such election, said board of directors shall appoint a registrar for each precinct of the district, except the precinct in which the office of the secretary of the board is located. In the precinct in which his office is located, or where there is but one voting precinct in the district, the secretary of the district shall act as registrar. Such registrars shall be governed in the performance of their duties by the general election laws of the state as far as they are applicable, and must be at their places of registration to receive applications for registration, from 9 o'clock a. m. to 9 o'clock p. m., on each of three Saturdays next preceding the date of election. In addition to the usual elector's oath, the following shall be added: "As I am a resident in, and holder of land within the boundaries of ..... Irrigation District." No election for any purpose shall be held in any irrigation district without such registration and only those persons duly registered shall be allowed to vote thereat.

**4729. Election conducted same as general election—Canvass of returns—Certificate of election—Vacancies, how filled.**

SEC. 7. The said judge shall elect a chairman, who may administer all oaths required in the progress of an election, and appoint judges and clerks, if during the progress of an election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of the election. The board of election of each precinct must, before opening the polls, appoint two clerks to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe to an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The time of opening and closing the polls, the manner of conducting the election, canvassing and announcing the result, the keeping of the tally-list and the making and certifying said results, and the disposition of the ballots after election, shall be the same, as near as may be, as provided for elections under the general election law of the state; *provided*, that the returns shall be delivered to the secretary of the district, and that no list, tally-paper or certificate returns from any election, shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns, and they shall proceed in the same manner and with like effect, as near as may be, as the board of county commissioners in canvassing the returns of general elections, and when they shall have declared the result, the secretary shall make full entries in his record in like manner as is required of the county clerk in general elections. The board of directors must declare elected the person or persons having the highest number of votes given for each office. The secretary shall immediately make out and deliver to such person or persons a certificate of election signed by him and authenticated with the seal of the board. In case of a vacancy in the office of the director, the vacancy shall be filled by appointment by the remaining members of the board from the division in which the vacancy occurred. An officer appointed to fill a vacancy, as above provided, shall hold his office until the next regular election of said district, at which election, a director shall be elected for the remainder of the unexpired term.

**4730. Voting—Count of ballots.**

SEC. 8. Voting may commence as soon as the polls are open and may con-

tinue during all the time the polls remain open, and shall be conducted, as nearly as practicable, in accordance with the provisions of the law relating to elections. As soon as the polls are closed, the judge shall open the ballot-box and shall commence counting the votes, and in no case shall the ballot-box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out one by one by the chairman of the board of election or one of the judges, who shall open them and read aloud the name of each person contained thereon and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tallies as they are read by such chairman or judge. The counting of votes shall continue without adjournment until all the votes have been counted.

#### 4731. Ballots, how disposed of.

SEC. 9. As soon as all votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll-list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to be filled for which he was voted for, which number shall be written in words and figures at full length. Each certificate shall be signed by all the members of the board of election and by both clerks. One of said certificates, with the poll-list and tally-paper to which it is attached, shall be retained by the chairman of the board of election, and preserved by him for at least thirty days. The ballots shall be strung on a cord or thread by said chairman, during the counting thereof, in the order in which they are entered upon the tally-lists by the clerks; and said ballots, together with the other of said certificates, with the poll-list and tally-paper to which it is attached, shall be sealed by the said chairman in the presence of the other of said judges and clerks, and endorsed "Election returns of ----- precinct," and be directed to the secretary of the board of directors; it shall be immediately delivered by said chairman or by other safe and responsible carrier designated by him, to said secretary, and the ballots shall be kept unopened for at least thirty days, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the precinct that is claimed to have been incorrectly counted.

#### 4732. Informalities disregarded—Canvass made public.

SEC. 10. No list, tally-paper or certificate return from any election, shall be set aside or rejected for want of form if it can be satisfactorily understood. If at the time of the meeting, the returns of each precinct in which polls have been opened have been received, the board or directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made public and by opening the returns and counting the votes of the district for each person voted for and declaring the result thereof.

#### 4733. Statement of result—What statement must show.

SEC. 11. The secretary of the board of directors must, as soon as the result is declared, enter on the records of said board a statement of such results, which statement must show:

(a) The whole number of votes cast in the district and in each voting precinct thereof.

(b) The name of the person or persons voted for.

- (c) The office to fill which each person was voted for.  
 (d) The number of votes given in each precinct to such person or persons.  
 (e) The number of votes given in the district for such person or persons.  
 The board of directors must declare elected the person or persons having the highest number of votes given for each office.

#### CHAPTER 2—POWERS AND DUTIES OF BOARD OF DIRECTORS

4734. Election of officers—Meetings of board—All meetings public.  
 4735. By-laws—Rights of board to acquire property for irrigation purposes.  
 4736. Legal title to property.  
 4737. Conveyance of property—Actions at law.  
 4738. Compensation of officers and directors.  
 4739. Directors and officers to have no interest in contracts.  
 4740. Elections for special assessment, when.  
 4741. Power to incur debts limited.  
 4742. Report to state engineer.  
 4743. Financial statements to be published.  
 4744. County commissioners may examine books.

#### 4734. Election of officers—Meetings of board—All meetings public.

SEC. 12. On the first Tuesday in May, next following their election, the board of directors shall meet and organize as a board, elect a president from their number and appoint a secretary and a treasurer, who shall each hold office during the pleasure of the board. The said secretary and treasurer shall each be required to file with the said board such bonds as it may seem necessary to insure the faithful performance of their duties. On the organization of the first board of directors of any such district, they shall designate some place within the district as the office of said board and said board shall hold a regular monthly meeting in its office on the first Monday in every month, and any special meetings as may be required for the proper transaction of business; *provided*, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order five days' notice of such special meetings. The order must specify the business to be transacted at such special meeting, and none other than that specified shall be transacted; *provided, further*, that whenever all members of the board are present, however called, the same shall be deemed a legal meeting, and any lawful business may be transacted. All meetings of the board must be public and a majority shall constitute a quorum for the transaction of business; but on all questions requiring a vote, there shall be a concurrence of at least a majority of the members of the board. All records of the board shall be open to the inspection of any elector during business hours.

#### 4735. By-laws—Rights of board to acquire property for irrigation purposes.

SEC. 13. Said board shall have the power to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required and prescribe their duties, and to establish equitable by-laws, rules and regulations, subject to the approval of the state board of control, for the distribution and use of water among the owners of such land as may be necessary and just to secure the just and proper distribution of the same. Said by-laws, rules and regulations must be printed in convenient form for distribution throughout the district. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works, and the lines of any canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, either by purchase, condemnation or other legal means, all lands, rights and other property necessary for the construction, use and supply, maintenance, repair and improvement of said canal or canals and works,

including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. In case of purchase, the bonds of the district, hereinafter provided for, may be used to their par value in payment. Said board may appropriate water in accordance with the law and also construct the necessary dams, reservoirs and works for the collection of water for said district; and do any and every lawful act necessary to be done that sufficient water may be furnished to each land owner in said district for irrigation purposes. The use of all water required for the irrigation of lands of any district formed under the provisions of this act, together with the rights of way for canals and ditches, sites for reservoirs and all other property required in fully carrying out the provisions of this act, is hereby declared to be a public use subject to the regulations and control of the state in the manner prescribed by law.

#### 4736. Legal title to property.

SEC. 14. The legal title to all property or rights acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district and shall be held by such district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this act. Said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property and rights as herein provided.

#### 4737. Conveyance of property—Actions at law.

SEC. 15. The said board is hereby authorized and empowered to take conveyances or other assurances for all property and rights acquired by it under the uses and provisions of this act, in the name of such irrigation district, to and for the purposes herein expressed; and to institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper to fully carry out the provisions of this act, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this act or acquired in pursuance thereof.

In all courts, actions, suits or proceedings the said board may sue, appear and defend, in person or by attorneys and in the name of such irrigation district.

#### 4738. Compensation of officers and directors.

SEC. 16. The members of the board of directors shall each receive not more than three dollars per day for each day spent attending meetings of said board or while engaged in official business under the order of the board. The board shall fix the compensation to be paid to the other officers named in this act to be paid out of the treasury of the district; *provided*, that said board shall upon the petition of a majority of the freeholders within such district, submit to the electors at any general election of said district a schedule of salaries and fees to be paid thereunder. Such petition must be presented to the board twenty days prior to a general election, and the result of such election shall be determined and declared in all respects as other elections are determined and declared under this act.

#### 4739. Directors and officers to have no interest in contracts.

SEC. 17. No director or any other officer named in this act shall in any manner be interested, directly or indirectly, in any contract awarded by the board, or in the profits to be derived therefrom, and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall suffer a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not to exceed six months or by both such fine and imprisonment.

**4740. Elections for special assessments, when.**

SEC. 18. The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district, the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof be determined and declared, in all respects in conformity with the provisions of sections 5 and 6. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be used. At such elections the ballots shall contain the words "Assessment—Yes," or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall immediately levy an assessment sufficient to raise the amount voted. The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board and collected at once, and in the same manner as other assessments provided for herein; and when collected, shall be paid into the district treasury for the purpose specified in the notice of such special election.

**4741. Power to incur debts limited.**

SEC. 19. The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void; *provided*, that for the purpose of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding in the aggregate the sum of two thousand dollars, and may cause warrants of the district to issue therefor, bearing interest at six per cent per annum.

**4742. Report to state engineer.**

SEC. 20. At least as often as once a year after the approval of said plans, the board of directors shall make a report to the state engineer of the progress of the work of construction and reclaiming, and whether or not the plan of irrigation formulated under the provisions of this act, is being successfully carried out, and whether or not, in the opinion of the board, the funds available will complete the proposed works. Upon receipt of such reports by the state engineer, he shall make such suggestions and recommendations to such board of directors as may be necessary to conserve the best interests of the district.

**4743. Financial statement to be published.**

SEC. 21. On or before the first Tuesday of February of each year the board of directors of each irrigation district, organized under this act, shall publish in at least one issue of some newspaper published in the county or counties in which such district is situated, a full, true, and correct statement of the financial condition of said district on the first day of the preceding January, giving a statement of all liabilities and assets of the district on such first day of January.

**4744. County commissioners may examine books.**

SEC. 22. Any board of directors of any such irrigation district, or the secretary thereof, shall at any time allow any member of the board of county commissioners, when acting under the order of such board, to have access to all books, records and vouchers of the district which are in possession or control of said board of directors or said secretary of said board.

## CHAPTER 3—ISSUANCE AND SALE OF BONDS

4745. Plan of operation—Election to authorize bonds—Notice of election published—Ballots, what to contain.
4746. Form of bonds—Percentages of bonds payable at certain intervals—Proviso—Interest payable semiannually—Record of bonds.
4747. Apportionment of benefits—Map—Assessments to be proportional.
4748. Notice of assessment—Notice advertised—Hearing.
4749. Confirmation of proceedings—Proviso.
4750. Method and rules of procedure.
4751. Hearing and confirmation.
4752. Sale of bonds.
4753. Payment of bonds and interest.
4754. Redemption of bonds.
4745. Plan of operations—Election to authorize bonds—Notice of election published—Ballots, what to contain.

SEC. 23. As soon as practicable after the organization of any such district, the board of directors shall, by a resolution entered on its records, formulate a general plan of its proposed operations, in which it shall state what constructive works or other property it proposes to purchase and the cost of purchasing the same; and further what construction work it proposes to do and how it proposes to raise the funds for carrying out said plan. For the purpose of ascertaining the cost of any such construction work, said board shall cause such surveys, examinations and plans to be made as shall demonstrate the practicability of such plan, and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans and estimates shall be made under the direction of a competent irrigation engineer and certified by him. Said board shall then submit a copy of the same to the state engineer, and within ninety days thereafter, the state engineer shall file a report upon the same with said board, which report shall contain such matters as, in the judgment of the state engineer, may be desirable. Upon receiving said report said board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the electors of said district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district shall be authorized. Notice of such election must be given by posting notices in three public places in each election precinct in said district at least four weeks before the date of said election, and the publication thereof for the same length of time in some newspaper published in the district, and in case no paper is published in the district, then in a paper published in each county in which the district, or any part thereof, is located. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued and, in case such maps and estimates have been made, it shall further state that copies thereof, and in all cases it shall state that said report of the state engineer, are on file and open for public inspection by the people of the district, at the office of said board and at the office of the state engineer at the state capitol. Said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; *provided*, that no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballot shall contain the words "Bonds—Yes," or "Bonds—No," or words equivalent thereto. If two-thirds of the votes cast are "Bonds—Yes," the board of directors shall cause bonds in said amounts to be issued; if more than one-third of the votes cast at any bond election are "Bonds—No," the result of such election shall be so declared and entered of record. And whenever thereafter said board, in its judgment, deems it for the best interest of the district that the question of the issuance of bonds in said amounts, or any other amounts, shall be submitted to the electors, it shall so declare of record in its minutes, and may thereupon submit such questions to said

electors in the same manner and with like effect as at such previous elections.

**4746. Form of bonds—Percentages of bonds payable at certain intervals—Proviso—Interest payable semiannually—Record of bonds.**

**SEC. 24.** The bonds authorized by any vote shall be designated as a series and the series shall be numbered consecutively as authorized. The portion of the bonds of the series sold at any time shall be designated as an issue, and each issue shall be numbered in its order. The bonds of such issue shall be numbered consecutively, commencing with those earliest falling due, and they shall be designated as eleven-year bonds, twelve-year bonds, etc. They shall be negotiable in form and payable in money of the United States as follows, to wit: At the expiration of eleven years from each issue, five per cent of the whole number of bonds of such issue; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration of seventeen years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent; *provided*, that such percentages may be changed sufficiently so that every bond shall be in an amount of one hundred dollars or a multiple thereof, and the above provisions shall not be construed to require any single bond to fall due in partial payments. Interest coupons shall be attached thereto, and all bonds and coupons shall be dated on January 1st or July 1st, next following the date of their authorization, and they shall bear interest at a rate of not to exceed six per cent per annum, payable semiannually on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of a denomination of not less than one hundred dollars nor more than one thousand dollars, and shall be signed by the president and secretary, and the seal of the board of directors shall be affixed thereto. Coupons attached to each bond shall be signed by the secretary. Said bonds shall express on their face that they were issued by the authority of this act, naming it, and shall also state the number of the issue of which such bonds are a part. The secretary and the treasurer shall each keep a record of the bonds sold, their number, the date of sale, the price received and the name of the purchaser. In case the money raised by the sale of all the bonds be insufficient for the completion of the plans and works adopted, and additional bonds be not voted, it shall be the duty of the board of directors to provide for the completion of said plan by levy of assessment therefor, in the manner hereinafter provided; *provided, further*, that when the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized therefor, and it becomes necessary to raise additional money for such purposes, additional bonds may be issued, submitting the question at a general election to the qualified voters of said district, otherwise complying with the provisions of this section in respect to an original issue of said bonds; *provided, also*, the lien for taxes, for the payment of interest and principal or of any bond issue shall be a prior lien to that of any subsequent bond issue.

**4747. Apportionment of benefits—Map—Assessments to be proportional.**

**SEC. 25.** Whenever the electors shall have authorized an issue of bonds, as hereinbefore provided, the board of directors shall examine each tract or legal subdivision of land in the said district, and shall determine the benefits which will accrue to each of such tracts or subdivisions from the construction or purchase of such irrigation works; and the cost of such

works shall be apportioned or distributed over such tracts or subdivisions of land in proportion to such benefits, and the amounts so apportioned or distributed to each of said tracts or subdivisions shall be and remain the basis for fixing the annual assessments levied against such tracts or subdivisions in carrying out the purposes of this act. Such board of directors shall make, or cause to be made, a list of such apportionment or distribution, which list shall contain a complete description of each subdivision or tract of land of such district with the amount and rate per acre of such apportionment or distribution of cost, and the name of the owner thereof; or they may prepare a map on a convenient scale showing each of said subdivisions or tracts with the rate per acre of such apportionment entered thereon; *provided*, that where all lands on any map or section of a map are assessed at the same rate a general statement to that effect shall be sufficient. Said list or map shall be made in duplicate, and one copy of each shall be filed in the office of the state engineer, and one copy shall remain in the office of said board of directors for public inspection. Whenever thereafter an assessment is made, either in lieu of bonds, or an annual assessment for raising the interest on bonds, or any portion of the principal, or the expenses of maintaining the property of the district, or any special assessment voted by the electors, it shall be spread upon the lands in the same proportion as the assessment of benefits, and the whole amount of the assessment of benefits shall equal the amount of bonds or other obligations authorized at the election last above mentioned.

#### 4748. Notice of assessment—Notice advertised—Hearing.

SEC. 26. After the board shall have examined the lands in said district, and before proceeding to make the assessment of benefits and the list and the apportionment as provided in the last preceding section, they shall give notice to the owners of said land that they will meet at their office on a day to be stated in said notice for the purpose of making such assessment and list and apportionment. They shall, as far as practicable, give such notice by letter, mailed or delivered, to each of said land owners, and the same shall be mailed or delivered to land owners residing out of the county where said office is located at least ten days before the day fixed for such meeting, and to such as reside in said county, it shall be so mailed or delivered at least six days before the time of such meeting. For the purpose of giving notice to nonresidents and such owners as it is not reasonably practicable to notify personally or by mail as aforesaid, the notice shall be published in some newspaper published in the same county two weeks before the time of such meeting. At such meeting the board shall proceed to hear all parties interested who may appear, and they shall continue in session from day to day until this assessment is completed. They shall hear all evidence offered, including any maps or surveys which any owners of lands may produce, and they may classify the lands in such way that the assessment when completed shall be just and equitable. Any person interested who shall fail to appear before the board shall not be permitted thereafter to contest said assessment, or any part thereof, except upon a special application to the court in the proceeding for confirmation of said assessment, showing reasonable excuse for failing to appear before said board of directors. In case any land owner makes objection to said assessment, or any part thereof, before said board, and said objection is overruled by the said board, and the land owners do not consent to the assessment as finally determined, such objection shall, without further proceedings, be regarded as appealed to the district court and to be heard at the said proceeding to confirm as aforesaid.

#### 4749. Confirmation of proceedings—Proviso.

SEC. 27. The board of directors of the irrigation district shall file with the

clerk of the district court in and for the county in which this office is situated a petition, praying in effect that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state generally that the irrigation district was duly organized and the first board of electors elected, that due and lawful proceedings were taken to issue bonds in an amount to be stated, and that said assessment, list and apportionment were duly made and a copy of said assessment, list and apportionment shall be attached to said petition, but the petition need not state other facts showing such proceedings; *provided*, that after the organization of the district is complete, a petition may be filed for the confirmation of the proceedings so far, or after the authorization of any issue of bonds such petition may be so filed, and where the procedure is by separate petitions for the confirmation of different portions of said proceedings, subsequent proceedings may be in the name of reopening of the same case, but shall not be considered as authorizing any rehearing of the matter theretofore heard and decided.

#### 4750. Method and rules of procedure.

SEC. 28. The court or judge shall fix the time for the hearing of the said petition, and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published in a newspaper published in the same county for four consecutive weeks. The notice shall state the time and place for the hearing of the petition, and the prayer of the petition, and that any person interested in the subject-matter of the said petition may, on or before the day fixed for the hearing thereof demur to or answer said petition. None of the pleadings in said matter need be sworn to. Every material statement of the petition not controverted by answer must be taken as true, and every person or party failing to answer the petition shall be deemed to have admitted all the material allegations of the petition. The rules of pleading and practice provided by the civil practice act of this state, which are not [in]consistent with this act, are applicable to the special proceeding herein provided for. A motion for a new trial, and all proceedings in the nature of appeals or rehearings may be had as in any ordinary civil action.

#### 4751. Hearing and confirmation.

SEC. 29. Upon the hearing of such special proceedings, the court shall examine all the proceedings set up in the petition, may ratify, approve and confirm the same or any part thereof, and in case of a petition to confirm said assessment, list, apportionment, and distribution, the court shall hear all objections either filed in said proceedings or brought up in the hearing before the board of directors as aforesaid, and for that purpose any person desiring to be heard upon objections overruled by the board of directors, shall state the substance of such objections and the ruling of the board in his answer. The court shall disregard every error, irregularity or omission which does not affect the substantial right of any party, and if the court shall find that said assessments, list and apportionment are in any substantial matter erroneous or unjust, the same shall not be returned to said board, but the court shall proceed to correct the same so as to conform to this act, and the rights of all parties in the premises, and the final order of decree of the court may approve and confirm such proceeding in part; and in case the proceeding for organization of the district and the issue of bonds are approved, the court shall correct all the errors in the assessment, apportionment and distribution of costs as above provided, and render the final decree approving and confirming all of the said proceedings. In case of the approval of the organization of the district and the disapproval of the proceedings for issuing bonds, the district shall have the right to institute further proceedings for the issuance of bonds de novo. The cost of the special proceedings may be

allowed and apportioned among the parties thereto in the discretion of the court.

#### 4752. Sale of bonds.

SEC. 30. The board may sell said bonds from time to time in such quantities as may be necessary and most advantageous, to raise money for the construction of said canals and works, the acquisition of said property and rights, and otherwise to carry out the object and purpose of this act. Before making any sale the board shall, by resolution, declare its intention to sell a specific amount of the bonds, and if said bonds can then be sold at their face value and accrued interest they may be sold without advertising, otherwise said resolution shall state the day and hour and place of such sale, and cause such resolution to be entered on the minutes, and notice of sale to be given by publication thereof at least four weeks in three newspapers published in the State of Nevada, one of which shall be a newspaper published in the county in which the office of the board of directors is situated, if there be a newspaper published in said county, and in other newspapers at their discretion. Said notice shall state that sealed proposals will be received by the board at their offices for the purchase of the bonds until the day and hour named in the resolution. At the time appointed the board shall open the proposals, and award the purchase of the bonds to the highest responsible bidder, or may reject all bids; but in case no bids are received, or all bids are rejected, at the time stated in the advertisement, it shall not be again necessary to advertise the sale of the same bonds, but they may be sold at any time until canceled; *provided*, said board shall in no event sell any of the said bonds for less than the par or face value thereof and accrued interest. If, for any reason, the duly authorized bonds of a district cannot be sold, or if at any time it shall be deemed for the best interests of the district to withdraw from sale all or any portion of an authorized bond issue, the board of directors may, in their discretion, cancel the same and they may levy assessments to the amount of the bonds canceled; *provided*, that the revenue derived from said assessments must be employed for the same purpose as was contemplated by the bond authorization; but no levy shall be made to pay for work or material, payment for which was contemplated by bonds which have been authorized, until bonds to the amount of said assessment have been canceled. Assessments made in lieu of bonds canceled shall be collected in the same manner, and shall have the same force and effect, as assessments levied under any provision of this act; *provided*, that such assessments shall not, during any one year, exceed ten per cent of the total bond issue authorized by such district, unless a greater assessment shall be authorized by a majority vote of the qualified electors of the district voting at a general election or a special election called for that purpose, said special election to be held in the manner provided in section 18.

#### 4753. Payment of bonds and interest.

SEC. 31. Said bonds and the interest thereon shall be paid by revenue derived from the annual assessment upon the land in the district; and all the land in the district shall be and remain liable to be assessed for such payment.

#### 4754. Redemption of bonds.

SEC. 32. Upon the presentation of the coupons due to the treasurer, he shall pay the same from the bond fund. Whenever after ten years from the issuance of said bonds, said fund shall amount to the sum of ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem at the lowest value at which they may be offered for liquidation, after advertising for at

least four weeks in some newspaper published in the county, and in other newspapers which said board may deem advisable, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting at a time to be named in the notice, and the lowest bid for said bonds must be accepted; *provided*, that no bonds shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed as herein provided for, said money shall be invested by the treasurer, under the direction of the board, in United States bonds or the bonds or warrants of the state, or municipal or school bonds, which shall be kept in such bond fund and may be used to redeem said district bonds whenever the holders thereof may desire.

#### CHAPTER 5—LEVY AND COLLECTION OF ASSESSMENTS

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| 4755. Assessment book.                     | 4760. Payment of assessments.   |
| 4756. Notice of correction of assessments. | 4761. Delinquent list.  |
| 4757. Board of correction.                 | 4762. Publication of delinquent list—Sales to be published—Method of conducting sale. |
| 4758. Levy of assessment.                  | 4763. Redemption, when and how made.  |
| 4759. Lien of assessment.                  |   |

#### 4755. Assessment book.

SEC. 33. The secretary of the board of directors shall be the assessor of the district and on or before August fifteenth of each year shall prepare an assessment book containing a full and accurate list and description of all the land of the district, and a list of the persons who own, claim or have possession or control thereof, during said year, giving the number of acres listed to each person.

If the name of the person owning, claiming, possessing, or controlling any tract of said land is not known, it shall be listed to "unknown owners."

#### 4756. Notice of correction of assessments.

SEC. 34. On or before the first Monday in September of each year, the secretary of the board must give notice of the time the board of directors will meet to correct assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice. In the meantime the assessment book must remain in the office of the secretary for the inspection of all parties interested.

#### 4757. Board of correction.

SEC. 35. Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of correction for that purpose, shall meet and continue from day to day, as long as may be necessary, not to exceed five days, exclusive of holidays, and may make such changes in said assessment book as may be necessary to make it conform to the facts. Within five days after the close of said session, the secretary of the board shall have the corrected assessment book complete.

#### 4758. Levy of assessment.

SEC. 36. At its regular meeting in October, the board of directors shall levy an assessment upon the lands in said district upon the basis, and in the proportion, of the list and apportionment of benefits approved by the court as hereinbefore provided, which assessment shall be sufficient to raise the annual interest on the outstanding bonds. At the expiration of ten years after the issue of said bonds of any issue, the board must increase said assessment, as may be necessary from year to year, to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book

the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected, the assessments shall be paid into the district treasury, and shall constitute a special fund, to be called "Bond Fund of -----Irrigation District." In case any assessment should be made for the purpose contemplated by a bond authorization, it shall be entered in a separate column of the assessment book in the same manner as the bond fund; and when collected shall constitute the "Construction Fund of -----Irrigation District."

#### 4759. Lien of assessment.

SEC. 37. The assessment is a lien against the property assessed from and after the first Monday in March of any year. The lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue, and such lien is not removed until the assessments are paid, or the property sold for the payment thereof.

#### 4760. Payment of assessments.

SEC. 38. On or before the first day of November the secretary must deliver the assessment book to the treasurer of the district, who shall within ten days publish a notice in a newspaper published in each county in which any portion of the district may lie, that said assessments are due and payable, and will become delinquent at 6 o'clock p. m. on the first day of January next thereafter, and also the times and places at which the payments of the assessments may be made, which notice shall be published for the period of two weeks. The treasurer must attend to the times and places specified in the notice, to receive assessments, which must be paid in lawful money of the United States; he must mark the date of payment of any assessment in the assessment book opposite the name of the person paying and give a receipt to such person, specifying the amount of the assessment, and the amount paid with a description of the property assessed. On the first day of January at 6 o'clock p. m. of each year, all unpaid assessments for the preceding year are delinquent; *provided*, that if any person shall pay one-half of his assessments before they become delinquent, the remaining one-half shall not become delinquent until the first Monday in July at 6 o'clock p. m. of each year.

#### 4761. Delinquent list.

SEC. 39. On or before the second Monday in January of each year said treasurer shall begin the preparation of a delinquent list containing a description of all tracts of land upon which assessments are delinquent, and the amount of assessments against each such tract and the name of the owner as shown on the assessment book, and thereafter and on or before the second Monday in July the treasurer shall complete said delinquent list and shall properly certify the same and prepare a duplicate thereof; and deliver it to the secretary of the district. If any such assessment becomes delinquent the treasurer shall collect the same with the penalties added, as provided for delinquent county and state taxes.

#### 4762. Publication of delinquent list—Sales to be published—Method of conducting sale.

SEC. 40. During the first seven days of August the treasurer must commence to publish the delinquent list, and the publication shall continue four weeks, and must contain the names of the persons, and a description of the property delinquent at the time, and the amount of the assessments and penalties, and the cost due opposite each name and description. After said publication shall have been made for the first time, the treasurer shall collect twenty-five cents additional to the assessments and penalties on each description of the land published. The treasurer must append and publish

with the delinquent list a notice that unless the assessments delinquent, together with penalties and costs, are paid, the real property upon which said assessments are made will be sold at public auction, at a time and place therein specified. The publication must be made in some newspaper published in said district, if it can be so published, and if it cannot be so published, then in some newspaper published in the county in which the office of the directors is situated; and if it cannot be so published, then by posting it in not less than three public places in said district, one of which shall be at the door of the office of said board; the time of said sale shall be fixed for the first Tuesday in September, and the place shall be at the office of said board of directors. The treasurer as soon as he has made the publication required, must file with the secretary proof of such publication by affidavit and like proof of posting in case such notice was posted as herein required. The treasurer must attend at the time and place specified in the notice and conduct the sale. The sale shall be conducted in all respects in the manner provided for the sale of property for delinquent county and state taxes, and may be postponed in the same manner and the district shall become the purchaser of the property in the cases when the county would have become the purchaser of property at sales for delinquent county and state taxes. The treasurer must retain in his office a list of the property sold, stating name of owner as appears by assessment roll, amount for which sold and date of sale, and file a duplicate list with the recorder of the county in which the land is situated. The treasurer shall execute a duplicate certificate of sale, which shall contain the statements in substance required in certificates of sale in sales of county and state delinquent taxes, one of which shall be delivered to the purchaser and the other shall be filed with the treasurer in the office of the county recorder of the county in which the land is situated. When the district is the purchaser the duplicate certificate shall be filed with the secretary. Any irrigation district as a purchaser of any land at any such delinquent tax sale, shall be entitled to the same rights as a private purchaser, and the title so acquired by the district, subject to the rights of the redemption herein provided, may be conveyed by deed executed and acknowledged by the president and the secretary of the board; *provided*, that authority to so convey must be conferred by resolution of the board entered on its minutes.

#### 4763. Redemption, when and how made.

SEC. 41. Redemption can be made at any time within one year from the date of sale. Redemption may be made by paying to the treasurer the amount for which the property was sold, together with ten per cent penalty and one per cent thereon. The treasurer shall thereupon deliver to the person redeeming a certificate of redemption stating the description of the lands sold, the name of the owner as it appeared upon the assessment roll, and the amount paid on such redemption, and shall note the redemption on his list of sales. When such certificates of redemption shall be presented to the county recorder where the land is situated, he shall mark the property as redeemed in his record of such sales. The treasurer must pay the amount received on such redemption to the person holding the certificate of sale, but on presentation thereof with satisfactory proof of ownership. When the district is purchaser, it may assign any certificate of sale to any person, within one year after the sale, upon receipt of the amount for which the property was sold to the district, with the interest from the date of sale. If no redemption be made within the year after said sale, the treasurer shall, upon request, execute a deed to the holder of the certificate, which deed shall recite and contain the matter required in deeds for property sold for county and state taxes, and when so executed and delivered shall have the same effect.

## CHAPTER 6—CONSTRUCTION WORK AND ACQUIREMENT OF PROPERTY

4764. Contract for construction work.

4765. Notice for bids, when dispensed with.

4766. Payment of claims.

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4768. Powers of board regarding rights of way.

4769. Right of way over state lands.

4770. Right of eminent domain.

## 4764. Contract for construction work.

SEC. 42. After adopting a plan for said canal or canals, storage reservoirs and works, the board of directors shall give notice, by publication thereof not less than thirty days in one newspaper published in each of the counties comprising the district, if a newspaper is published therein, and in such other newspaper as they may deem advisable, calling for bids for the construction of such work, or any portion thereof. If less than the whole work is advertised, then the portions so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the time and place appointed, shall be opened in public; and as soon as convenient thereafter, the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any and all bids and readvertise for proposals. Contracts for the purchase of the material shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties to be approved by the board, payable to said district for its use, for 25 per cent of the amount of the contract price, conditioned upon the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer employed by the district, and approved by the board; *provided*, that no contract of any kind shall be let by said board of directors unless there is sufficient money in the district treasury at the time such contract is let, available for such payment, to fully pay for the work or material so contracted for.

## 4765. Notice for bids, when dispensed with.

SEC. 43. On the petition of a majority of the owners of land in said district, to be determined as provided by section 1, the board of directors may do any work mentioned in the preceding section on behalf of the district, and it may use the construction fund therefor; in such cases they need not publish notice for bids as provided in the last preceding section.

## 4766. Payment of claims.

SEC. 44. No claim shall be paid by the treasurer until allowed by the board, and only upon warrant signed by the president and countersigned by the secretary.

## 4767. Payment of expenses — Water tolls — Semiannual statement of assessments.

SEC. 45. The cost and expense of purchasing and acquiring property and constructing works and improvements to carry out the formulated plan, shall be paid out of the construction fund. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair and improvement of such portion of said canal and works as are completed in use, including salaries of officers and employees, the board may either fix rates of toll and charges for water against all persons using said canal for irrigation or other purposes, or they may levy assessments therefor, or by both said tolls and assessments. The procedure for levying and collection of assessments shall conform to the provisions of this

act relating to the payments of principal and interest of bonds. All assessments and tolls shall be listed and carried out in the regular assessment book and collected by the treasurer at the time and in the manner of regular annual assessment. All special assessments are a lien on the lands assessed from the time when they are ordered. The board of directors may order tolls for water to be collected in advance. Whenever an assessment book or toll book shall be delivered to the treasurer the secretary shall charge the treasurer with the total amount of the various amounts as carried out in said books. On the second Monday in January in each year the treasurer shall make a semiannual settlement with the secretary and deliver to the secretary a statement in brief of all assessments delinquent at that time, and account for all such sums theretofore collected. The treasurer shall make such settlements for tolls at such times as may be ordered by the board. On the second Monday of July the treasurer shall make final settlement with the secretary, and deliver to the secretary a duplicate delinquent list, and account for all sums not shown on said delinquent list. The secretary shall then charge the treasurer with the amount of said list and penalties added, and upon receiving the affidavit of publication thereof he shall charge the treasurer with twenty-five cents additional for each description published. On the first Monday after the sale, the treasurer shall make final settlement for assessments, by receiving credit for the property sold to the district and accounting for all of the balance.

#### 4768. Powers of board regarding rights of way.

SEC. 46. The board of directors shall have power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals may intersect or cross in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said work, shall unite with said board in forming said intersections and crossings and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of said property, thing or franchise to be crossed, cannot agree upon the amount to be paid therefor, or upon the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to the taking of land.

#### 4769. Right of way over state lands.

SEC. 47. The right of way is hereby given, dedicated and set apart, to locate, construct and maintain said work over and through any of the lands which are now or may be the property of the state.

#### 4770. Right of eminent domain.

SEC. 48. All irrigation districts organized under the laws of the State of Nevada, shall have the right of eminent domain, with the power by and through their boards of directors, to cause to be condemned and appropriated in the name of and for the use of said districts, all lands, reservoirs, canals and works constructed or being constructed by private owners, and lands for reservoirs for the storage of needful waters, and all necessary appurtenances and other property and rights necessary for the construction, use and supply, maintenance, repair, and improvement of said canal or canals and works. Said irrigation district shall have the right by and through their boards of directors to acquire by purchase or other legal means any or all of the property mentioned and referred to in this section. In any action of proceedings for the condemnation of any property mentioned and referred to in this section, wherein said irrigation district is party, the plaintiff must, within six

months after final judgment, pay the sum of money assessed, or said judgment will be annulled. Except as otherwise provided in this chapter the provisions of the laws of Nevada relative to the right of eminent domain, civil actions, new trials and appeals, shall be applicable to and constitute the rules of practice in condemnation proceedings by said irrigation districts.

#### CHAPTER 7—CHANGING BOUNDARIES OF DISTRICTS

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| 4771. Petition for annexation of adjacent lands.       | 4779. Order changing boundary.  |
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#### 4771. Petition for annexation of adjacent lands.

SEC. 49. The holder or holders of any title, or evidence of title representing one-half or more of any body of lands adjacent to the boundaries of an irrigation district, may file with the board of directors of said district a petition in writing praying that said land may be annexed. The petition shall describe the lands and also describe the several parcels owned by petitioners.

#### 4772. Guardians and administrators may sign petitions.

SEC. 50. A guardian, executor, or an administrator of an estate, who is appointed as such under the laws of this state, and who as such guardian, executor, or administrator is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition mentioned in this chapter for the change of boundaries in the district.

#### 4773. Notice of petition.

SEC. 51. The secretary must cause a notice of the filing of such petition to be published three weeks in the manner of notices of special elections. The notice shall state the filing of such petition, and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition, and it shall notify all persons interested in or that may be affected by such change of boundaries of the district, to appear at the office of said board at a time named in said notice and show cause in writing, if any they have, why the lands mentioned should not be annexed to said district. The petitioner shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under this chapter.

#### 4774. Hearing of petition.

SEC. 52. The board of directors at the time mentioned in said notice or at such other time to which the hearing may be adjourned, shall hear the petition and all the objections thereto, showing cause, as aforesaid. The failure of any person to show cause as aforesaid, shall be taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said land.

#### 4775. Assessment against petitioners.

SEC. 53. The board of directors may require, as a condition to the granting of said petition that the petitioners shall severally pay to such district such respective sums as nearly as the same can be estimated, as said petitioners, or their grantors, would have been required to pay to such district, had such lands been included in such district at the time the same was originally formed.

**4776. Order accepting or rejecting petition.**

SEC. 54. The board of directors, if they deem it not for the best interests of the district to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district, and if no person interested shall show cause why the proposed change be not made, or if having shown cause, withdraws the same, the board may order, without any election, that the lands mentioned in said petition, or some part thereof, be annexed to said district, the order shall describe the lands to be annexed to said district and the board may cause a survey thereof to be made if deemed necessary.

**4777. Overruling objection.**

SEC. 55. If any person interested shall show cause as aforesaid, and shall not withdraw the same, and if the board of directors deem it for the best interests of the district to include therein the lands mentioned in petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the lands which the board is of the opinion should be included within the district.

**4778. Election to determine change.**

SEC. 56. Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held. Notice thereof shall be given and published, and such election shall be held, and all things pertaining thereto conducted, in the manner prescribed by this act in case of an election to determine whether bonds of the district shall be issued. The ballots cast at said election shall contain the words "for change of boundary" or "against change of boundary," or words equivalent thereto. The notice of election shall describe the lands to be annexed to said district.

**4779. Order changing boundary.**

SEC. 57. If at such election a majority of all the votes cast at said election shall be against such change in the boundaries of the district the board shall proceed no further in the matter. But if a majority of such votes be in favor of such change the board shall thereupon order that the boundaries be changed in accordance with said resolution. The order shall describe the land so annexed to said district, and thereafter such lands so annexed shall be subject to such assessments from time to time as the board of directors shall deem right under the circumstances, and such assessments shall be deemed to be assessments for benefits to said lands by reason of their annexation to said district. Immediately after the recording of the order annexing said lands to the district, the directors shall state on their minutes to which division and election precinct in said district the said lands so annexed shall be attached, and if necessary, the board shall make an order redividing the district into divisions and election precincts in the same manner and with like effect as near as may be as provided for that purpose on the formation of a district.

**4780. Order to be recorded.**

SEC. 58. Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district as fully and to every intent and purpose as if the lands which are

included in the district by the change of the boundaries as aforesaid had been included therein at the original organization of the district.

#### 4781. Petition recorded in minutes.

SEC. 59. Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary of the board shall record in the minutes of the board the petition aforesaid, and said minutes, or a certified copy thereof, shall be admissible in evidence, with the same effect as the petition.

#### 4782. Exclusion of land from district.

SEC. 60. The holder or holders of any title to land included within the boundary of an irrigation district may file with the board of directors of said district, a petition in writing praying that the boundaries of said district may be so changed as to exclude the said lands described in said petition. The petition shall describe the boundaries of the several parcels owned by the petitioners; if the petitioners be the owners respectively of the district parcels of land, such petition must also state that the lands described in said petition are too high to be watered from water owned and controlled by said irrigation district. Said petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

#### 4783. Excluded lands to be surveyed.

SEC. 61. The board of directors to whom such petition is presented must cause the lands described in said petition to be surveyed by a competent irrigation engineer, and if found to be too high to receive any benefit from irrigation works of said district, said board must make an order changing the boundaries of said district so as to exclude the lands described in said petition.

#### 4784. Costs of survey.

SEC. 62. If upon a survey being made by order of the board of directors of lands described in the petition, it is found that said lands can be watered from irrigation works of said district, parties signing said petition shall be liable to the irrigation district for the full amount of costs incurred by said district in having the lands described in said petition surveyed.

#### 4785. Changes to be recorded.

SEC. 63. Upon a change of the boundaries of a district being made as provided in the three preceding sections, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in a recorder's office of each county within which are situated any lands of the district, and thereupon the district shall be and remain an irrigation district as fully and to every intent and purpose, as if the lands which are excluded from the district by the change of the boundaries, as aforesaid, had been excluded at the original organization of the district.

#### 4786. Districts may be consolidated—Popular election, when—Ballots—Directors of consolidated district—Proviso.

SEC. 64. Whenever the board of directors of any two or more irrigation districts which are contiguous, deem for the best interests of their respective districts that the same be consolidated into a single district, such board of directors may petition the board of county commissioners for an order for an election, to vote upon the question of such consolidation, which petition shall state in detail the terms upon which such consolidation is proposed to be made. Upon receiving such petitions, the said board of county commissioners shall request the state engineer to investigate the conditions of such districts, and all questions affecting such proposed consolidation,

and he shall make a report of the result of such investigation to the board of county commissioners, not more than ninety days after such request is received. At the time said report upon the matter is made, said board of county commissioners, if deemed advisable, shall make an order fixing the time for an election in the said district, to vote upon the question of such proposed consolidation, which time shall not be less than thirty nor more than sixty days after the date of said report. Notice of said election shall be published as required for notice of the election in section 4 of this act; and the said board of directors shall make all necessary arrangements for such election in their respective districts as provided in this act for other elections. The ballot should be substantially as follows: "Consolidation—Yes," "Consolidation—No." The said board of directors shall canvass the returns of such election as provided in case of usual district elections, and shall immediately thereafter transmit, by messenger or by registered mail, certified abstracts of the result of said election in their respective districts to the clerk of the board of county commissioners. Within ten days after such returns are received by said clerk the said board of county commissioners shall meet and canvass the same. If it appears that a majority of all the votes cast in each of said districts is "Consolidation—Yes," said board shall make an order and enter the same of record in its minutes, establishing said consolidated district, giving its boundaries and designation, and in detail the terms under which the consolidation has been effected, and dividing said consolidated district into three divisions, and shall appoint some person qualified under this act to act as director of each of said divisions of said district until the next general election for the election of officers, when a board of directors shall be elected as provided in section 5; *provided, however*, that the organization of such district shall not take effect until the first Tuesday of the January following said order of its establishment. If the date provided by law for the election of directors shall come between the date of said order of the board of county commissioners and said first Tuesday of January, then in making such order said board shall designate the board of directors of one of the consolidated districts as a board to take charge of said election, and a director shall in that case be elected for each division of said consolidated district, and in that case no appointment of directors shall be made by said board of county commissioners. If, however, upon such canvass by said board of county commissioners, it appears that a majority of votes cast in any district thus proposed to be consolidated is "Consolidation—No," then a record of that fact shall be entered in the same minutes of the said board of county commissioners, and all the proceedings had under this section shall be void.

#### CHAPTER 8—MISCELLANEOUS PROVISIONS

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| 4787. State lands included within irrigation district—State land register to make contracts, when—Proviso—Amount of benefit, how calculated—State reimbursed, when. | 4788. Mining industries not to be impaired.    |
|   | 4789. Publication of notices.                  |
|   | 4790. Other laws unaffected.                   |
|   | 4791. Existing districts governed by this act. |

4787. State lands included within irrigation district—State land register to make contract, when—State reimbursed, when.

SEC. 65. No state lands included within any legally organized irrigation district shall ever be assessed, nor shall any of the preceding sections relative to the levying and collecting of assessments and taxes apply, but the state land register and the state engineer shall make a thorough examination as to the benefits to accrue to such state lands by reason of the formation of such irrigation district, and by reason of the acquiring of water rights for said land, and the state land register is hereby empowered to enter into a contract with the board of directors of such irrigation district,

specifying by legal subdivisions the land so benefited, the amount of benefit to accrue to each piece of land, and such contracts shall provide that an annual payment shall be made each year out of the general fund to said board of directors to be applied on the cost of constructing such irrigation works within said district, until the full amount of such benefit is paid; but the state land register shall have the option to pay the full amount to such contract at any time upon any or all of such legal subdivisions; *provided*, that said contract shall be subject to said irrigation district and works being properly managed and constructed, so that the benefits agreed upon shall accrue to said lands; *provided, also*, that the county recorder of every county in which certificate of sale of any state lands for irrigation district taxes have been heretofore filed or recorded, shall cancel the same upon the records of said counties. The amount of benefit so agreed upon shall be charged to the state land register against said lands, and shall be paid as follows: Before any such land shall be offered for sale, the state land register shall cause said lands to be appraised showing first (1): The value of the land without any water right, ditches or other improvements affected or made by such district, and second (2): The value of the water rights, ditches and other improvements or the proportion thereof appurtenant to such land and such legal subdivisions; and said lands shall be offered for sale and sold with said water rights, ditches and other improvements included. Before the proceeds of such sale are deposited in the fund where they properly belong, the amounts of money paid by the state, or for which the state is held bound to pay, or such proportionate amounts where said lands are sold to be paid for in installments, shall be deducted from the said proceeds and placed in the general fund of the state, to reimburse the state for expenditures so made; *provided*, that no reductions shall be made from said proceeds that shall reduce the same below the appraised value of said lands, or below the price of ten dollars per acre.

#### 4788. Mining industries not to be impaired.

SEC. 66. Vested interest in or to any mining or power water rights or ditches, or in or to any water or water rights, or reservoirs or dams now used by the owners or possessors thereof in connection with any mining or power-development industry, or by persons purchasing or renting the use thereof, or in or to any other property now used directly or indirectly in carrying on or promoting the mining or power-developing industry, ever be effected by or taken under its provisions, save and except that rights of way may be acquired over the same.

#### 4789. Publication of notices.

SEC. 67. Wherever in this act any notices are required to be given by publication, it shall be satisfied by publishing the same in a weekly newspaper the same number of times consecutively as the number of weeks mentioned in the requirements. A ten days' notice shall be satisfied by two such publications, a twenty days' notice by three, and a thirty days' notice by five such publications.

#### 4790. Other laws unaffected.

SEC. 68. None of the provisions of this act shall be construed as repealing or in any wise modifying the provisions of any other act relating to the subject of irrigation or water distribution. Nothing herein contained shall be deemed to authorize any person or persons to divert the water of any river, creek, stream, canal or ditch, from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this state authorizing the taking of private property or rights for public uses.

### 4791. Existing districts governed by this act.

SEC. 69. All irrigation districts heretofore organized under the laws of this state shall hereafter be governed in all respects by the provisions of this act.

## WEIGHTS AND MEASURES

Concerning and fixing standard weights and measures and to regulate the sale of commodities or articles of merchandise according to such standards, and to provide for the inspection of weights, measures and weighing and measuring devices, sections 4792-4823.

To regulate the measurement of charcoal, sections 4824-4827.

*An Act concerning and fixing standard weights and measures and to regulate the sale of commodities or articles of merchandise according to such standards, and to provide fines, penalties and damages for the violation thereof, and for rules of evidence relating thereto; and to provide for the inspection of weights, measures and weighing and measuring devices, and for the enforcement thereof, and making an appropriation for the carrying out of this act.*

Approved March 8, 1911, 37

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| 4794. Defining rod, mile and chain.   | 4812. Penalties — Treble damages — Variations considered — Proviso.                         |
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| 4804. Butter.   | 4822. Person defined.   |
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| 4809. All packages to bear correct statement of weight or number — Proviso. |   |

### 4792. Standards of weights and measures adopted.

SECTION 1. The standard weights and measures as have been adopted by the government of the United States of America, and such weights, measures, balances and measuring devices as heretofore have been, or hereafter may be, furnished this state by the United States, as standard weights, measures, balances and measuring devices, shall be the legal standard of weights and measures throughout the State of Nevada. This section shall not prevent the use of the weights and measures of the metric system, authorized by Congress of the United States, as it appears in the Revised Statutes of the United States.

### 4793. Defining yard and fractions.

SEC. 2. The unit of standard measure of length and surface, from which all other measures of extension, whether lineal, superficial or solid, shall be

derived and ascertained, is the standard yard, adopted by the government of the United States. The yard shall be divided into three equal parts, called feet, and each foot into twelve equal parts, called inches. For the measure of cloth and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths.

#### 4794. Defining rod, mile, and chain.

SEC. 3. The rod, pole, or perch shall contain five and a half standard yards, and the mile, one thousand seven hundred and sixty such yards. The chain for measuring land shall be twenty-two standard yards long, and be divided into one hundred equal parts, called links.

#### 4795. Acre and square mile defined.

SEC. 4. The acre for land measure shall be measured horizontally, and contain ten square chains, and be equivalent in area to a rectangle sixteen rods in length and ten rods in breadth. Six hundred and forty acres shall be contained in a square mile.

#### 4796. Perch.

SEC. 5. The perch of mason work or stone shall consist of twenty-five cubic feet.

#### 4797. Units of weight.

SEC. 6. The units of standards of weights from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights adopted by the government of the United States.

#### 4798. Pound, avoirdupois—Ton—Ounce—Troy weight.

SEC. 7. The avoirdupois pound which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, shall be divided into sixteen equal parts called ounces. The hundredweight, except of pig iron and iron ore, shall consist of one hundred avoirdupois pounds, and twenty hundredweight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound. Whenever hereafter in this act the word pound is used it shall mean the avoirdupois pound unless otherwise distinctly specified.

#### 4799. Units of measure of capacity—Gallon and fractions.

SEC. 8. The unit of standard measure of capacity for liquids from which all other measures of liquid shall be derived and ascertained shall be the standard gallon, adopted by the government of the United States. The half-gallon, quart, pint, half-pint and gill measures for measuring liquids shall be derived from the gallon by dividing it and each successive measure by two.

#### 4800. Barrel.

SEC. 9. The barrel shall contain thirty-one and one-half gallons and two barrels shall constitute a hogshead.

#### 4801. Bushel and fractions.

SEC. 10. The unit of standard measure of capacity for commodities other than liquids, from which all other measures of such commodities shall be derived and ascertained, shall be the standard bushel measure adopted by the government of the United States. The half-bushel, peck, half-peck, quarter-peck, quart, and pint measures for measuring commodities other than liquids shall be derived from the bushel by dividing it and each successive measure by two.

#### 4802. Barrel and bushel of certain commodities—Weights of.

SEC. 11. Whenever any of the following articles shall be contracted for, or sold, or delivered, and no special contract or agreement shall be made to

the contrary, such sale and computations for payment or settlement thereof shall be by weight. The net weight per barrel or bushel, or divisible merchantable quantities of a barrel or bushel, shall be as follows: Wheat flour, per barrel, one hundred and ninety-six pounds; per half-barrel, ninety-eight pounds; per quarter-barrel sack, forty-nine pounds; per one-eighth-barrel sack, twenty-four pounds; per one-sixteenth-barrel sack, twelve pounds; corn meal, per bushel sack, forty-eight pounds; per half-bushel sack, twenty-four pounds; per quarter-bushel sack, twelve pounds; and the following commodities per bushel: wheat, sixty pounds; rye, fifty-six pounds; Indian corn on the ear, seventy pounds; Kaffir corn, fifty-six pounds; rice corn, fifty-six pounds; corn, shelled, fifty-six pounds; sorghum seed, fifty pounds; buckwheat, fifty pounds; barley, forty-eight pounds; malt, thirty-two pounds; bran, twenty pounds; beans, sixty pounds; clover seed, sixty pounds; Hungarian and millet seed, fifty pounds; potatoes, sixty pounds; sweet potatoes, fifty pounds; turnips, fifty-six pounds; flax-seed, fifty-six pounds; onions, fifty-seven pounds; salt, eighty pounds; castor beans, forty-six pounds; hemp seed, forty-eight pounds; native blue-grass seed, fourteen pounds; English blue-grass seed, twenty-two pounds; timothy seed, forty-five pounds; dried peaches, thirty-three pounds; dried apples, twenty-four pounds; green apples, forty-eight pounds; parsnips, fifty pounds; carrots, fifty pounds; beets, fifty-six pounds; tomatoes, fifty-six pounds; peaches, forty-eight pounds; shelled dried peas, sixty pounds, and alfalfa seed, sixty pounds; oats, thirty-two pounds.

#### 4803. Standard bread loaf.

SEC. 12. A standard loaf of bread sold or offered for sale in this state shall weigh one pound and a standard loaf of bread need not be labeled with a statement of its weight. Whenever a loaf of bread sold or offered for sale weighs more or less than a pound, it shall be labeled in plain, intelligible English words and figures with its correct weight, together with the name of its manufacturer.

#### 4804. Butter.

SEC. 13. Butter in a standard package or container, sold or offered for sale in this state, shall weigh one pound and a standard package or container of butter need have no statement of the net weight of its contents thereon. Whenever butter is sold or offered for sale in a package or container, the net weight of which is more or less than one pound, such package or container shall be labeled in plain, intelligible English words and figures with the correct net weight of its contents, together with the name of the manufacturer or jobber.

#### 4805. Milk or cream—Other liquids.

SEC. 14. All milk or cream that is sold or offered for sale in this state in bottles shall be sold or offered for sale only in bottles containing standard gallons, half-gallons, quarts, pints or half-pints. All other liquid commodities shall be sold only by standard liquid measure or standard weight, except where parties otherwise agree.

#### 4806. Berries and fruits.

SEC. 15. Berries and small fruits whenever sold or offered for sale in this state in boxes, shall be sold or offered for sale in boxes containing a standard dry quart or dry pint, and if said boxes contain more or less than this amount the information must be given the purchaser, or such boxes must be labeled in plain, intelligible English words and figures with a correct statement of the quantity of its contents.

#### 4807. Firewood—Standard cord.

SEC. 16. A standard cord of firewood sold or offered for sale in this state

shall be and contain one hundred and twenty-eight cubic feet, well stowed and packed. And when delivering firewood to a purchaser the vender shall give, or cause to be given therewith to such purchaser, a written statement of the quantity, in terms of the standard cord, of the firewood so delivered.

**4808. Ton of coal—Statement of weight furnished—Weight by sack.**

SEC. 17. A standard ton of coal sold or offered for sale in this state shall weigh two thousand pounds. And when delivering coal to a purchaser the vender shall give, or cause to be given, therewith to such purchaser a written statement of the weight, in terms of the standard ton, of the coal so delivered. When coal is sold by the sack the contents of such sack shall weigh one hundred pounds.

**4809. All packages to bear correct statement of weight, or number—Proviso.**

SEC. 18. It shall be unlawful for any person to put up any commodity or article of merchandise into a package or container and sell or offer for sale in this state such commodity or article of merchandise in that form without having such package or container labeled in plain, intelligible English words and figures with a correct statement of the net weight, measure or numerical count of its contents; *provided*, that nothing in this section shall prevent the putting up of commodities or articles of merchandise, which have been previously sold by net weight, measure or numerical count, into packages or containers for the purpose of delivering or transporting such commodities or articles of merchandise.

**4810. Mutual agreement—Contracts, how construed.**

SEC. 19. It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure or numerical count, except where the parties otherwise agree. Contracts for work to be done, or for anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations or measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights or measures aforesaid.

**4811. False or short weight or measure unlawful.**

SEC. 20. It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise upon which scale or device the graduations or indications are falsely or inaccurately placed, either as to weight or price.

**4812. Penalties—Treble damages—Variations considered—Proviso.**

SEC. 21. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof before the justice of the peace having jurisdiction of the offense, shall be fined in a sum not to exceed two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment, and

any weight, measure, balance or measuring device which shall have been used by him in such violation shall be ordered confiscated and destroyed. He shall also be liable in damages to the party injured by his violation in treble the amount of the property wrongfully taken or not given and twenty dollars in addition thereto, to be recovered in a court of competent jurisdiction. The selling and delivery of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vender, that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation or waste that there may be from the time a package or container is filled by the vender until he sells the same. A slight variation from the stated weight, measure or quantity for individual packages is permissible; *provided*, that variation is as often above as below the weight, measure or quantity stated.

See secs. 6708-6709.

#### 4813. District attorney to prosecute.

SEC. 22. It shall be the duty of the district attorney to prosecute all violations of the provisions of this act occurring within his county.

#### 4814. Official sealer, director of agricultural experiment station—To procure standards.

SEC. 23. The director of the Nevada agricultural experiment station is hereby designated and constituted ex officio sealer of weights and measures and shall be charged with the proper enforcement of the provisions of this act, and he may appoint such deputy or deputies as he may deem necessary therefor. He shall have the care and custody of the authorized public standards of weights and measures and of balances and other apparatus of all kinds owned by the state under section 1 of this act. He shall maintain the state standards in good order and submit them at least once in every ten years to the national bureau of standards for verification. He shall at once, after the approval of this act, obtain from the government of the United States all standard weights and measures mentioned in this act which this state does not at that time own.

#### 4815. Duties of sealer and assistants—Tests to make—Duty to prosecute violations.

SEC. 24. It shall be the duty of the sealer and his duly authorized deputy to test and prove all weights, measures, balances and measuring devices when requested so to do by any person, without expense to such person, and when the same are found or made to conform to the authorized standards he shall seal and mark such weights, measures, balances and measuring devices with a seal to be kept by him for that purpose. It shall be the duty of the sealer and his deputy to inspect and test all weights, measures, balances and measuring devices and when any weight, measure, balance or measuring device is found by the sealer or his deputy or deputies to be false or untrue or not of the approved type, or which does not conform to the standards, or which cannot be made to conform to the standards by such means as the sealer or his deputy may have at his disposal he shall condemn the same and mark it condemned in a conspicuous manner, and such condemnation mark shall not be removed or defaced except by authorization of the said sealer or his deputy. It shall be the duty of the sealer and his deputy to inspect packages or containers of commodities or articles of merchandise, put up and sold or offered for sale in this state, and he shall mark in a conspicuous manner any package or container which does not have a statement of the net weight, measure or numerical count of its contents on it, and such mark shall not be removed or defaced except by authorization of the said sealer or his deputy. Whenever the sealer or his

deputy has reason to believe that there has been a violation of any of the provisions of this act he shall swear to, or cause to be sworn to, a complaint before the justice of the peace having jurisdiction, charging the suspected person with a misdemeanor, and shall take charge of, pending the trial of the accused person, the weight, measure, balance or measuring device used in such suspected violation.

#### 4816. Powers of sealer and deputies.

SEC. 25. The sealer and his duly authorized deputy shall have full power to enter any premises in or on which any weights, measures, balances or measuring devices may be located or used for the purpose of trade, or any premises in or on which any commodities or articles of merchandise are put up into packages or containers for the purposes of trade, for the purpose of inspecting, adjusting, sealing, condemning or marking such weights, measures, balances or measuring devices and such packages or containers.

#### 4817. Unlawful to obstruct sealer or deputies—Penalty.

SEC. 26. It shall be unlawful for any person to hinder, obstruct or in any way interfere with the sealer or his duly authorized deputy while in the performance of such inspection, and it shall be unlawful for any person to fail to produce upon demand by the sealer or his deputy all weights, measures, balances or measuring devices and all packages or containers of commodities or articles of merchandise, in or upon his place of business or in his possession, for use in manufacture or trade. Any such person so violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

#### 4818. Sealer must test before condemning weights—Penalty.

SEC. 27. If the sealer or any of his deputies shall seal any weight, measure, balance or measuring device before first testing and making the same conform to the authorized standard or if he shall condemn or take charge of any weight, measure, balance or measuring device without first testing the same, the one so doing shall be deemed guilty of a misdemeanor and upon conviction thereof in a court of competent jurisdiction shall be subject to a fine of not less than five dollars nor more than one hundred dollars.

#### 4819. Neglect of duty by sealer or deputies, how punished.

SEC. 28. If the sealer or any of his deputies neglects to keep the standards under his charge in good order or repair, or suffers any of them through his neglect to be lost, damaged or destroyed, or fails to perform any of the duties imposed upon him by this act, the one so doing shall be deemed guilty of a misdemeanor and upon conviction thereof, in a court of competent jurisdiction, shall be subject to a fine of not less than ten dollars nor more than two hundred dollars.

#### 4820. Sealer to keep records and report to governor.

SEC. 29. The sealer shall keep a record of all the weights, measures, balances or other measuring devices sealed, and of all convictions had and confiscations made under this act and shall make an annual report to the governor on or before January first of each year, a copy of which shall be filed with the national bureau of standards. He shall issue from time to time regulations for the guidance of his deputies and the said regulations shall govern the procedure to be followed by the aforesaid deputies in the discharge of their duties.

#### 4821. Terms defined.

SEC. 30. The terms "package" and "container" as used in this act shall

include any carton, box, barrel, bag, keg, drum, bundle, jar, jug, crock, demi-john, bottle, crate, basket, hamper, pail, can, parcel, package or paper wrapper.

#### 4822. Person defined.

SEC. 31. The term "person" as used in this act shall be construed to impart both singular and plural as the case demands and shall include corporation, company, society and association. When construing and enforcing the provisions of this act omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association within the scope of his employment or office, shall in every case be also deemed omission or failure of such corporation, company, society or association, as well as that of the person.

#### 4823. Appropriation.

SEC. 32. The sum of four thousand dollars (\$4,000) is hereby appropriated out of any money in the state treasury, not otherwise appropriated, for the compensation of sealer, deputy or deputies, office supplies and for apparatus necessary to carry out the provisions of this act. The state controller is hereby authorized to draw his warrants for the sum herein appropriated in favor of the Nevada agricultural experiment station, and the state treasurer is hereby directed to pay the same.

### *An Act to regulate the measurement of charcoal.*

Approved February 26, 1879, 50

#### 4824. Standard bushel of charcoal.

SECTION 1. The standard measure of a bushel of charcoal is hereby established at two thousand seven hundred and forty-seven and seven hundred and fifteen one-thousandths cubic inches, stroke measure, and all charcoal bought or sold by actual measurement, must be measured in the mode and manner herein provided.

#### 4825. Sealed measures kept.

SEC. 2. All persons, or corporations, purchasing or consuming more than twenty thousand bushels of charcoal annually, shall keep a sealed measure of convenient size.

#### 4826. Duties of county surveyors—Establish dimensions.

SEC. 3. For the purpose of this act, any county surveyor is empowered to estimate the dimensions of any bin or measure, and he shall inscribe thereon, in plain letters, the number of standard bushels it will contain, together with his own name or signature; he shall receive for such services five dollars for each measure so inscribed; his fee to be paid by those required under the provisions of this act, to maintain sealed measures.

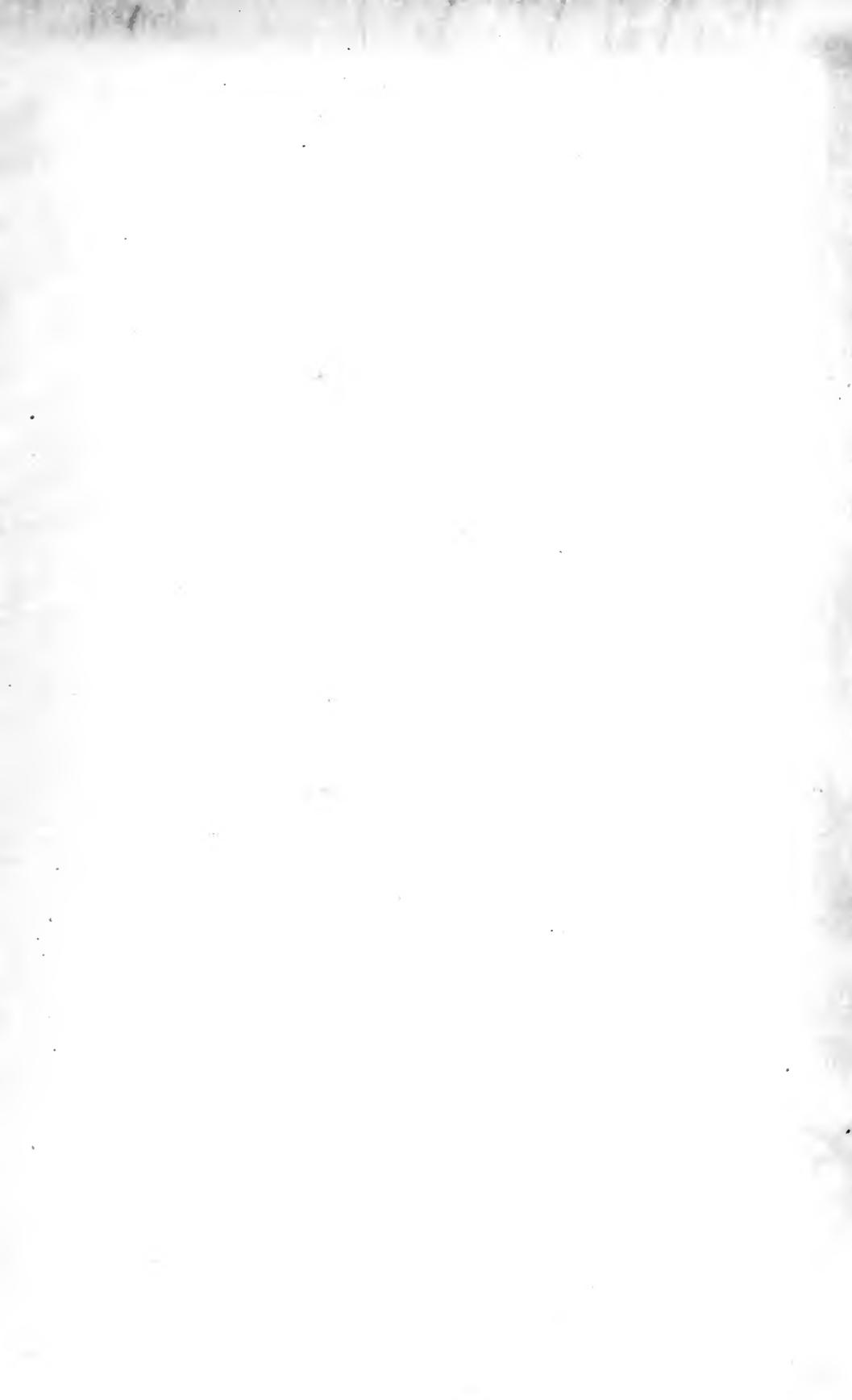
#### 4827. Penalty for violating act.

SEC. 4. Any person, or superintendent, or manager of any corporation or company, violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not to exceed five hundred dollars.









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Partnership

1-7-20

D. H. Kehoe,

