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THE
REVISED STATUTES,



OF THE

TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE

LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

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ADVERTISEMENT.

By the twelfth section of the act of congress, establishing the territorial government of Minnesota, approved March the third, one thousand eight hundred and forty-nine, it is provided "that the inhabitants of the said territory shall be entitled to all the rights, privileges and immunities, heretofore granted and secured to the territory of Wisconsin and to its inhabitants; and the laws in force in the territory of Wisconsin, at the date of the admission of the state of Wisconsin shall continue to be valid and operative therein, so far as the same be not incompatible with the provisions of this act; subject nevertheless to be altered, modified or repealed by the governor and legislative assembly of the said territory of Minnesota."

The laws of the late territory of Wisconsin, thus extended over this territory, consisted of enactments of a period of ten years, commencing with the statutes of Wisconsin, passed by the legislative assembly in the year A. D., one thousand eight hundred and thirty-nine, and each subsequent session of the legislative assembly passed its usual quota of acts, and in some cases without any seeming regard to former enactments.

In many instances repealing acts have been passed, without sufficiently designating the acts to be repealed, and in several instances legalizing and explanatory acts, all of which tended to confuse rather than to explain.

These various acts were scattered through some nine or ten different publications, which from their great scarcity, it was almost impossible to procure a full set of these several publications, leaving magistrates and the people, without any adequate means of knowing what the law was.

In addition to these difficulties it was found that the laws of Wisconsin, framed for a people following different pursuits, and surrounded by different circumstances from our own, seemed illy suited to the wants of the people of Minnesota, and to the administration of their territorial government.

In the annual message of Governor Ramsey, of eighteen hundred and fifty-one, a revision of the laws was recommended, and consequently a joint resolution of the legislative assembly was passed on the twenty-first day of January, A. D. one thousand eight hundred fifty-one, authorizing the joint judiciary committees of the two houses of the legislative assembly, to call to their assistance such persons as they might think proper, not exceeding three in number, for the purpose of compiling and revising the laws of the territory of Minnesota.

In pursuance of that resolution, M. S. Wilkinson, L. A. Babcock and Wm. Holcombe were appointed, to prepare and arrange a code of laws, and instructed to report the same to the legislative assembly, then in session.

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so as aforesaid, to sue such justice and his sureties, or any of them, in a civil action, and on proof that the said justice has neglected or refused, to pay any such sum of money, by him collected, as aforesaid, then, and in every such case, judgment shall be given against the parties defendant in such suit, for the moneys so collected, together with interest and costs, according to the condition of such bond; *Provided, always,* That a copy of such bond, under the official certificate of the clerk, with whom the same is filed and recorded, shall be legal evidence of the contents and execution thereof, in all courts.

Judges of election to make return of persons elected justices of the peace

SEC. 4. The judges of election, in the several precincts, shall make a return to the clerk of the board of county commissioners, of the several persons who may be elected justices of the peace, in pursuance of the provisions of this chapter; and the said clerk shall issue to the persons so elected, certificates of such election, under the seal of said board, which shall be sufficient evidence of such election, for all purposes whatever.

Jurisdiction of justices of the peace, office where to be kept.

SEC. 5. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this chapter, shall be co-extensive with the limits of the county in which they shall be elected, and no other or greater, whether said county be attached to any other county, or whether any other county be attached to it: *Provided,* That every justice elected under the provisions of this chapter, shall keep his office in the precinct for which he may be elected, and not elsewhere.

In case of vacancy, docket where to be deposited.

SEC. 6. If any justice of the peace, die, resign, or remove out of the town or precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, papers, and documents appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the same county, who may thereupon proceed to hear, try and determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice, before whom such matter or suit was commenced, to have done.

When county divided, justice of the peace to continue to act as such.

SEC. 7. When a county shall be divided, any justice of the peace of the original county, whose place of residence may be embraced within the limits of the new county, shall continue to discharge the duties of the justice of the peace in said county, until his successor shall be elected and qualified.

OF CONSTABLES.

Two constables to elect in each precinct for one year.

SEC. 8. At each general election, there shall be elected by the qualified electors of each precinct, in each of the organized counties of this territory, two constables, whose term of office shall continue one year, and until their successors shall be elected and qualified, and who shall be residents of the precinct for which they shall be elected.

Constables to give bond.

SEC. 9. Every person elected or appointed to the office of constable, before he enters upon the duties of his office, and within the time prescribed by law for filing his oath of office, shall execute an instrument in writing, with two or more sufficient sureties, to be approved by the clerk of the board of county commissioners, which writing shall in substance be in the following form:

Form of bond.

A. B., chosen a constable in the precinct of _____ in the county of _____ and territory of Minnesota, and C. D. and E. F. his sureties, do hereby jointly and severally agree, to pay to each and every person who may be entitled thereto, all such sums of money, as the said constable may become liable to pay for, on account of any moneys

which may come into his hands, by virtue of his office, or for the neglect of any official duty.

Dated the _____ day of _____ A. D. _____
A. B.
C. D.
E. F.

Executed in presence of
Clerk of the board of commissioners. }

SEC. 10. The clerk of the board of county commissioners, shall endorse on such instrument, his approval of the sureties therein named, and shall file the same in his office, and a copy of such instrument, certified by the clerk of the board of county commissioners, shall be presumptive evidence in all courts, of the execution thereof by such constable and his sureties, and all actions against a constable and his sureties upon any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein, shall have been elected.

Clerk of board of commissioners' allowance on bond.

SEC. 11. Any constable may, within his county, serve any writ, process, or order, lawfully directed to him, by any judge of probate, coroner, or justice of the peace, and generally do and perform, all acts by law required of constables, and shall receive the same fees as are by law paid to the sheriff, for like services.

Duties of constables.

SEC. 12. Should there be no constable elected, in any town or precinct, the county commissioners are authorized to appoint one constable, in such town or precinct, to serve until the next annual election, and who shall qualify as above stated.

When there are no constables, commissioners to appoint.

CHAPTER 10.

OF RESIGNATIONS, VACANCIES AND REMOVALS, AND OF SUPPLYING VACANCIES.

SECTION

- 1. Resignations to whom made.
- 2. What events to create vacancy.
- 3. When governor to declare office vacant.
- 4. Governor may remove certain officers.
- 6. Collectors and receivers of public moneys may be removed by governor.

SECTION

- 6. The governor may fill vacancies in certain offices.
- 7. County commissioners may fill vacancies in certain county offices.
- 8. Persons appointed to fill vacancies, to qualify, &c.

RESIGNATIONS.

SEC. 1. Resignations shall be made as follows, to wit:

1. By the treasurer of the territory, auditor of the territory, attorney general, superintendent of common schools, and by all officers appointed by the governor, or by the governor by and with the advice and consent of the council, shall be made to the governor.

Resignations to whom made.

2. By all officers who hold their offices by election, to the officer or officers respectively authorized by law, to order a special election to fill such offices respectively.

3. By all other officers holding their offices by appointment, to the body, board, or officer that appointed them.

VACANCIES.

What events to create vacancy.

SEC. 2. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office.

1. The death of the incumbent.
2. His resignation.
3. His removal.
4. His ceasing to be an inhabitant of the territory, or if the office be local, his ceasing to be an inhabitant of the district, county, city, or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged.
5. His conviction of any infamous crime, or of any offence involving a violation of his official oath.
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond, within the time prescribed by law.
7. The decision of a competent tribunal declaring void his election or appointment.

When governor to declare office vacant.

SEC. 3. The governor shall also declare vacant the office of every officer required by law to execute an official bond, wherever a judgment shall be obtained against such officer for a breach of the condition of such bond.

REMOVALS FROM OFFICE.

Governor may remove certain officers

SEC. 4. The governor may remove from office, any sheriff, coroner, register of deeds, or district attorney, whenever it shall appear to him, by competent proof, that either of such officers have been guilty of official misconduct or neglect, or have wilfully violated the duties of their offices, giving to such officer a copy of the charges against him, and an opportunity to be heard in his defence.

Collectors and receivers of public moneys may be removed by governor.

SEC. 5. Any collector or receiver of public moneys, appointed by the legislature, or by the governor, by and with the advice and consent of the council, or of both branches of the legislature, except those officers for whose removal provision is otherwise made by law, may be removed by the governor, in case it shall appear to him, on sufficient proofs, that such collector, or receiver, has, in any particular, wilfully violated his duty.

SUPPLYING VACANCIES.

The governor may fill vacancies in certain offices.

SEC. 6. Whenever a vacancy shall occur, during the recess of the legislature, in any office which the legislature, or the governor, by and with the advice and consent of the council, or of both branches of the legislature, are authorized to fill by appointment, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office for the time being.

County commissioners may fill vacancies in certain county offices.

SEC. 7. When, at any time, there shall be, in either of the offices of judge of probate, register of deeds, district attorney, sheriff, or coroner, no officer duly authorized to execute the duties thereof, some suitable person may be appointed, by the county commissioners, to perform the duties of either of said offices for the time being.

Persons appointed to fill vacancies to qualify, &c.

SEC. 8. Each of the persons appointed, in pursuance of either of the two last preceding sections, shall, before proceeding to execute the duties assigned them, 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 powers and duties of the office, to which he shall be so appointed, until such vacancy shall be regularly supplied, as provided by law.

Dec 9. added. See Laws 1856. p 10

CHAPTER 11.

OF FENCES AND FENCE VIEWERS; OF POUNDS AND THE IMPOUNDING OF CATTLE.

SECTION

1. What to be deemed a legal fence.
2. Partition fences.
3. Neglect to maintain partition fence.
4. Double value of repairs may be recovered of delinquent.
5. Fence viewers to determine controversies relative to partition fences.
6. Other party may erect fence in case of neglect, and recover double value.
7. Divisions of fences recorded, &c., to be valid.
8. When either party erects more than his share, the other party to pay for the same.
9. Partition fences to be kept in good repair.
10. How partition fences made when lands divided by river, pond, &c.
11. How fence viewers to decide in such cases; if either party neglect to build fence, the other may build it.

SECTION

12. Divisions of partition fence between persons occupying lands in common.
13. If party neglect to make his part of fence, party may make same and recover double the expense.
14. When one party wishes to open inclosure, the other party may purchase.
15. The owner of uninclosed land to pay for half of division fences.
16. Fence viewers may be taken from either county in certain cases.
17. Partition fences running into water.
18. Owner to support division fences.
19. Owner may remove partition fence on six months' notice.
20. Supervisors of roads to be fence viewers.
21. Penalty for neglect of fence viewers to act.
22. Fees of fence viewers, and how recovered.
23. County may maintain pounds.
24. Penalty for injuring pound.

SEC. 1. All fences four and a half feet high and in good repair, consisting of rails, timber, boards or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

What to be deemed a legal fence.

SEC. 2. The respective occupants of lands, inclosed with fences, shall keep up and maintain partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same.

Partition fences.

SEC. 3. In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the county, who after due notice to each party, shall proceed to examine the same; and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they shall judge reasonable; and if such fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.

Neglect to maintain partition fence.

SEC. 4. When any deficient fence, built up or repaired by any com-