

5. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

SEC. 413. *Individual liability.*—Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt; and if an action has been brought against him upon such debt, it shall be dismissed as to him upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred, and such liability is not released by any subsequent transfer of stock. The term "stockholder", as used in this section, shall apply not only to such persons as appear on the books in the name of another; and also to every equitable owner of stock, although the same purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable, under the provisions of this section, by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability. In corporations having no capital stock each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered.

SEC. 414. *Valid uncalled meeting.*—When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

SEC. 415. *Non-resident stock transfers.*—When the shares of stock in a corporation are owned by parties residing out of the territory, the president, secretary, and directors of the corporation, before entering any transfer of the shares on its books or issuing a certificate thereof to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties satisfactory to the officers of the corporation, or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

SEC. 416. *Changing amount of stock.*—Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock, must be personally served on each stockholder resident in the territory, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business once a week for four weeks successively.
2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.
3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution before it can be effected.

4. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the register of deeds where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of the territory, and thereupon the capital stock shall be so increased or diminished.

6. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock as if a meeting were called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

#### ART. IV.—*Corporate records.*

SEC. 417.—*Entries required in journal—Stock-book—Publicity.*—All corporations for profit are required to keep a record of all their business transactions, a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done, who were present, and who were absent, and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request the protest of any director, member, or stockholder, or any action or proposed action must be entered in full; all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

2. In addition to the records above required to be kept, corporations for profit must keep a book to be known as the "stock and transfer book", in which must be kept a record of all stock, the names of the stockholders or members, alphabetically arranged, installments paid or unpaid, assessments levied and paid or unpaid, a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom, and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

#### ART. V.—*Dissolution of corporations.*

SEC. 418. *Involuntary—Voluntary, how.*—A corporation is dissolved:

1. By the expiration of the time limited by its articles of incorporation.
2. Its involuntary dissolution is provided for in chapter XXVI of the code of civil procedure.
3. If voluntary, its dissolution may be effected in the following manner:

1. A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

2. The application must be in writing and must set forth that at a meeting of the stockholders or members called for that purpose the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members, and that all claims and demands against the corporation have been satisfied and discharged.

3. The application must be signed by a majority of the board of directors, trustees, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

4. If the court is satisfied that the application is in conformity with this article, it must order the application to be filed, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisement posted up in five of the principal public places in the county.

5. At any time before the expiration of the time of publication any person may file his objections to the application.

6. After the time of publication has expired the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, the court must declare the corporation dissolved.

7. The application, notices, and proof of publication, objections (if any), and declaration of dissolution constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions.

SEC. 419. *Lapse by non-user.*—If a corporation does not organize and commence the transaction of business or the construction of its works within one year from the date of its incorporation, its corporate powers cease.

SEC. 420. *Directors trustees on dissolution.*—Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and to collect and pay debts, and divide among the stockholders the property which remains after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions in their own names by the style of the

trustees of such corporation dissolved, naming it; and no action whereto any such corporation is a party shall abate by reason of such dissolution.

SEC. 421. *Liability.*—The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders, and members of the corporation to the extent of its property in their hands.

SEC. 422. *Revival.*—A corporation once dissolved can be revived only by the same power by which it could be created.

ART. VI.—*Assessments of stock.*

SEC. 423. *Levied, when.*—The directors of any corporation formed or existing under the laws of this territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein.

SEC. 424. *Limitation of.*—No assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

SEC. 425. *New assessment only.*—No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second, or third subdivision of section four hundred and twenty-four.

SEC. 426. *Requisites of assessment.*—Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

SEC. 427. *Form of notice.*—Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

[Name of corporation in full; location of principal place of business.] Notice is hereby given that at a meeting of the directors, held on the [date], an assessment of [amount] per share was levied upon the capital stock of the corporation, payable [when, to whom, and where]. Any stock upon which this assessment shall remain unpaid on the [day fixed] will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the [day appointed], to pay the delinquent assessment, together with costs of advertising and expenses of sale.

[Signature of secretary, with location of office.]

SEC. 428. *Service thereof.*—The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

SEC. 429. *Delinquent levy.*—If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published, in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

[Name in full; location of principal place of business.]

NOTICE.—There is delinquent upon the following described stock, on account of assessment levied on the

[date] (and assessments levied previous thereto, if any) the several amounts set opposite the names of the respective shareholders, as follows: [Names, number of certificate, number of shares, amount.] And in accordance with law (and an order of the board of directors made on the [date], if any such order shall have been made), so many shares of each parcel of such stock as may be necessary will be sold, at the [particular place], on the [date], at [the hour] of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.  
[Name of secretary, with location of office.]

SEC. 430. *Contents of notice.*—The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

SEC. 431. *Publication.*—The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

SEC. 432. *Effect of same.*—By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment, or costs, or advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

SEC. 433. *Manner of sale.*—On the day, at the place, and at the time appointed in the notice of sale the secretary must, unless otherwise ordered by the directors, sell, or cause to be sold, at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

SEC. 434. *Bidder defined.*—The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation on payment of the assessment and costs.

SEC. 435. *Bidding in.*—If at the sale of stock no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

SEC. 436. *Stock held by corporation.*—All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

SEC. 437. *Extended notice.*—The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time, for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

SEC. 438. *Irregularities.*—No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

SEC. 439. *Redemption—Limitation.*—No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all delinquent assessments which may have been paid thereon, and interest on such sums from the time they were paid, and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

SEC. 440. *Proof of notice—Sale.*—The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is *prima-facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof.



are *prima-facie* evidence of the facts therein stated. Certificates signed by the secretary, and under the seal of the corporation, are *prima-facie* evidence of the contents thereof.

SEC. 441. *Action—Option.*—On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this article for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

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ART. VIII.—*Examination of corporations, etc.*

SEC. 448. *Power of legislature.*—The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this territory at all times; and for that purpose any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any district court or any judge thereof, under such rules and regulations as the court may prescribe.

SEC. 449. *Power reserved.*—The legislative assembly may at any time amend this chapter, or any article or section thereof.

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ART. XII.—*Mining and manufacturing corporations, etc.*

SEC. 511. *Limited twenty years.*—Corporations for mining, manufacturing, and other industrial pursuits may be formed as provided in this chapter; and such corporations have all the rights and are subject to all the duties, restrictions, and liabilities therein mentioned, so far as the same apply or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty years.

SEC. 512. *Loan to stockholder forbidden.*—The purposes for which every such corporation shall be formed must be distinctly and definitely specified in the articles of incorporation, and it must not appropriate its funds to any other purpose, nor must it loan any of its money to any stockholder therein; and if any such loan or misappropriation be made, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan or misappropriation and interest, for all the debts of the corporation contracted before the repayment of the sum so loaned or misappropriated.

SEC. 513. *Accounts—Publicity—Statement.*—Regular books of accounts of all the business of such corporations must be kept, which, with the vouchers, shall be at all reasonable times open for the inspection of any of the stockholders; and as often as once in each year a statement of such accounts shall be made by order of the directors and laid before the stockholders.

SEC. 514. *Liability for labor.*—The stockholders of any corporation formed for the purposes mentioned in this article shall be jointly and severally liable, in their individual capacities, for all debts due to mechanics, workmen, and laborers employed by such corporation, which said liability may be enforced against any stockholders by an action at any time after an execution against such corporation shall be returned not satisfied: *Provided*, Such action be commenced within four months: *And provided always*, That if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally, or any number of them, and recover in such action the ratable amount due from the person or persons so sued.

SEC. 515. *Annual report—Contents.*—Every such corporation shall annually, within twenty days from the first day of January, make a report, which must be published in some newspaper published at or nearest to the place where the business of said corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of its indebtedness, and the amounts due the corporation, the number and amount of dividends and when paid, and the net amount of profits. The said report must be signed by the president and a majority of the directors, and be verified by the oath of the president or secretary of the corporation, and filed in the office of the register of deeds of the county where the business of the corporation is carried on; and if any such corporation shall fail so to do, the directors shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such report shall be made.

SEC. 516. *Demand for statement.*—Whenever any person or persons owning twenty per cent. of the capital stock of any corporation formed for the purpose mentioned in this article shall present a written request to the treasurer thereof that they desire a written statement of the affairs of the corporation, he must make such statement under oath, embracing a particular account of all its assets and liabilities in detail, and deliver the same to the persons presenting the written request within twenty days after such presentation; and such treasurer shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of such corporation demanding an examination thereof; the treasurer, however, shall not be required to make or deliver such statement in the manner aforesaid oftener

than once in six months. If such treasurer neglect or refuse to comply with the provisions of this section, he shall forfeit and pay to the person or persons presenting such written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in an action.

SEC. 517. *May have office elsewhere.*—Any corporation formed for the purposes mentioned in this article may provide in the articles of incorporation for having a business office without this territory, at any place within the United States, and to hold any meeting of the stockholders or directors of the corporation at such office so provided for; but every such corporation having a business office out of this territory must have its main office for the transaction of business within this territory, to be also designated in such articles.

SEC. 518. *Fraud—Responsibility.*—If any such corporation shall willfully violate any of the provisions of this chapter relating or applying to such corporation, and shall thereby become insolvent, the directors ordering or assenting to such violation shall, jointly and severally, be liable in an action founded upon this statute for all debts contracted after such violation.

SEC. 519. *Ditch corporation—Requisites.*—In addition to the matters required by section three hundred and eighty-six, every corporation formed for the purpose of constructing a ditch to convey water to any mines, mills, or lands to be used for mining, manufacturing, milling, or for the irrigation of lands, must, in the articles of incorporation, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch, as near as may be; and the use to which the said water is intended to be applied.

SEC. 520. *Rights.*—Any ditch corporation shall have the right of way over the line named in the articles, and shall also have the right to run the water of the stream or streams named in the articles through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those granted under this article and acquired by virtue of such articles of incorporation. Nor shall the water of any stream be diverted from its original channel to the detriment of any miners, mill-men, or others along the line of said stream who may have a priority of right; and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists along said stream.

SEC. 521. *Duty to furnish water.*—Every ditch corporation must furnish water to the class of persons using water in the way and for the purpose for which the articles of incorporation declare the water obtained by the corporation is to be used, whether miners, manufacturers, mill-men, or farmers, whenever they shall have water in their ditch unsold, and must at all times give the preference to the use of the water in such ditch to the class of persons so named in the articles; and the rates or tolls at which water is to be furnished must be fixed by the board of county commissioners as soon as such ditch shall be completed and prepared to furnish water.

SEC. 522. *Protection from injury.*—Every ditch corporation must keep the banks of its ditch in good condition, so that the water shall not be allowed to escape from it to the injury of any mining-claim, road, ditch, or other property; and whenever it is necessary to extend or construct any ditch over, across, or above any lode or mining-claim or public highway the corporation shall, if necessary to keep the water of said ditch out or from any such lode, claim, or highway, flume the ditch so far as necessary to protect such claim, property, or highway from the water of such ditch.

SEC. 523. *Flumes—Requisites.*—In addition to the matters required in section three hundred and eighty-six, every corporation formed for the purpose of constructing a flume must, in its articles of incorporation, specify as follows: The place of beginning, the termini, and the route, so near as may be, and the purpose for which such flume is intended. Such corporation shall have the right of way over the line named in its articles: *Provided*, It does not conflict with the right of any fluming, ditching, or other corporation, or with the prior water-rights of any person.

SEC. 524. *Tunnels—Same.*—In addition to the matters required by section three hundred and eighty-six, every corporation formed for the purpose of running and excavating a tunnel for mining for gold, silver, or other ore, or quartz or coal, must, in the articles of incorporation, specify as follows: Where said tunnel is to be run; the place of commencement; the course and termination; and the metals, minerals, or ores designated to be excavated. Through all lodes crossed by such tunnel such corporation shall have the right of way.

SEC. 525. *Acquiring right of way.*—The right of way granted in this article to any ditch, flume, or tunnel corporation may be acquired in the same manner and by like proceedings as provided for railroad corporations.

SEC. 526. *Non-user forfeits rights.*—Every corporation formed under the provisions of this article must, within ninety days from the date of the issue of its certificate of incorporation, commence the construction of its works or the transaction of its business, and must prosecute the work or business with due diligence until the same is completed; and the time of the completion of its works shall not extend beyond a period of two years from the time work was commenced as aforesaid; and any such corporation failing to commence work within ninety days from the date of its certificate, or failing to complete the same within two years from the time of commencement, as aforesaid, shall forfeit all right to the route so claimed, and the same shall be subject to be claimed by any other corporation: *Provided*, That this section shall not apply to the construction of any works through or over any grounds owned by such corporation.

The manner of acquiring the right of way by any an ditch, flume, or tunnel corporation is the same, with like proceedings as provided by railroad corporations (see section 525), which proceedings, etc., are as follows:

SEC. 452. *Taking when owner refuses—Procedure.*—If the owner of any real property over which said railroad corporation may desire to locate its road shall refuse to grant the right of way through and over his premises, the district judge of the county or subdivision in which said real property may be situated, as provided in this article, shall, upon the application or petition of either party, and after ten days' notice to the opposite party, either by personal service or by leaving a copy thereof at his usual place of residence, or, in case of his non-residence in the territory, by such publication in a newspaper as the judge may order, direct the sheriff of said county to summon three disinterested freeholders of said county or subdivision (or if there be none such, then of the territory) as commissioners, who shall be selected by said judge, and who must not be interested in a like question. The commissioners shall be duly sworn to perform their duties impartially and justly; and they shall inspect said real property and consider the injury which such owner may sustain by reason of such railroad; and they shall assess the damages which said owner will sustain by such appropriation of his land; and they shall forthwith make report thereof in writing to the clerk of the said court, setting forth the quantity, boundaries, and value of the property taken, or amount of injury done to the property which they assess to the owners, which report must be filed and recorded by the clerk, and a certified copy thereof may be transmitted to the register of deeds of the county or subdivision where the land lies, to be by him filed and recorded (without further acknowledgment or proof) in the same manner and with like force and effect as is provided for the record of deeds. And if said corporation shall, at any time before it enters upon said real property for the purpose of constructing said road, pay to said clerk for the use of said owner the sum so assessed and reported to him as aforesaid, it shall thereby be authorized to construct and maintain its road over and across said premises: *Provided*, That if the corporation shall need or require, for the purpose of constructing said railroad, to take and occupy any real property in any unorganized county, or in other unorganized country where there is no district court established, then the judge of the district court of the nearest organized county or subdivision (wherein such court is established) upon the line of said road shall appoint commissioners to assess said damages; and he and they shall perform all other duties required of district judges and commissioners by the terms of this article, and either party shall have the right to appeal as in other cases herein provided: *And provided further*, That the report of the commissioners may be reviewed by the district court, on written exceptions filed by either party in the clerk's office within sixty days after the filing of such report; and the court shall take such order therein as right and justice may require, either by confirming, modifying, or rejecting the same, or by ordering a new appraisal, on good cause shown: *And provided further*, That either party may appeal from the decision of the district court to the supreme court, and the money so deposited shall remain in the hands of the clerk, as aforesaid, until a final decision be had, and subject thereto; but such review or appeal shall not delay the prosecution of the work on said railroad over the premises in question, if such corporation shall first have paid or deposited with said clerk the amount so assessed by said commissioners; and in no case shall said corporation be liable for the costs on such review or appeal, unless the owner of such real property shall be adjudged entitled, upon either review or appeal, to a greater amount of damages than was awarded by said commissioners. The corporation shall, in all cases, pay the costs and expenses of the first assessment. And in case of review or appeal, the final decision may be transmitted by the clerk of the proper court, duly certified, to the proper register of deeds, to be by him filed and recorded as hereinbefore provided for the recording of the report, and with like effect.

SEC. 453. *Commissioners act in all cases—Vacancies.*—Freeholders so appointed shall be the commissioners to assess all the damages to the owners of real property in said county or subdivision; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county or subdivision to grant the right of way as aforesaid, by giving said owner or guardian ten days' notice thereof in the manner prescribed in the preceding section, have the damages assessed in the manner hereinbefore prescribed. In case of the death, absence, or refusal or neglect of any of said freeholders to act as commissioners, as aforesaid, the sheriff shall, upon the selection of the district judge, summon other freeholders to complete the panel, and said commissioners shall receive three dollars per day each for their services, and the same shall be taxed in the bill of costs.

SEC. 454. *Guardians—Married women.*—Whenever any railroad corporation shall take any real property, as aforesaid, of any minor, any person insane or otherwise incompetent, or of any married woman whose husband is under guardianship, the guardian of such minor, insane or incompetent person, or such married woman with the guardian of her husband, may agree and settle with said corporation for all damages or claims by reason of the taking of such real property, and may give valid releases and discharges therefor upon the approval thereof by the judge of the probate court.

SEC. 455. *Unknown owner.*—If upon the location of said railroad it shall be found to run through the real property of any non-resident owner who is unknown to the corporation, or who has not been by it informed thereof, and has neither granted nor refused to grant the right of way through and over his said premises, the said corporation may give four weeks' notice to such owner, if known, and if not known, by a description of such real property by

publication four consecutive weeks in some newspaper published in the county or subdivision where such real property may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through and over his lands; and if said owner do not, within thirty days thereafter, apply to the district judge to have the damages assessed in the mode prescribed in this article, said corporation may proceed to have the damages assessed, as hereinbefore provided, subject to the same right of review and appeal as in case of resident owners; and, upon payment of damages assessed to the clerk of the district court, the corporation shall acquire all the rights and privileges mentioned in this article.

SEC. 456. *Claimants on public lands.*—Any railroad corporation is authorized to pass over, occupy, and enjoy all the public lands, to the extent and in the manner prescribed by the act of Congress approved March 3, 1875: *Provided*, That the damages accruing to and occupant or possessory claimant, or other person who may reside on or have improvements upon said public land, shall be determined and paid by said railroad corporation as provided in this article for owners of private lands.

The involuntary dissolution of corporations, referred to in second subdivision of section 418, p. 263, is as follows:

CHAP. XXVI.

SEC. 532. *Territory against corporation.*—An action may be brought by any district attorney in the name of the territory, on leave granted by the district court or judge thereof, for the purpose of vacating the charter or the articles of incorporation, or for annulling the existence of a corporation other than municipal, whenever such corporation shall:

1. Offend against any of the laws creating, altering, or renewing such corporation; or,
2. Violating the provisions of any law, by which such corporation shall have forfeited its charter or articles of incorporation by abuse of its power; or,
3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,
4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,
5. Whenever it shall exercise a franchise or privilege not conferred upon it by law. And it shall be the duty of any district attorney, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and, upon leave granted, to bring the action in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the territory against the costs and expenses to be incurred thereby.

SEC. 533. *Leave to bring such action.*—Leave to bring the action may be granted upon the application of any district attorney, and the court or judge may, at discretion, direct notice of such application to be given to the corporation or its officers previous to granting such leave, and may hear the corporation in opposition thereto.

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SEC. 543. *Judgment against corporation.*—If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter has, by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchise, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

SEC. 544. *Costs, how collected.*—If judgment be rendered in such action against a corporation, or against a person claiming to be a corporation, the court may cause the costs therein to be collected by execution against the person claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

SEC. 545. *Closing corporate affairs.*—When such judgment shall be rendered against a corporation, the court has power to restrain the corporation, to appoint a receiver of its property, and to take an account and make distribution thereof among its creditors, and the district attorney must, immediately after the rendition of such judgment, institute proceedings for that purpose.

SEC. 546. *Judgment filed with secretary.*—Upon the rendition of such judgment against a corporation, the district attorney must cause a copy of the judgment to be forthwith filed in the office of the secretary of the territory, whose duty it shall be to record the same.

REVISED CODES, 1877: CODE OF CIVIL PROCEDURE.

AN ACT to establish a code of civil procedure for Dakota territory. (Approved February 17, 1877; Rev. Codes, p. 483.)

PART 2—CHAP. VI.—TIME OF COMMENCING ACTIONS IN GENERAL.

SEC. 41. *Seizin within twenty years.*—No action for the recovery of real property, or for the recovery of possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within twenty years before the commencement of such action.

SEC. 42. *Same.*—No cause of action, or defense to an action, founded upon the title to real property, or to rents or services out of the same, shall be effectual unless it appear that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within twenty years before the committing of the act in respect to which such action is prosecuted or defense made.

CHAP. XXIX.—ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER ACTIONS CONCERNING REAL ESTATE.

SECTION 645. *Right of entry.*—The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts, or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

SEC. 646. *Order for—Service.*—The order must describe the property, and a copy thereof must be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurement; but if any unnecessary injury be done to the property, he is liable therefor.

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SEC. 649. *Mining customs.*—In actions respecting mining-claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim, and such customs, usages, or regulations, when not in conflict with the laws of this territory and of the United States, must govern the decision of the action.

SEC. 650. *Occupying claimants.*—Any person settled upon the public lands belonging to the United States, on which settlement is not expressly prohibited by Congress or some department of the general government, may maintain an action for any injuries done the same; also, an action to recover the possession thereof, in the same manner as if he possessed a fee-simple title to said lands.

REVISED CODES, 1877: PENAL CODE.

AN ACT to establish a penal code for the territory of Dakota. (Approved February 7, 1877; Rev. Codes, p. 726.)

CHAP. XVII.—HOMICIDE.

SECTION 248. *Murder by forcibly taking mine.*—If any person or persons shall associate and agree to enter or attempt to enter, by force of numbers and the terror such numbers is calculated to inspire, or by force and violence or by threats of violence against any person or persons in the actual possession of any lode, gulch, or placer-claim, and upon such entry or attempted entry any person or persons shall be killed, said persons, and all and each of them, so entering or attempting to enter, shall be deemed guilty of murder, and punished accordingly. Upon the trial of such cases, any person cognizant of such entry or attempted entry who shall be present and aiding, assisting, or in anywise encouraging such entry or attempted entry, shall be deemed a principal in the commission of said offense.

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AN ACT to establish a penal code for the territory of Dakota. (Approved February 7, 1877; Rev. Codes, p. 794.)

CHAP. LVII.

SEC. 735. *Conspiracy and mobs against mines.*—In all cases where two or more persons shall associate themselves together for the purpose of obtaining possession of any lode, gulch, or placer-claim, then in the actual possession of another, by force and violence, or by threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining-claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer-claim, or quartz-mill, or other mining property, or, not being upon such property, but within hearing of the same, shall make any threats, or make use of any language, sign, or gesture calculated to intimidate any person or persons at work on said property from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending shall, upon conviction, be punished by imprisonment in the county jail not exceeding six months and not less than thirty days, and by fine not exceeding two hundred and fifty dollars, such fine to be discharged either by payment or by confinement in such jail until such fine is discharged at the rate of two dollars and fifty cents per day. On trials under this section proof of a common purpose of two or more persons to obtain possession of property, as aforesaid, or to intimidate laborers, as above set forth, accompanied or followed by any of the acts above specified, by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same.

## SESSION LAWS, 1879.

## CHAP. IX.

AN ACT to amend section four hundred and thirteen of the civil code. (Approved February 22, 1879, p. 13.)

SECTION 1. *Liability of stockholders—Duty of court in case of suit—Stockholder defined.*—That section four hundred and thirteen of the Civil Code be, and the same is hereby, amended so as to read as follows:

SEC. 413. Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint and several actions against any of its stockholders that have not wholly paid the capital stock held by him, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. And in no other case shall the stockholders be individually and personally liable for the debts of the corporation. The term "stockholder", as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability.

## CHAP. X.

AN ACT to amend chapter three (3) of title two (2), part three (3) of the Civil Code of this territory, in relation to corporations. (This act was passed over the veto of the governor by the necessary two-thirds vote by the council and house of representatives February 18th and 19th, respectively, 1879, and was deposited with the secretary of the territory at 10 o'clock a. m. February 20, 1879.)

SECTION 1. *Interest of delinquent member of incorporated company may be sold.*—Whenever any member of an incorporated company organized under articles 10, 12, and 13 of chapter 3, title 2, part 3 of the Civil Code, duly organized under the laws of this territory, where the same is not a stock company, shall refuse, fail, or neglect to pay any assessment levied by the company of which he is a member in accordance with law, after having been notified of such assessment as provided in said chapter, his share, interest, or membership in such company may be sold in the same manner and like proceedings had as in the sale of the stock of incorporated companies under said chapter, and the title to such share, interest, or membership, when so sold, shall vest absolutely in the purchaser thereof.

SEC. 2. *Purchaser of interest in incorporated company becomes a member thereof—Interest may be sold, when.*—Any member of an incorporated company not being a stock company may, by deed, transfer his interest, share, or membership therein, whereupon the purchaser thereof shall become a member of such company; and if any assessment or amount of money shall at the time be due and unpaid thereon, such share, interest, or membership may be sold, as in other cases, if such assessment or amount remains unpaid after said purchaser has due notice of such delinquency.

SEC. 3. *Time extended for completion of works.*—Every incorporated company transacting business within this territory shall be allowed twice the length of time now allowed under said chapter three (3) for the completion of its works without working any forfeiture whatever until the expiration of such extended time, and then only upon failure to complete such works.

SEC. 4. *Certain associations to be held strictly to the law.*—Any person or persons, or association of persons, now engaged in, or that may hereafter engage in, the construction of any street railway, toll-road, ditch for conveying water, or any other works or improvements specified in said chapter three (3), shall be required to comply strictly with all the provisions of said chapter, in the same manner as therein provided for incorporated companies, so far as the same can be done; and, upon failure of any such person or persons, or association of persons, to comply as aforesaid, the same shall work a forfeiture of any and all rights he or they may have acquired in accordance with law.



SEC. 5. *County commissioners shall not fix rates.*—No board of county commissioners shall hereafter have power to fix the rates or tolls at which water is to be furnished by the owners of any ditch or flume constructed for the purpose of conveying water.

SEC. 6. All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

CHAP. XLI.—LIENS.

AN ACT to create a lien for miners and laborers in certain cases. (Approved February 1, 1879, p. 114.)

SECTION 1. *Miner to have lien upon mine for work done or material furnished.*—That every miner or other person who, at the request of the owner or owners, or his or their agents, of any lode, lead, ledge, mine, or deposit bearing gold, cinnabar, or copper, or of any coal bank or mine, or at the request of any contractor or subcontractor, shall perform any labor whatever on said mine, or furnish any timber, rope, nails, or any other materials for timbering shafts or levels for the mine owned by such owner or owners, or who shall furnish any kind of materials for erecting any windlass, whims, or any other hoisting apparatus or machinery, or for any car-track, cars, tunnels, drifts, or openings thereon, or shall perform any labor on any tunnel, shall have a lien upon such lode, lead, mine, deposit, bank, or tunnel to secure the payment of the same.

SEC. 2. *When labor is performed for contractor, owner to pay, when.*—Every miner or other person doing and performing any work or furnishing any materials, as specified in section one of this act, under a contract, either express or implied, between the owner or owners of any mine, or his or their agent, and any contractor working on such mine, whether such work shall be performed or materials furnished as miner, laborer, or otherwise, whose demand for work so performed or material so furnished has not been paid, may deliver to the owner or owners of such mine or tunnel, or to his or their agent or superintendent, an attested account of the amount and value of the work and labor thus performed, or of the materials thus furnished and remaining unpaid, and thereupon such owner or owners, or his or their agent, shall retain out of the first subsequent payments to such contractor, the amount so due for such work and labor, or materials furnished, for the benefit of the person so performing or purchasing the same.

SEC. 3. *Duty of owner when account for labor is presented.*—Whenever any account for labor performed or materials furnished, as specified in the last preceding section, shall be placed in the hands of the owner or owners of any mine or tunnel, or his or their agent, it shall be the duty of such owner or owners or agent to furnish such contractor with a copy of such papers, so that if there be any disagreement between such contractor or his subcontractor and the creditor of either, as the case may be, they may, by amicable adjustment or by arbitration, ascertain the sum due, if any; and if such contractor or subcontractor shall not, within ten days after the receipt of such papers, give such owner or owners or agent written notice that he intends to dispute the claim, or if ten days after giving such notice he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting thereto; and such owner or owners or agent may pay the same when it becomes due, and for that purpose may deduct the amount out of any moneys due such contractor, who may in like manner deduct such amount from any moneys due by him to his subcontractor, in case such account or demand is against such subcontractor for work and labor performed or materials furnished as aforesaid.

SEC. 4. *Amount due from contractor may be recovered, how.*—The amount which may be due from any contractor to his creditor may be recovered from said owner or owners by the creditor of said contractor in any action at law to the extent in value of any balance due by the owner or owners to his or their contractor under the contract with him, at the time of the notice first given as aforesaid, or subsequently, according to such contract or under the same.

SEC. 5. *Person entitled to lien to make itemized statement and file same.*—Any person entitled to a lien under this act shall make an account in writing of the items of labor, skill, machinery, and material furnished, as the case may be, and after making oath thereto shall, within sixty days from the time of completing such labor and skill, or furnishing the last item of machinery or materials, file the same in the office of the clerk of the district court of the county or subdivision in which the lode, lead, ledge, mine, deposit, bank, or tunnel may be situated, for or upon which such labor, skill, machinery, or materials shall have been furnished; and also file at the same time a correct description of the property to be charged with said lien, which account and description so made and filed shall be recorded in a separate book, to be provided for that purpose by such clerk of court, and thereupon the same shall, from the time of the completion of the work or furnishing the last item of machinery or materials, and for one year thereafter, operate as a lien on the property charged in such description; when any work and labor has been performed or materials furnished as aforesaid under a written contract, the same or a copy thereof shall be filed with said account and description: *Provided*, That all lien claims for labor performed or materials furnished shall be concurrent liens upon the property charged, and shall be paid *pro rata* out of proceeds arising from the sale thereof, if the same shall be sold, or upon settlement without sale.

SEC. 6. *Holder of lien may obtain judgment.*—Any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action, and when any suit or suits shall be commenced thereon such lien shall continue until said suit or suits be finally determined and satisfied; and in all actions instituted under this act all persons claiming liens upon the property charged shall be made parties to such action or proceeding, and the rights of all parties therein shall be determined by the court, and such order made in regard thereto as shall preserve and protect the rights of all such parties under the provisions of this act.

SEC. 7. *When lien is paid satisfaction thereof shall be entered.*—Any person who shall have filed his account and perfected his lien under the provisions of this act, shall have received satisfaction of his claim or demand and the legal cost of his proceedings thereunder, he shall, upon the request of any person interested, and within six days after such request, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat, and release the same; and if any person holding a lien as aforesaid shall receive satisfaction as hereinbefore specified, or having been tendered the amount due on his claim or demand, with legal costs, shall not, within six days after receiving such satisfaction or tender of payment, enter satisfaction as aforesaid, he shall forfeit and pay to the person or persons aggrieved double the amount of damages which may have been sustained in consequence of such failure or neglect: *Provided*, He shall have been requested in such case to enter satisfaction as aforesaid.

SEC. 8. *This act to apply to oil wells, etc.*—The provisions of this act shall apply to oil wells or springs, iron and lead mines, as well as all other mines not herein specified, so far as the same may be applicable.

SEC. 9. This act shall take effect and be in force from and after its passage and approval.

#### CHAP. XXVII.—RIGHT OF WAY.

AN ACT concerning the right of way, easements, and other necessary means for the development of mines. (Approved March 3, 1881; Sess. Laws, 1881, p. 124.)

SECTION 1. *Owners of mines to have right of way.*—That the proprietor, owner, or owners of mining-claims, whether patented under the laws of the United States or held under the local laws and customs of this territory, shall have a right of way for ingress for the necessary purpose over and across the land or mining-claim, patented or otherwise, of others, as hereinafter provided.

SEC. 2. *Same.*—Whenever any such mine or mining-claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or tunnel thereto, which road, ditch, cut, or tunnel shall necessarily pass over, under, through, or across any lands or mining-claims owned or occupied by others, either under a patent from the United States or otherwise, then shall such first-mentioned owner or owners be entitled to a right of way for said road, ditch, flume, shaft, or tunnel over, under, through, and across such other lands or mining-claims upon compliance with the provisions of this act.

SEC. 3. *Proceedings to obtain right of way.*—Whenever the owner or owners of any mining-claim shall desire to work the same, and it is necessary, to enable him or them to do so successfully and conveniently, that he or they shall have a right of way for any of the purposes in the foregoing section, and such right of way shall not have been acquired by agreement between him or them, and the claim over, under, across, and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the district court of the several counties and subdivisions of the territory of Dakota, in which such right of way or some part thereof sought to be enforced is situated, a petition praying that such right of way be awarded to him or them. Such petition shall be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims or lands to be affected by such right or privilege, with the names of the occupants or owners thereof; it may also set forth any tender or offer hereinafter mentioned, and shall demand the relief sought.

SEC. 4. *Proceedings in court.*—Upon the receipt of such petition and filing thereof with the clerk of such court, the judge shall direct a citation to issue, under the seal of such court, to the owners named in the petition of mining-claims and lands to be affected by the proceedings, directing them and each of them to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for. Such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

SEC. 5. *Judge shall appoint commissioners.*—Upon the return day of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties; and if upon such hearing he is satisfied that the claims of the petitioner should be worked by means of the privilege prayed for, he shall make an order adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners, who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order.

SEC. 6. *Assessment of damage by commissioners.*—The commissioners so appointed shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed without unreasonable delay to examine the premises, and shall assess the damage resulting from such right or privilege prayed for, and report the amount to the judge appointing them; and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person.

SEC. 7. *Judge may set aside report, etc.*—For good cause shown, the judge may set aside the report of such commissioners and appoint three other commissioners, whose duties shall be the same as above mentioned.

SEC. 8. *Petitioner entitled to right of way upon tender of payment.*—Upon the payment of the sum assessed as damages, as aforesaid, to the persons to whom it shall be awarded, or a tender thereof to them, then the person petitioning as aforesaid shall be entitled to the right of way prayed for in their or his petition, and may immediately proceed to occupy the same, and to erect thereon such work and structures and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

SEC. 9. *Appeals.*—Appeals from the assessment of the commissioners may be made and prosecuted in the proper district court by any party interested at any time within ten days after filing the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summons are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made a bond, with sureties, to be approved by the clerk, in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee and abide any judgment that may be rendered in the cause.

SEC. 10. *Time of appeal.*—Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or by a jury, as other cases in court.

SEC. 11. *Prosecution of appeal not to hinder work.*—The prosecution of any appeal shall not hinder, delay, or prevent the appellee from exercising all the rights and privileges mentioned in section eight of this act: *Provided*, That the appellee shall file with the clerk of the court in which the appeal is pending a bond, with sufficient sureties, to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action, not exceeding the amount of such bond.

SEC. 12. *When appellee to pay costs.*—If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs.

SEC. 13. *Costs and expenses, by whom paid.*—The costs and expenses under the provisions of this act, except as herein otherwise provided, shall be paid by the party making the application: *Provided, however*, That if the applicant shall, before the commencement of such proceeding, have tendered to the parties owning or occupying such lands or mining-claims a sum equal to or more than the amount of damages assessed by the commissioners, then all the costs and expenses shall be paid by the party or parties owning the lands or claims affected by such right of way, and who appeared and resisted the claims of the applicants.

SEC. 14. This act shall take effect and be in force from and after its passage and approval.

#### CHAP. XCVI.—LOCATION OF LODES.

AN ACT to amend chapter XXXI of the Political Code. (Sess. Laws, 1881, p. 123.)

[This act was received at executive office February 28, 1881, at 5.30 p. m., and, not having been returned by governor within the time prescribed by law, became a law without his approval.]

SECTION 1. *Discoverer entitled to sixty days before recording.*—That section three of chapter XXXI of the Political Code be, and the same is hereby, amended by striking out the word "twenty", where it occurs in the second line thereof, and inserting in lieu thereof the word "sixty".

SEC. 2. *Name of locators.*—That subdivision two of section three of said chapter be amended by adding, after the word "locator", the words "or locators".

SEC. 3. *Name of locators.*—That section five of said chapter be amended by adding after the word "locator", where it appears in the fifth line thereof, the words "or locators".

SEC. 4. *Marking boundaries.*—That section six of said chapter be amended by adding, after the word "claim", the following: "and plainly marked with the name of the lode and the corner, end, or side of the claim that they respectively represent."

SEC. 5. *Locators entitled to sixty days to perform labor.*—That section eight of said chapter be amended by striking out the word "thirty" and inserting in lieu thereof the word "sixty".

SEC. 6. *Time of doing annual work.*—That section fourteen of said chapter be amended by adding at the end of said section, the following: "*Provided*, That the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of location of such claim."

SEC. 7. That section fifteen of said chapter be, and the same is hereby, repealed.

SEC. 8. This act shall take effect and be in force from and after its passage and approval.

CHAP. CXLII.—WATER-RIGHTS.

AN ACT relating to water-rights. (Sess. Laws, 1881, p. 226.)

[This act was received at executive office February 28, 1881, at 5.30 o'clock p. m., and, not having been returned to the council where it originated, became a law without the governor's approval.]

SECTION 1. *Party holding land shall have right to water.*—That any person or persons, corporation, or company who may have or hold a title or possessory right or title to any mineral or agricultural lands within the limits of this territory shall be entitled to the usual enjoyment of the waters of the streams or creeks in said territory for mining, milling, agricultural, or domestic purposes: *Provided*, That the right to such use shall not interfere with any prior right or claim to such waters when the law has been complied with in doing the necessary work.

SEC. 2. *May conduct water from remote stream.*—That when any person or persons, corporation, or company owning or holding land as provided in section one of this act shall have no available water facilities upon the same, or whenever such lands are too far removed from any stream or creek to so use the waters thereof, as aforesaid, such person or persons, corporation, or company shall have the right of way through and over any tract or piece of land for the purpose of conducting and conveying said water by means of ditches, dykes, flumes, or canals for the purpose aforesaid.

SEC. 3. *Right of way limited.*—That such right to dig and construct such ditches, dykes, flumes, and canals over and across the lands of another shall only extend to so much digging, cutting, or excavation as may be necessary for the purposes required.

SEC. 4. *Controversies, how determined.*—That in all controversies respecting rights to water, under the provisions of this act, the same shall be determined by the date of appropriation as respectively made by the parties, whether for mining, milling, agricultural, or domestic purposes.

SEC. 5. *Deterioration or diminution not to be considered.*—That the waters of the streams or creeks of the territory may be made available to the full extent of the capacity thereof for mining, milling, agricultural, or domestic purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator.

SEC. 6. *Penalty for damaging lands.*—That any person or persons, corporation, or company damaging or injuring the lands or possessions of another by reason of cutting or digging ditches or canals or erecting flumes, as provided by section two of this act, the party so committing such injury or damage shall be liable to the party so injured for the actual damage occasioned thereby.

SEC. 7. *Abandoned water-right, bridging ditches, etc.*—That this act shall not be so construed as to impair or in any way or manner interfere with the rights of parties to the use of the waters of such streams or creeks acquired before the passage of this act: *Provided*, That all water-rights or ditches that have not been used or worked upon for one year next prior to the passage of this act shall be deemed abandoned and forfeited, and subject to appropriation anew. That any person or persons, corporation or company, who may dig any ditch or canal, dyke or flume, over or across any public road, trail, or highway, or who use the waters of such ditch, dyke, flume, or canal, shall be required to bridge the same and keep the same in good repair at such crossing or other places where the water from any such ditch, dykes, flumes, or canals may flow over or in anywise injure any road, trail, or highway, either by bridges or otherwise.

SEC. 8. *Penalty for failure to comply with provisions of section 7.*—That any person or persons, corporation, or company offending against section seven of this act, on conviction thereof, shall forfeit and pay for every such offense a penalty of not less than twenty-five dollars nor more than one hundred dollars, to be recovered, with costs of suit, in civil action, in the name of the territory of Dakota, before any court having jurisdiction. One-half of the fine so collected shall be paid into the county treasury for the benefit of the common schools of the county in which the offense was committed, and the other half shall be paid to the person or persons informing the nearest magistrate that such offense has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fine and costs have been paid.

SEC. 9. *Manner of locating water-rights.*—That any person or persons, corporation, or company appropriating the waters of any streams or creeks in this territory shall turn the water from the channel of such creek or stream, and construct at least twenty feet of ditch or flume, within thirty days from the date of appropriation, and turn the water therein, and construct at least twenty rods of said ditch or flume, if needed, within six months from the date of such appropriation, and turn the water therein; and within twenty days from the date of location the locator or locators of such water-right shall file a location certificate thereof with the register of deeds in the proper county within which such water-right is situated; a copy of such certificate shall be posted at or near the head of such ditch, flume, or canal, and shall contain the name or names of the locators, the date of location, number

of inches of water claimed or appropriated, and the purpose of the appropriation, and in no case shall the number of inches of water claimed exceed the conveying capacity of the first twenty feet of the flume or ditch, nor shall said ditch or flume be enlarged to the prejudice or injury of a subsequent appropriator before such enlargement.

SEC. 10. *When abandoned.*—A failure to commence the construction of such ditch or flume for sixty days after location, and prosecute such ditch, canal, or flume to a final completion, without unnecessary delay, such appropriation shall be deemed abandoned.

SEC. 11. This act shall take effect and be in force from and after its passage and approval.

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CHAP. XIII.

AN ACT in relation to the execution of the judgment in civil actions. (Rev. Codes, p. 534.)

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EXEMPTIONS.

SECTION 322. *Exempt from all process.*—Except as hereinafter provided, the property mentioned under this heading is exempt from attachment or mesne process, and from levy and sale on execution, and from any other final process issued from any court.

SEC. 323. *Absolute exemptions.*—The property mentioned in this section is absolutely exempt from all such process, levy, or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. The family bible, and all school-books used by the family, and all other books used as a part of the family library, not exceeding in value one hundred dollars.
5. All wearing apparel and clothing of the debtor and his family.
6. The provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year.
7. The homestead, as created, defined, and limited by law.

SEC. 324. *Additional exemptions.*—In addition to the property mentioned in the preceding section, the debtor may, by himself or his agent, select, from all other of his personal property not absolutely exempt, goods, chattels, merchandise, money, or other personal property, not to exceed in the aggregate fifteen hundred dollars in value, which is also exempt, and must be chosen and appraised as hereinafter provided.

SEC. 325. \* \* \* 4. The tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and, in addition thereto, stock in trade not exceeding two hundred dollars in value. The library and instruments of any professional person, not exceeding six hundred dollars in value.

SEC. 326. *Those by number chosen; by value appraised.*—All the articles enumerated in the preceding section which are exempt by limitation of number must be chosen by the debtor, his agent, or attorney; so, also, all property exempt by limitation of value must be determined by an appraisal made under the direction of the sheriff or other officer.

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IDAHO.

REVISED LAWS OF 1874-'75.

AN ACT for perfecting titles to quartz-claims in the county of Idaho. (Sess. Laws, 1865-'66, p. 201.)

SECTION 1. That all transfers of quartz-claims in the county of Idaho, made by bill of sale, without acknowledgment by a proper officer, prior to the passage of this act, shall be full and valid in law in all cases when the person purchasing has taken possession of the same, either in person or constructively.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

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AN ACT providing for the taking effect of certain acts; for continuing in force certain acts; for repealing certain acts; for the appointment of a revisory commission, and defining their authority and duties; and making an appropriation for the payment of the printing and publishing of the Code provided for by law; and for the distribution of the statutes of Idaho. (Approved January 15, 1875; Rev. Laws, p. 870.)

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SECTION 3. That said commission are hereby further empowered and authorized to carefully examine each and every act of the legislative assembly of the territory of Idaho of a public character, passed at the first, second,

third, fourth, fifth, sixth, and seventh sessions thereof, and shall designate such as are not repealed, and not inconsistent or repugnant to any act or part of act passed at the present session, which act so designated shall be printed and published in a volume with the acts known as the Code, as provided for at the present session; and such designated acts are hereby declared to be continued in force.

SEC. 4. That all acts and parts of acts passed and approved at the first, second, third, fourth, fifth, sixth, and seventh sessions of the legislative assembly of the territory of Idaho of a public character, and not designated by the revisory commission as in section third of this act provided, be, and the same are hereby, repealed on and after 12 o'clock (noon) on the first day of July, A. D. 1875.

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NOTE.—“An act relating to the discovery of gold and silver quartz-lodes, and of the manner of their location,” is (with exception of certain interlineations and of the omission in this act of section 9 of the original act) the same as act of January 12, 1866, 3d session.

NOTE.—The following acts are continued in force (see Appendix to Revised Laws):

AN ACT for perfecting title to quartz-claims in the county of Idaho.

AN ACT relating to the recording of quartz-claims in Owyhee and Alturas counties, and fixing the fees therefor.

AN ACT relating to the discovery of gold and silver quartz-lodes, and of the manner of their location. (Approved January 12, 1866; Rev. Laws, p. 777.)

SECTION 1. That any person or persons who may hereafter discover any quartz lead or lode shall be entitled to one claim thereon by right of discovery, and one claim each by right of location: *Provided*, That no person shall be entitled to hold more than one claim by right of location on any one lead or lode, and that no person be entitled, or have the right to locate, or to hold by location, or to have recorded any claim or claims on any lead or lode, unless he be a resident or inhabitant of this territory.

NOTE.—This act was repealed by “An act relating to the location and recording of mining claims”, approved February 10, 1881 (Gen. Laws, 1880-'81, p. 262).

SEC. 2. That any quartz-claim shall consist of two hundred feet in length along the lead or lode, by one hundred feet in width, being fifty feet on each side of said lead or lode, covering and including all dips, spurs, and angles within the bounds of said claim; and also the right of drainage, tunneling, and such other privileges as may be necessary to the working of said claim: *Provided*, That nothing in this act shall be so construed as to give any claimant or claimants any right to any separate or distinct lodes other than the one claimed, running the width of said claim, or to obstruct any subsequent claimants in working and improving such distinct ledge; and the center of the ground between such ledges shall be the dividing line between such claimants.

NOTE.—Section 2 of this act is repealed by act of February 21, 1879, and all future locations are to be made in accordance with act of Congress, May 10, 1872, and prior locations made in accordance with that act (May 10, 1872) are legalized and confirmed, but no vested rights are to be invalidated.

SEC. 3. The locator or locators of any quartz-claim or claims on any lead or lode shall, at the time of locating said claim or claims, place a substantial stake, not less than three inches in diameter, at each end of the claim so located: *Provided*, That where two or more claims are located together and recorded in one notice, then the aforesaid stakes shall be placed at each end of the claims so located in one notice. On said stake at each end of said claim or claims shall be placed a notice in writing, and said notice shall contain the date of the location of said claim or claims, the name or names of the locator or locators, the name of the lead or lode on which said claim or claims are located, the number of feet so claimed by each of said locators, the distance to the nearest end of said claim or claims from the discovery stake, the direction, as nearly as possible, from the discovery stake, and the direction said claim or claims extend in, as nearly as may be, from the point designated as its or their commencement, and, where more than one person join in one notice in locating said claims, shall state the actual number of feet claimed, and the portion of the ground so claimed by each person so locating.

SEC. 4. Two or more persons may locate or take claims together in a body by joining in a notice specifying the number of claims so located, and the name of each person so joining in such location being written under the notice; but the claims so located shall not exceed two hundred feet for each person so locating; and said claims shall, on said notice, be numbered and designated as segregated claims, and shall designate the position of the said segregated ground in said claims so located in one notice, including, when necessary, a discovery claim, except where it may be necessary to include a claim by right of discovery, and the notice shall then state in whose name or names said discovery claim is located. Persons so joining in one notice shall be considered as tenants in common so soon as the work hereinafter required to be done shall be fully finished and performed. The work hereinafter required to be performed on a quartz-claim, to entitle the locator or his assigns to hold the same as real estate, may be performed on any one of the claims so held under one notice: *Provided*, It be equal in value to one hundred dollars for each and every two hundred feet held under one notice, including the discovery claim; but when any claims have been located by two or more persons in one notice, so soon as the work as required by this act has been performed on said claim or claims, to wit: one hundred dollars' worth of work for each and every two hundred feet included in the



notice locating said claims, the said claimants shall be deemed tenants in common, and shall be subject to all the rights, privileges, and benefits, responsibilities, and liabilities of tenants in common.

SEC. 5. All claims shall be recorded in the recorder's office of the county in which such lead or lode shall be discovered, by filing with the recorder a copy of the notice placed on the ledge or lode, or a similar notice containing the name of the ledge or lode, the name or names of the locators, the number of feet claimed, the date of location, the direction in which the ledge or lode runs, the district and county in which the ledge or lode may be, and the general distance and direction from some known or initial points, and any other fact or statement by which the ledge may be identified, known, or found. Said notice shall be filed within ten days after the location of any claim or claims on any ledge or lode, and the person or persons named in the notice shall, each one for himself, and not one for the other, within three days after filing the notice, appear in person at the recorder's office and authorize the recording of the same in their name or names, and no record shall be legal or valid without the personal appearance of the person or persons named in the notice. At the recorder's office the recorder shall record the same in a book kept for that purpose, and called "the book of quartz-claims", to which there shall be complete and full duplicate index kept by the recorder, and the recorder shall be entitled to receive a fee of twenty-five cents for filing each notice, one dollar for each quartz-claim recorded, and twenty-five cents for indexing each name in notice recorded with the name or names thereon: *Provided*, That if said lead or lode be more than thirty miles from the county-seat of said county, then the time for recording the same may extend to fifteen days. And all persons recording any claim or claims shall take an oath before the recorder of said county that said claim or claims have not been heretofore located according to law, or, if so located, that the said claim or claims have been abandoned or forfeited by non-fulfillment of the provisions of this act.

SEC. 6. Quartz-claims located and recorded in accordance with the provisions of this act shall entitle the person or persons so locating and recording to hold the same as real estate, to the use of himself, his heirs, and assigns: *Provided*, That within one year from and after the date of recording he or they shall cause to be performed one hundred dollars' worth of work for each and every claim of two hundred feet of said lead or lode, said work to consist of the following: The stripping the lead or lode, sinking of shafts, excavating of tunnels, obtaining machinery, and repairing material for working said lead or lode in good faith.

SEC. 7. Conveyances of quartz-claims shall require the same formalities, and shall be subject to the same rules of construction, as the transfer and conveyance of real estate.

SEC. 8. Any person or persons who shall willfully and maliciously tear down or destroy any notice posted on quartz-claims, or tear up or destroy any stakes marking quartz-claims, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars or not exceeding one hundred dollars, or by not less than thirty days nor more than six months' imprisonment in the county jail, or by both such fine and imprisonment, and all justices of the peace in their respective counties shall have jurisdiction of such offenses.

SEC. 9. Any person or persons desiring to preserve and perpetuate testimony as to the sufficiency of the amount of work done on any claim or claims to entitle him or them to hold them as real estate, according to the provisions of section six of this act, may take two disinterested persons to view such work, who shall carefully examine the same, immediately after which they shall go before the county recorder, or other officer by law authorized to administer oaths in the county, and take and subscribe an affidavit, containing, first, a description of the location of the claim or claims on which the work is performed, the character and value of such work, and the date when they received the same, which affidavit shall be filed by the county recorder and carefully preserved. Such affidavits, or certified copy of the same under the certificate of the county recorder who has the custody of the original affidavit or affidavits, shall, in any court of this territory, be *prima-facie* evidence of the character and amount of labor performed on the claim or claims which are described in such affidavit or affidavits. The recorder shall receive a fee of fifty cents for filing and preserving the affidavits required by this section.

SEC. 10. Any person or persons who may desire to run a tunnel into any hill or mountain, for the purpose of discovering or working mineral-bearing-quartz leads or lodes, shall be entitled to hold five hundred feet each way from the line of the tunnel on every lead or lode so discovered: *Provided*, The said lode has not been previously claimed and held according to law; and said person or persons shall also be entitled to hold three hundred feet square at the entrance or entrances of said tunnel or tunnels for building, deepening, or other necessary purposes: *Provided further*, That nothing in this act shall be so construed as to invalidate the vested rights of other persons.

SEC. 11. The manner of locating tunnels shall be by posting a notice or notices at the entrance or entrances of the tunnel, describing the line of the tunnel, and of the dumping-ground, which notice shall be signed by all the parties interested, stating the interest of each person.

SEC. 12. A copy of said notice shall be recorded in the office of the county recorder within ten days from the time of location, and the recorder shall receive two dollars for recording said notice.

SEC. 13. The parties claiming any tunnel shall, within one year from the time of location, perform, or cause to be performed, five hundred dollars' worth of labor on said tunnel; and when a quartz lead or lode belonging to such tunnel company shall be struck it shall become real estate, and any person or persons interested in any tunnel who shall fail to perform his or their proportion of the labor required by this act within the time specified shall forfeit

all his or their rights in said tunnel; and those who do perform their portion of said labor in the required time shall acquire all the rights of such delinquent parties, and shall proceed immediately to perform the requisite amount of labor, and any tunnel-site becoming vacant by non-fulfillment of the law shall not be subject to relocation by the same parties.

SEC. 14. That an act entitled "An act relating to the discovery of gold and silver bearing quartz-ledges, and of the manner of their location", approved December thirteenth, A. D. eighteen hundred and sixty-four, and all other acts or sections of acts in conflict with this act be, and the same are hereby, repealed.

SEC. 15. This act to take effect and be in force from and after its approval by the governor.

AN ACT to provide for the protecting of stock about quartz-mills. (Approved January 10, 1873; Sess. Laws, 1872-'73, p. 61.)

SECTION 1. That all owners and operators of quartz-mills in this territory shall inclose, with a good and substantial fence sufficient to turn stock, all reservoirs and dumps, or other material, when known to contain poison which is injurious to the health and destructive to the life of stock, and shall construct a suitable drain to convey the water from such reservoirs or dumps into a running stream.

SEC. 2. Every person or persons who shall fail to comply with the provisions of section one of this act shall be liable to the owners of any horse, mule, cow, or other stock that may be injured, poisoned, or destroyed by drinking the water or acids that may flow from said mills, in a civil action, in twice the damage done, if said stock shall be injured or poisoned, and in twice the value of the property if said stock shall be killed or destroyed: *Provided*, That the provisions of this act shall only apply to Alturas county.

SEC. 3. This act shall take effect and be in force from and after its passage.

AN ACT concerning corporations. (Approved January 12, 1875; Rev. Laws, 1874-'75, p. 618.)

Sec.	Sec.
1. For what purposes corporations may be formed; limitations of.	16. Liability of stockholders individually.
2. How a corporation is formed; the certificate; what to contain when filed.	17. The trustees, etc., or collateral holder of stock not personally liable.
3. What the certificate proves.	18. Books of mining and water companies open to inspection, transcripts from.
4. The corporation; its powers.	19. Penalty, etc., upon officer or the corporation for disobeying this act.
5. Board of trustees, their election, etc.	20. May increase or diminish capital stock.
6. Election valid whenever held.	21. Proceedings to increase or diminish stock.
7. Majority of board rules.	22. Certificate of proceedings of meeting to increase stock, etc., to be filed in certain offices.
8. First meeting of trustees, how called.	23. Dissolution, duties and powers of trustee upon.
9. Transfer of stock, how made.	24. Dissolution, proceedings to effect.
10. Powers of trustees; levy of assessments; their collection.	25. There being no officer to call or preside at meetings, how to proceed.
11. The trustees, etc., to represent stock held in trust.	26. At such meeting officers may be elected and other business transacted.
12. Stock may be pledged, yet represented.	
13. Fictitious dividends forbidden.	
14. Indebtedness not to exceed paid-in capital stock; liability of trustees.	
15. Not to issue notes, etc., as money.	

SECTION 1. Corporations for manufacturing, mining, mechanical, chemical, or agricultural purposes, for constructing telegraph-lines, for making roads, for establishing ferries, for building bridges, for conveying water, or for the purpose of engaging in any species of trade or commerce, or the construction and operation of irrigating ditches and canals and of the lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable, or scientific association, may be formed according to the provisions of this act, such corporation and members thereof being subject to the conditions and liabilities herein imposed, and to none other: *Provided*, That nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than fourteen hundred and forty acres of land, or to authorize an individual member of such company or association, in his corporate capacity, to hold, own, or possess a number of acres to exceed eighty: *And provided further*, That no corporation formed for agricultural purposes shall be allowed to hold any mineral lands under the provisions of this act.

SEC. 2. Any three or more persons who may desire to form a company for one or more of the purposes specified in the preceding section may make, sign, and acknowledge before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the district court of the judicial district in which the principal place of business of the company is intended to be located, and a certified copy thereof, under the hand of the clerk and seal of said court in the said district, in the office of the secretary of the territory, a certificate in writing, in which shall be stated the corporate name of the company, the object for which the company 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 stock shall consist, the number of trustees, and their names, who shall manage the concerns of the company for the first

three months, and the name of the city or town and county in which the principal place of business of the company is to be located.

SEC. 3. A copy of any certificate of incorporation filed in pursuance of this act, and certified by the county clerk or the clerk of the district court in the county or district in which it is filed, or his deputy, or by the secretary of the territory, shall be received in all courts and places as presumptive evidence of the facts therein stated.

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 politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name shall have succession for the period limited, 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 corporation shall require.

*Fourth.* To appoint such officers, agents, and servants as the business of the corporation may 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 fulfillment 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 upon a written request signed by stockholders legally representing two-thirds of the whole stock.

*Sixth.* To make by-laws, not inconsistent with the laws of this territory or of the United States, for the organization of the company, the management of its prosperity, 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.

SEC. 5. The corporate powers of the corporation shall be exercised by the board of not less than three trustees, who shall be stockholders in the company, and a majority of them citizens of the United States and residents of this territory, and who shall, after the expiration of the term of the trustees first elected, be annually elected by stockholders at such time and place, and upon such notice, and in such mode as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock, and the persons receiving the greatest number of votes shall be and act as trustees. When any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

SEC. 6. If it should happen at any time that an election of trustees shall not be made 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 by the by-laws of the company; and all acts of trustees shall be valid and binding upon the company until successors shall be elected.

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.

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 meeting, which notice shall be either delivered personally to each trustee or published at least ten 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 published nearest thereto.

SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except between the parties thereto, until the same shall have so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the same, and the date of the transfer.

SEC. 10. The trustees shall have power to call in and demand from the stockholders the sums by them subscribed, at such times and in such payments or installments as they may deem proper; notice of such assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, or, if none is published there, in some newspaper published nearest to such place. 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, 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, after a notice of thirty days, published as above directed in this section; and that at such sale the person who will agree to pay the assessment so due, together with the expense of advertisement and the other expenses of sale, for the smallest number of whole shares, shall be deemed the highest bidder.

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 vote accordingly as a stockholder.

SEC. 12. Any stockholder may pledge his stock by a delivery of his certificate or other evidence of his interest, but may nevertheless represent the same at all meetings, and vote accordingly as a stockholder.

SEC. 13. It shall not be lawful for the trustees to make any dividend except from the surplus profits arising from the business of the corporation, nor to divide, withdraw, or in any way pay 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 have happened, except those who may have caused their dissent therefrom to be entered at large in 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 capacity, be jointly and severally liable to the corporation and the creditors thereof, in the event of its dissolution, to the full amount so divided, withdrawn, paid out, or reduced: *Provided*, That this section shall not be so construed as 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 extinction of its charter.

SEC. 14. The total amount of the debts of the corporation shall not at any time exceed the amount of the capital stock actually paid in, and in case of any excess the trustees under whose administration the same may have happened, except those who 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 the event of its dissolution, to any of the creditors thereof, for the full amount of such excess.

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.

SEC. 16. Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company contracted or incurred during the time that he was a stockholder, for the recovery of which joint or several actions may be instituted, and a judgment in such actions shall be recovered against joint stockholders; the court in the trial thereof shall apportion the amount of the liability of each, and in the execution thereof no stockholder shall be liable beyond his proportion so ascertained.

SEC. 17. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company, but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the 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 person interested in the trust fund, would have been if he had been living and competent to act and hold the stock in his own name.

SEC. 18. It shall be the duty of the trustee of every company incorporated under this act for the purpose of ditching, mining, or conveying water for mining purposes to cause a book to be kept, containing the names of all persons, alphabetically arranged, who are, or shall become, stockholders of the corporation, and showing the number and designation of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; also, a book, or books, in which shall be entered at length, in a plain and simple manner, all by-laws, orders, and resolutions of the company and board of trustees, and the manner and time of their adoption; which books, during the business hours of the day, Sundays, fourth of July, and the twenty-fifth day of December excepted, shall be open for the inspection of stockholders and the creditors of the company, each individual stockholder, and their duly authorized agents and attorneys, at the office or principal place of business of the company: *Provided*, That the office and books of every such company shall be kept, and the books of the company shall be opened, as aforesaid, in the county in which their principal business is transacted; and every stockholder and creditor, as aforesaid, or their agents, or attorneys, shall have the right to make extracts from such books, or upon payment of reasonable clerks' fees therefor, to demand and receive, from the clerk or other officer having the charge of such books, certified copies of entries; a certified copy of any entry 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.

SEC. 19. If the clerk or other officer having charge of such books shall make any false entry or neglect to make any proper entry therein, or 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 an entry therein, 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 one hundred dollars and all damages resulting therefrom, to be recovered in any court of competent jurisdiction in this territory; and for neglect to keep up such books for inspection, and in place provided for in last section, the corporation shall forfeit to the people of Idaho territory the sum of two hundred and fifty dollars for every day they shall so neglect, to be sued for and recovered before any court of competent jurisdiction in the county or district in which the principal business of such company is transacted; and it shall be the duty of the district attorney within and for such district to prosecute such action in the name of, and for the benefit of, the people of Idaho territory; and it is further provided that in case any such incorporated company shall refuse or neglect, for the space of one full year after the passage of this act, to comply with the provisions of this and the preceding section, then, upon the showing of such facts by petition of any person aggrieved thereby, and due proof thereof before the district judge in the district in which such company's principal business is transacted, after such company shall have been duly notified thereof by summons, to be issued by said judge, citing such company to appear before such judge at a time and place therein mentioned, which shall not be less than ten nor more than thirty days from the date of such summons, such company shall by said judge be declared and decreed to be disincorporated so far as to deprive said company

of all the privileges of this act, but in no manner to affect the remedy of all persons against such company, to be exercised as this act provides: *Provided*, That nothing contained in the provisions of this section concerning the disincorporation of such companies shall be so construed as to prevent the enforcement of the other remedies in this section mentioned, at any time after the passage of this act, except as herein provided.

SEC. 20. 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 purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its 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 capital.

SEC. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least four weeks in some newspaper published in the county where the principal place of business of the company is located, or in some newspaper nearest thereto; which notice shall specify the object of the meeting, the time and place where it is to be held, the amount to 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 an increase or diminution of the amount of capital stock.

SEC. 22. If, at any meeting so called, a sufficient number of votes has 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 the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman and secretary of the meeting, certified 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.

SEC. 23. 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 full power and authority to sue for and recover the debts and property of the corporation by the name of the 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.

SEC. 24. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the district judge of the district in which the meetings of the trustees are usually held a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that, at a general or special meeting of the stockholders called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. 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 four consecutive weeks, or, if no newspaper is published in the county, by advertisement posted up for thirty days in three of the most public places in the county. At the time and place appointed, or at any other 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.

SEC. 25. Whenever, by reason of death, absence from the county, or other legal impediments of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established may, on the written application of three or more of the members thereof, or of one or more of the trustees named in the articles of incorporation, issue a warrant to either of said members or trustees, directing him to call a meeting of the corporation by giving such notice as is required by law for the first meeting of trustees, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

SEC. 26. The members of such corporation who shall so assemble may elect officers to fill all vacancies then existing, and may act upon and transact such other business as might lawfully be transacted at a regular meeting of the corporation; and the regularity or validity of any such meeting or of any action thereof shall not be questioned or inquired into collaterally in any private suit.

AN ACT prescribing the mode of maintaining and defending possessory actions on the public lands in this territory. (Approved December 10, 1864; Sess. Laws, 2d sess., 1864, p. 421; Gen. Laws, p. 751.)

Sec.

1. Who may settle on public domain.
2. Claim, what to contain.
3. Claim, how described; shall be recorded.

Sec.

4. Shall improve, how and when.
5. Action for possession, plaintiff to prove.
6. Act to take effect, when.

SECTION 1. Any person, being a citizen of the United States, or having, in accordance with law, declared his intention to become a citizen, now occupying and settled upon, or who may hereafter occupy or settle upon, any of

the public lands of the United States in this territory, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with, or injury to, his possession of such land against any person or persons interfering with or injuring the same: *Provided*, That, if such land contains mines of any of the precious metals, the possession or claim of the person or persons occupying the same for the purposes aforesaid shall not prevent the working of such mines by persons desiring to work the same as fully as if no such claim for agricultural or grazing purposes had been made thereon: *Provided further*, That this act shall not be so construed as to allow persons who have, subsequent to the location of land for agricultural or grazing purposes, to go upon such lands for the purpose of mining without either first paying the owner thereof the value of any growing crops they may destroy, or giving bonds for the same; this provision not to extend to any crops planted upon any lands subsequent to their location for mining purposes: *And provided further*, That this act shall not be construed to authorize the maintenance of any claim upon lands which, at the commencement of any such action, may have been selected by the United States and reserved for any purpose.

SEC. 2. Every claim, to enable the holder to maintain any action as aforesaid, shall contain not more than one hundred and sixty acres of lands; shall be in a compact form, and in no place less than eighty rods in width, and so distinctly marked that the boundaries thereof may be easily traced.

SEC. 3. Every such claim shall be accurately described in a written notice, which shall be recorded in the office of the recorder of the county wherein the claim shall be situated, in a book to be kept by him for that purpose, together with an affidavit of the claimant, setting forth:

*First*. That such claim does not embrace more than one hundred and sixty acres of land.

*Second*. That he or she holds no other claim under the provisions of this act.

*Third*. That, to the best of his or her information and belief, no part of said land is claimed under any existing adverse title.

SEC. 4. Within ninety days after the date of such record, said claimant shall improve the land so recorded, unless the same shall have been previously done by him or some one through whom he claims, by putting such improvements thereon as shall partake of the realty to the value of two hundred dollars, and shall continue to occupy and to cultivate or graze the same, or some portion thereof, either in person or by his agent or employé; and no person shall be entitled to maintain any such action unless he shall have complied with all the provisions of this act.

SEC. 5. In any action for the possession of, or for any injury done to, a lot or parcel of land situated in any city, town, or village on the public lands in this territory, the plaintiff shall be required to prove either an actual inclosure of the whole lot claimed by him, or the erection of a dwelling-house or other substantial building on some part thereof, by himself or some person through whom he claims, and proof of such building, with or without inclosure, shall be sufficient to hold such lot or parcel to the bounds thereof, as indicated by the plat of such city, town, or village, if there be one, and if there be no such plat, then to hold the same, with its full width and extent, from and including such building to the nearest adjacent street where the intervening space shall not have been previously claimed by adverse possession.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

#### SESSION LAWS, 1876, 1877, 1879.

AN ACT concerning rights of way, easements, and other necessary means for the development of mines. (Approved January 12, 1877; Sess. Laws, 1876-'77, p. 70.)

Whereas the Congress of the United States, by an act approved July 26, 1866, and an act amendatory thereto, approved July 9, 1870, has provided that the local legislatures of the several states and territories may provide rules for working mines, involving easements, drainage, and other necessary means to complete development of mines upon which patents shall be granted by the United States, in the absence of necessary legislation by Congress; and whereas there has been no legislation by Congress upon this subject: Therefore,

*Be it enacted, etc.*, SECTION 1. The proprietor, owner, or owners of mining-claims, whether patented under the laws of the United States or held under the local laws and customs of this territory, shall have a right of way for ingress and egress, for the necessary purpose, over and across the lands or mining-claims (patented or otherwise) of others, as hereinafter prescribed.

SEC. 2. Whenever any such mine or mining-claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch to convey the water thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or a tunnel thereto, which road, ditch, cut, flume, shaft, or tunnel shall necessarily pass over, under, through, or across any lands or mining-claim owned or occupied by others, either under a patent from the United States or otherwise, then shall such first-mentioned owner or owners be entitled to a right of way for such road, ditch, cut, flume, shaft, or tunnel over, under, through, and across such other lands or mining-claims, upon compliance with the provisions of this act.

NOTE.—Section 2 of this act was amended, and new section 2 provided by the act approved January 7, 1881 (Gen. Laws, 1880-'81, p. 266).



SEC. 3. Whenever the owner or owners of any mine or mining-claims shall desire to work the same, and it is necessary, to enable him or them to do so successfully and conveniently, that he or they should have a right of way for any of the purposes mentioned in the foregoing sections, and if such right of way shall not have been acquired by agreement between him or them and the claimants or owners of the lands or claims over, under, across, and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the district court of the territory of Idaho, within and for the county in which such right of way, or some part thereof, sought to be enforced is situated, or to which such county is attached for judicial purposes, a petition praying that such right of way be awarded to him or them. Such petition shall be verified, and contain a particular description of the character and extent of the right sought, a description of the mine or claims of the petitioner, and the claim or claims and the lands to be affected by such right or privileges, with the names of the occupants or owners thereof. It may also set forth any tender or offer hereinafter mentioned, and shall demand the relief sought.

SEC. 4. Upon the receipt of such petition and filing thereof with the clerk of such court, the judge shall direct a citation to be issued, under the seal of such court, to the owners named in the petition of mining-claims and lands to be affected by the proceedings, requiring them, and each of them, to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for; such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

SEC. 5. Upon the return day of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties, and if upon such hearing he is satisfied that the claims of the petitioners can only be conveniently worked by means of the privilege prayed for, he shall make an order adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners, who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order.

SEC. 6. The commissioners so appointed shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed without unreasonable delay to examine the premises, and shall assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them; and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person.

SEC. 7. For good cause shown, the judge may set aside the report of such commissioners, and appoint three other commissioners, whose duties shall be the same as above mentioned.

SEC. 8. Upon the payment of the sum assessed as damages, as aforesaid, to the persons to whom it shall be awarded, or a tender thereof to them, then the person or persons petitioning, as aforesaid, shall be entitled to the right of way as prayed for in their or his petition, and may immediately proceed to occupy the same and erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

SEC. 9. Appeals from the assessment of damages made by the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten days after the filing of the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summons are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made a bond, with sureties to be approved by the clerk, in the amount of the assessment appealed from, in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee and abide any judgment that may be rendered in the cause.

SEC. 10. Appeals shall bring before the appellate court only the property and the amount of damages, and may be tried by the court or before a jury as other cases in the court.

SEC. 11. The prosecution of any appeal shall not hinder, delay, or prevent the appellee from exercising all the rights and privileges mentioned in section eight of this act: *Provided*, That the appellee shall file with the clerk of the court in which the appeal is pending a bond, with sufficient sureties to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action.

SEC. 12. If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs.

SEC. 13. The costs and expenses of proceedings under the provisions of this act, except as herein otherwise provided, shall be paid by the party making the application: *Provided, however*, That if the applicant shall, before the commencement of such proceedings, have tendered to the parties owning or occupying the lands or mining-claims a sum equal to or more than the amount of damages recovered by the defendant or defendants, then all the costs and expenses shall be paid by the party or parties owning the lands or claims affected by such right of way, and who appeared and resisted the claim of the applicants thereto.

SEC. 14. This act to be in force and take effect from and after its passage: *Provided*, That this bill shall not apply to the counties of Bois , Idaho, Nez Perc , and Shoshone.

AN ACT to encourage agriculture and manufactures, and to provide a right of way for canals, water ditches, etc. (Approved January 12, 1877; Sess. Laws, 1876-'77, p. 54.)

SECTION 1. Any person or persons who shall own or occupy lands in this territory shall have the right of way across the lands of any other person or persons for the purpose of conveying water by ditches or flumes on his or their lands for agricultural, mining, milling, or manufacturing purposes, by complying with the provisions of this act.

SEC. 2. The person or persons desiring the right of way across the lands of any other person or persons shall pay to such person or persons owning or occupying such lands such compensation therefor as may be mutually agreed upon by the parties interested, and in case the parties cannot agree, each party shall appoint one arbitrator, and in case either party shall neglect or refuse to appoint an arbitrator for the period of three days after written notice has been served on the party so refusing, requiring him or them to make such appointment, then it shall be lawful and shall be the duty of the district court of the county wherein the right of way is claimed, or the judge thereof, to appoint one arbitrator for the party so refusing, and the two arbitrators appointed as aforesaid shall select a third arbitrator. The arbitrators so appointed and selected shall appraise the value of the lands to be used for such canal, or for such ditching or fluming purposes, and shall hear and determine all questions of damages arising from the taking and use thereof, and assess the sum or amount to be paid for the said right of way. Before proceeding to appraise said lands or determine the damages for the taking thereof, the said arbitrators shall make and subscribe an oath that they will faithfully and honestly perform the duties of their appointment. After performing their duties aforesaid, the said arbitrators shall make their report to the district court of the said county, and the same shall be confirmed or set aside for cause shown, and if set aside, new arbitrators shall be appointed in the same manner as is hereinbefore prescribed, who shall proceed in like manner; and as soon as any award under the provisions of this act shall be affirmed by said district court, it shall have the effect of a judgment, and execution or any other process necessary to enforce the same may be issued by said court or by the clerk thereof. The report of the arbitrators aforesaid to the district court shall be in writing, and shall designate the line, course, and direction of the proposed canal, ditch, or flume for which a right of way is claimed.

SEC. 3. Upon payment of the damages assessed or awarded as aforesaid to the person or persons entitled thereto, the person or persons awarded the right of way may construct the canal, ditch, or flume authorized by the said award.

SEC. 4. All persons availing themselves of the benefits of this act shall construct and keep in good repair a sufficient number of good and substantial bridges and causeways wherever any public roads or highways may cross the canals, ditches, or flumes aforesaid. Any such person or persons failing to do so shall be guilty of a misdemeanor, and shall be liable in a civil action for all damages which may accrue to any person on account thereof.

SEC. 5. The arbitrators appointed and acting under the provisions of this act shall each receive three dollars for each day's service rendered under this act, and the clerk of the district court shall receive such compensation as is allowed for similar services in other cases, all of which shall be paid by the party applying for the right of way: *Provided*, That nothing in this act shall apply to any mining locality.

SEC. 6. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

AN ACT relating to the recording of quartz-claims in Owyhee and Alturas counties, and fixing the fees thereof. (Approved January 15, 1875; Sess. Laws, 1876-'77, p. 108.)

SECTION 1. The county recorders of Owyhee and Alturas counties shall be allowed to charge the fees now allowed by law for recording quartz-claims: *Provided*, That when any quartz-claim exceeds in length six hundred feet he shall not be allowed to charge more than five dollars therefor.

SEC. 2. This act to be in force from and after its passage.

NOTE.—This act was repealed by "An act relating to the location and recording of mining-claims", approved February 10, 1881 (Gen. Laws, 1880-'81, p. 262).

AN ACT supplemental to and amendatory of an act entitled "An act relating to the discovery of gold and silver bearing quartz-lodes, and of the manner of their location". (Approved January 4, 1877; Sess. Laws, 1876-'77, p. 20.)

SECTION 1. That an act entitled "An act relating to the discovery of gold and silver bearing quartz-lodes, and of the manner of their location", approved January the 12, A. D. 1875, be, and the same is hereby, amended by adding the following supplementary sections:

"SEC. 15. In mining districts distant thirty miles or more from the county-seat of the county in which such district is or may be situated, it shall be lawful for the county recorder to appoint, and he is hereby required on the application of five adult male citizens of such district to appoint, a resident deputy recorder, whose duties shall be as follows: To receive for record all notices of the location of quartz-claims, and enter the same in a book kept by him in said district for that purpose. That said deputy recorder is hereby authorized to administer the oath

required by law to be taken by the person or persons for whom such record shall be made, and enter a copy of the same on his book of records.

"SEC. 16. That said deputy recorder shall, at least once in six months, transmit to the county recorder a certified copy or transcript of all mining records made by him (not previously transmitted), and shall also transmit the original notices from which such records were made, and it shall be lawful for such deputy recorder to retain for his own use and benefit one-half the fees now allowed by law to county recorders for recording mining-claims, paying over the remaining half to the county recorder.

"SEC. 17. It shall be the duty of the county recorder, when such transcript shall have been received by him, to enter the same in the proper book of records for mining-claims, and place on file the original notices, as well as the transcript of the record forwarded by the deputy recorder.

"SEC. 18. The deputy recorders provided for in this act shall not by virtue of this act be authorized to perform any other than the special duties herein provided for."

SEC. 2. All laws in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

NOTE.—The act which is hereby amended was not continued in force by the revised laws of Idaho, 1874-'75. This act was repealed by "An act relating to the location and recording of mining-claims", approved February 10, 1881 (Gen. Laws, 1880-'81, p. 262).

AN ACT relating to the discovery of gold and silver quartz-lodes in Lemhi county, and the manner of their location. (Approved January 9, 1877; Sess. Laws, 1876-'77, p. 75.)

SECTION 1. That any person or persons who may hereafter discover any quartz lead or lode within the boundary of Lemhi county, in this territory, shall locate and represent the same in accordance with the act of Congress entitled "An act to promote the development of the mineral resources of the United States", approved May 10th, 1872.

SEC. 2. All quartz-claims hereafter located in the county of Lemhi shall be recorded in the recorder's office of said county, by filing with the recorder a copy of the notice placed on the lead or lode, or a similar notice, within ten days after the location of such lead or lode, and the recorder shall record the same in a book kept for that purpose, called "the book of quartz-claims", to which there shall be full and complete duplicate index kept by the recorder, and the recorder shall be entitled to receive a fee of twenty-five cents for filing each notice, one dollar for each claim recorded, and twenty-five cents for indorsing each name in the notice recorded: *Provided*, That if said lead or lode be more than thirty miles from the county seat of said county, then the time for recording the same may extend to twenty days; and all persons recording any claims shall take an oath that said claim has not heretofore been located according to law, or, if so located, the said claim has been abandoned or forfeited by non-fulfillment of the requirements of law; and the county recorder, or any justice of the peace, or any other officer of the county by law authorized, may administer said oath, which shall be recorded with the notice of location: *Provided*, That when two or more persons may join in the location of a claim, the oath of one of the locators shall be sufficient.

SEC. 3. Any person or persons who may desire to run a tunnel into any hill or mountain for the purpose of discovering or working mineral-bearing-quartz leads or lodes shall be entitled to hold three hundred feet square at the entrance of said tunnel for building, dumping, or other necessary purposes: *Provided*, That nothing in this act shall be so construed as to invalidate the vested rights of other persons.

SEC. 4. The manner of locating tunnels shall be by a notice at the entrance of the tunnel, describing the line of the tunnel and of the dumping-ground, which notice shall be signed by all parties interested, and a similar notice shall be recorded in the office of the county recorder, and the recorder shall receive a fee of two dollars for recording said notice.

SEC. 5. Any person or persons who shall willfully and maliciously tear down or destroy any notice posted on quartz-claims or tunnels, or tear up or destroy any stake, tree, or monument marking quartz-claims or tunnels, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars and not exceeding one hundred dollars, and by not less than thirty days' imprisonment and not more than six months in the county jail, or by both such fine and imprisonment; and all justices of the peace in said Lemhi county shall have jurisdiction of such offenses.

SEC. 6. All quartz-claims located in Lemhi county subsequent to the tenth day of May, 1872, in accordance with the mineral laws of the United States, are hereby exempted from the provisions of all the laws regulating the discovery, location, and representation of quartz-claims in this territory.

SEC. 7. An act entitled "An act relating to the discovery of gold and silver quartz-lodes, and the manner of their location", approved January 12th, 1866, so far as its provisions apply to Lemhi county, be, and the same is hereby, repealed.

SEC. 8. This act shall take effect and be in force from and after its passage.

NOTE.—This act was repealed by "An act relating to the location and recording of mining-claims", approved February 10, 1881 (Gen. Laws, 1880-'81, p. 262).

AN ACT to amend an act entitled "An act relating to the discovery of gold and silver quartz-lodes in Lemhi county, and the manner of their location". (Sess. Laws, 1879, p. 59.)

SECTION 1. That an act entitled "An act relating to the discovery of gold and silver quartz-lodes in Lemhi county, and the manner of their location", approved January 9th, 1877, be, and the same is hereby, amended:

"SEC. 2. Lines 8, 9, 10, and 11 to read as follows: That the recorder shall be entitled to receive the sum of three dollars for each and every claim so recorded".

SEC. 2. This act shall take effect and be in force from and after its passage.

NOTE.—This act was repealed by "An act relating to the location and recording of mining-claims", approved February 10, 1881. (Gen. Laws, 1880-'81, p. 262).

AN ACT to repeal an act relating to quartz-claims in the first judicial district, etc. (Approved February 17, 1879; Sess. Laws, 1879, p. 48.)

SECTION 1. That an act entitled "An act relative to quartz-claims in the first judicial district of this territory, embracing the counties of Idaho, Nez Percé, Shoshone, Lahtoh, and Kootenai", approved January 12th, 1866, be, and the same is hereby, repealed.

SEC. 2. This act to take effect and be in force from and after its passage.

AN ACT to repeal the second section of an act entitled "An act relating to the discovery of gold and silver quartz-lodes, and of the manner of their location", approved January 12, 1866. (Approved February 21, 1879; Sess. Laws, 1879, p. 29.)

SECTION 1. That the second section of an act entitled "An act relating to the discovery of gold and silver quartz-lodes, and of the manner of their location", approved January 12th, 1866, be, and the same is hereby, repealed.

SEC. 2. That all locations hereafter made shall be made in conformity with, and pursuant to, the provisions of the act of Congress of May 10th, 1872: *Provided*, That all locations made prior to the passage of this act, in accordance with the act of Congress of May 10th, 1872, are hereby legalized and confirmed: *Provided further*, That nothing in this act shall be so construed as to invalidate the vested rights of discoverers and locators.

SEC. 3. This act to take effect and be in force from after its passage.

NOTE.—This act was repealed by "An act relating to the location and recording of mining-claims", approved February 10, 1881 (Gen. Laws, 1880-'81, p. 262).

## GENERAL LAWS OF 1880-1881: CODE OF CIVIL PROCEDURE.

AN ACT to establish a code of civil procedure for Idaho territory, p 1.

### PRELIMINARY PROVISIONS.

SECTION 1. This act takes effect at twelve o'clock, noon, on the twenty-first day of May, eighteen hundred and eighty-one, and shall be known, and may be cited, as the Code of Civil Procedure.

SEC. 2. No part of it is retroactive, unless expressly so declared.

SEC. 3. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to this code. The code establishes the law of this territory respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.

SEC. 4. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

SEC. 440. The following property is exempt from execution, except as herein otherwise specially provided:

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5. The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also, his shovels, pipes, hose, windlass, derrick, cars, pumps, and tools, not exceeding in value two hundred dollars.

### CHAP. XLVIII.—ENFORCEMENT OF LIENS.

Sec.

815. Liens of mechanics and others.

816. Subcontractors and others.

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819. Effect of liens.

820. Claim of lien.

Sec.

821. Liens upon two or more pieces of property, each to be designated.

822. Claim to be recorded.

823. Time of continuance.

824. Subcontractors.

[The residue of above chapter relates to matters other than mines, and to the enforcement of liens, and is not essential to the purpose of this quotation, viz, the existence of the lien.]

SECTION 815. Every person performing labor upon, or furnishing materials to be used in, the construction, alteration, or repair of any mining-claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad,

wagon-road, aqueduct to create hydraulic power, or any other structure, or who performs labor in any mining-claim, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the amount which the owner would be otherwise liable to pay.

SEC. 816. Any subcontractor, material-man, laborer, or other person, performing labor or furnishing materials for a contractor, who is entitled to a lien under the provisions of the last section may, at any time, serve upon the owner, or his agent, or the person employing the contractor, written notice of the amount due him for such labor or materials, and such subcontractor, material-man, laborer, or other person may have a lien for such amount, but not exceeding the amount, then or thereafter due such contractor from such owner or person employing him under the contract. And any person furnishing materials or performing labor for a subcontractor may, by like notice to the contractor, be subrogated to the rights of such subcontractor.

SEC. 819. 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 lienholder 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.

SEC. 820. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within thirty days after the completion of any building, improvement, or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining-claim, file for record with the county recorder of the county in which such property, or some part thereof, is situated, 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, and 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.

SEC. 821. 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, mortgage, or otherwise upon either of such buildings or other improvements, or upon the land upon which the same are situated.

SEC. 822. 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.

SEC. 823. No lien provided for in this chapter binds any building, mining-claim, improvement, or structure for a longer period than ninety days 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; 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.

SEC. 824. All persons entitled to liens on the structure or improvement, except those who contracted with the owner thereof, are subcontractors, and the court in the judgment must direct the amount due subcontractors to be paid out of the proceeds of sales before any part of such proceeds are paid to the contractor.

CHAP. XXXIII.—ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

SECTION 486. In actions respecting mining-claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this territory, must govern the decision of the action.

CHAP. L.—VOLUNTARY DISSOLUTION OF CORPORATIONS.

Sec.  
844. How dissolved.  
845. Application, what to contain.  
846. Application, how signed and verified.  
847. Filing application and publication of notice.

Sec.  
848. Objections may be filed.  
849. Hearing of application.  
850. Judgment roll and appeals.

SECTION 844. A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

SEC. 845. The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members, called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members.
2. That all claims and demands against the corporation have been satisfied and discharged.

SEC. 846. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

SEC. 847. If the judge is satisfied that the application is in conformity with this chapter, he must order it to be filed with the clerk, and that the clerk give not less than thirty days' notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisements posted up in three of the principal public places in the county.

SEC. 848. At any time before the expiration of the time of publication any person may file his objections to the application.

SEC. 849. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice if no objections have been filed, proceed to hear and determine the application; and if all the statements herein made are shown to be true, he must declare the corporation dissolved.

SEC. 850. The application, notices, and proof of publication, objections (if any), and declaration of dissolution constitute the judgment roll, and from the judgment an appeal may be taken as from judgments of the county courts.

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CHAP. X.—OF THE TIME OF COMMENCING CIVIL ACTIONS.

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 SECTION 143. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within five years before the commencement of the action; and this section includes possessory rights to lands and mining-claims.  
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SEC. 146. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for five years before the commencement of the action.

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AN ACT relating to the location and recording of mining-claims. (Approved February 10, 1881; Gen. Laws, 1880-'81, p. 262.)

SECTION 1. The mining-claims hereafter located, upon veins or lodes of quartz or other rock in place bearing any of the precious or other metals mentioned in section 2320 of the Revised Statutes of the United States, may extend to three hundred (300) feet on each side of the middle of the vein or lode: *Provided*, That when the locators have set the stakes, posts, or monuments described in the next section, to indicate the line of the vein, ledge, or lode, such stakes, posts, or monuments shall be taken, for the purposes of said location, to mark correctly the line thereof, and such line shall not be afterwards changed so as to affect the rights acquired or interfere with any locations made subsequently thereto.

SEC. 2. The locators of any mining-claim shall, at the time of making the location, place a substantial stake or post, not less than four (4) inches square or in diameter, at each end of the ground claimed, and as near as practicable along the course or line of the vein or ledge, and also a similar stake or post at each corner of the location. Such stakes or posts shall be at least four (4) feet high above the surface, and shall each be marked distinctly with the name of the claim. The notice of location hereinafter mentioned shall be conspicuously attached to one of said center end-posts, so that the same may be easily read; or it shall be conspicuously posted in like manner at the point of discovery and prospecting work on the claim. Where stakes or posts cannot be conveniently had, well-built monuments of stone, of the like height above the surface, will answer the purpose of stakes or posts, but the notice must be so placed on the side of such monument as to be readily seen.

SEC. 3. The notice shall contain the date of the location, the names of the locators, the name of the claim, ledge, or lode, the quantity in feet claimed along the ledge or lode, the width claimed from the middle of the vein, and shall also give such a description of the locality of the claim, by reference to natural land-marks or fixed objects and contiguous claims, if there be any, as to render the situation of the same reasonably certain from the letter of the notice itself.

SEC. 4. Every claim shall be recorded, within fifteen (15) days from the time of the posting of the notice, in the district in which the same is situated or at the nearest office to the claim. For the convenience of prospectors and locators the county recorders of the several counties shall appoint a deputy at any place where he may deem it



necessary, and at all places more than ten (10) miles distant from an existing office, whenever ten or more mining locators interested shall petition for the appointment of such deputy. Upon the failure of any recorder to make the appointment of a deputy for ten days after a petition in writing shall have been presented to him, the resident miners at such district may appoint temporarily one of their number to act as recorder of the district, whose records shall be as valid as if made by a deputy, and whose records shall be entered by the recorder as hereinafter required: *Provided*, That whenever at any time afterwards the recorder shall appoint a deputy for such district or place, the authority of the person elected by the resident miners shall cease.

SEC. 5. At the time of presenting a notice of location for record, or within five (5) days thereafter, one of the locators named in the same shall appear before the deputy and make and subscribe an affidavit in writing, on or attached to the notice to be administered by said deputy, substantially in the following form, to wit:

TERRITORY OF IDAHO,

County of \_\_\_\_\_, ss:

I, \_\_\_\_\_, do solemnly swear that I am acquainted with the mining ground described in the notice of location herewith, called the \_\_\_\_\_ ledge, lode, or claim, and that the ground and claim therein described, or any part thereof, has not, to the best of my knowledge and belief, been heretofore located according to the laws of the United States and of this territory; or, if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply, in respect thereto, with the requirements of said laws.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

A. B., —.

SEC. 6. The notice herein required to be recorded is a copy of the notice placed upon the claim, or substantially a copy of the same. It shall be recorded by the deputy appointed for the district, or the person elected for that purpose, as above provided (when the legal fee therefor shall be tendered), in a book to be kept for that purpose. Said book shall be indexed, with the names of all locators arranged in alphabetical order, according to the first letter of the family or surname of each. The fee to be tendered for making such record, administering the oath to the locator, and certifying the same, for indexing the names appearing upon the notice, and to include the recording of the notice by the recorder, as hereinafter required, and the indexing by said recorder shall be three (\$3) dollars, which fee shall be equally divided between the recorder and the deputy, or person acting under an election as hereinabove provided, and no other or additional sum of money shall be demanded or received by either or any of them for any services connected with the recording of any notice of location made pursuant to the requirements of this act.

SEC. 7. The deputy recorder of mining-claims of each district, or the person elected, as hereinabove provided, to make the record in case of the failure of the recorder to appoint a deputy, shall, at least once in each month, transmit to the recorder, at the county-seat, all the notices of location filed with him for record and not previously transmitted, which shall at once be recorded by said recorder in a book to be kept in his office, and be known as the book of mining-claims. The names of all persons appearing in every notice of location shall be indexed by the recorder, said names being arranged in said index in alphabetical order according to the first letter of the surname of said locators.

SEC. 8. The deputy recorders provided for in this act shall not, by virtue of the provisions hereof, be authorized to perform any other than the special duties herein specified. They shall keep an official seal, and the records in their custody shall be public records, but the seal of a deputy recorder shall not be attached to any paper except for the purpose of authenticating certificates attached to transcripts of the records in his custody as deputy recorder.

SEC. 9. Any person who shall willfully and maliciously tear or take down or destroy any notice posted on any claim, or remove or take down any stake, post, or monument placed or erected for the purpose of marking or indicating any mining-claim or the line of the vein, ledge, or lode, with the intent to destroy or impair the evidence of such location, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any justice of the peace of the county, may be punished by fine in any sum not exceeding one hundred (\$100) dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

SEC. 10. An act relating to the discovery of gold and silver quartz-lodes, and the manner of their location, approved January 12, 1866; an act supplemental to and amendatory of said act, approved January 4, 1877; an act relating to the recording of quartz-claims in Owyhee and Alturas counties, and fixing the fees thereof, approved January 15, 1875; an act relating to the discovery of gold and silver quartz-lodes in Lemhi county, and the manner of their location, approved January 9, 1877; an act relating to the discovery of gold and silver quartz-lodes in Lemhi county, and the manner of their location, approved February 21, 1879, and all other acts and parts of acts in conflict or inconsistent with the provisions of this act, are hereby repealed.

SEC. 11. This act shall take effect and be in force from and after the passage thereof.

AN ACT to amend an act entitled "An act concerning rights of way, easements, and other necessary means for the development of mines", approved January 12th, 1877. (Approved January 7, 1881; Gen. Laws, 1880-'81, p. 266.)

SECTION 1. Section two of the act concerning rights of way, easements, and other necessary means for the development of mines, approved January 12th, 1877, is amended to read as follows:

"SEC. 2. Whenever any mine or mining-claim shall be so situated that, for the more convenient enjoyment of the same, a road, railroad, or tramway therefrom, or a ditch or canal to convey water thereto, or a ditch, flume, cut, or tunnel to drain or convey the water or tailings therefrom, or a tunnel or shaft may be necessary for the better working thereof, which road, railroad, tramway, ditch, canal, flume, cut, shaft, or tunnel may require the use or occupancy of lands or mining ground owned, occupied, or possessed by others than the person or persons or body corporate requiring an easement for any of the purposes described, then shall the owner's of the mine or mining-claim first above mentioned be entitled to a right of way, entry, and possession for all the uses and privileges for such road, railroad, tramway, ditch, canal, flume, cut, shaft, or tunnel in, upon, through, and across such other lands or mining-claims, upon compliance with the provisions of this act".

SEC. 2. This act shall take effect from and after its passage.

AN ACT to regulate the right to the use of water for mining, agricultural, manufacturing, and other purposes. (Approved February 10 1881; Gen. Laws, 1880-'81, p. 267.)

#### RIGHT TO USE OF WATER.

SECTION 1. The right to the use of water flowing in a river, creek, cañon, ravine, or other stream may be acquired by appropriation, and as between appropriations priority in time shall, subject to the provisions of this act, secure the priority of right.

SEC. 2. The appropriation must be in good faith for some useful and beneficial purpose, and when once perfected may be converted or changed to any other beneficial use than that originally designated or for which it may have been employed.

SEC. 3. The appropriator, or his or their successors in interest, may change the place of diversion, if the rights acquired by others are not thereby interfered with and no injury to others therefrom results, and may also extend any ditch, canal, flume, pipe, or other conduit to points or places beyond such as may have been designated or first used, saving the rights which may have accrued prior to such extension.

SEC. 4. A person, company, or corporation desiring to appropriate water must post a notice in writing in as conspicuous a place as possible at the point of intended diversion, stating therein: First, the quantity of water which is intended to be claimed and diverted, giving the number of inches, measured under a four-inch pressure, and accurately describing the point of its diversion. Second, the purpose for which the same is claimed and intended to be used, and the point or place of such intended use. Third, the means which are designed to be employed for diverting and conducting such waters, and the size or dimensions of the ditch, canal, pipe, flume, or other conduit therefor. A copy of the notice must, within the time allowed in case of a mining-claim, be furnished for record to the officer of the county or district whose duty it may be to make record of mining-claims; which said officer shall be entitled to the same fees for recording such notice as may be fixed by law for recording notice of a mining-claim: *Provided*, That when the notice of such claim to water is accompanied by a descriptive survey of the proposed work, or by a map of the same, such officer shall be entitled to the same fees as shall be fixed by law for recording deeds of conveyance.

SEC. 5. Within sixty days after the notice is posted, the claimant, or his or their successors in interest, must commence the making, digging, or constructing of the ditch, canal, flume, or other conduit by means of which it is intended to divert and conduct the waters claimed; and the work for the complete diversion and conducting of said waters shall be prosecuted diligently and without unnecessary interruption: *Provided*, That when such work cannot be carried on by reason of unavoidable natural causes, such as the state of the weather or the action of the elements, the same shall be resumed as soon as practicable after such causes of delay are removed.

SEC. 6. By "complete diversion", as used in the last section, is meant the conducting of the waters claimed to the place of intended use as described in the notice, or to such other place as may have been adopted, and an actual beneficial use thereof made.

SEC. 7. By a compliance with the above conditions and requirements the appropriation is perfected, and the right to the use of the waters claimed, which the ditch, canal, flume, or other conduit is capable of conducting, is hereby declared to relate back to the time of the posting of notice of claim: *Provided*, That nothing in this section contained shall be so construed as to render any person or party liable to damages or to make compensation to any appropriator for any waters used prior to the time of a "complete diversion" thereof, as defined in the last preceding section.

SEC. 8. All ditches, canals, and other works heretofore made, constructed, or provided, and by means of which the waters of any stream have been diverted and applied to any beneficial use, shall be taken to have secured the right to the waters claimed to the extent of the quantity which said works are capable of conducting, and not exceeding the quantity claimed, without regard to, or compliance with, the requirements of this act.

SEC. 9. In case where any person, company, or corporation have heretofore made claim to divert the waters of any stream, and the same has not been forfeited or abandoned, and have not cut, excavated, made, or constructed the necessary ditch, canal, flume, or other conduit to carry such waters and apply the same to a beneficial use, such claimant must, within four months from and after the date of the approval of this act, commence work in pursuance of the requirements hereof, and carry the same to completion, or at the expiration of the said time, or upon failure to prosecute the work in the manner herein required, such claim shall cease to be of any validity as the foundation of a right to the waters of any such stream.

SEC. 10. All persons, companies, and corporations owning or claiming any lands situated on the banks or in the vicinity of any stream shall be entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

SEC. 11. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal, or other conduit on his own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants shall be entitled to a right of way through the lands of others for the purposes of irrigation: *Provided*, That in the making, constructing, keeping up, and maintenance of such ditch, canal, or conduit through the lands of others, the person, company, or corporation proceeding under this section, and those succeeding to the interests of such person, company, or corporation, shall keep such ditch, canal, or other conduit in good repair, and shall also be liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages which may be occasioned by the overflow thereof or result from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

SEC. 12. In case of the refusal of the owners or claimants of any lands through which such ditch, canal, or other works are proposed to be made or constructed to allow the passage thereof, the persons, company, or corporation desiring the right of way may present to the county commissioners of the county a petition describing the lands to be crossed, the size of the ditch, canal, or works, the quantity of land required to be taken, and setting forth the names of the owners or parties interested in the lands to be crossed, and praying for the appointment of three appraisers to ascertain the compensation to be made to such owners or parties interested. Upon the filing of said petition the county commissioners shall give notice, by publication in a newspaper, if there be any printed in the county, or, if there be none, by posting such notice in three of the most public places in the county, one of which shall be at the county-seat, that, at a time and place specified in said notice, said petition will be heard and such appraisers appointed, unless good cause be shown by the parties adversely interested why the said petition should be denied. Said notice shall be published or posted for not less than thirty days prior to the hearing thereon, and the expenses of the publication or posting of the same shall be defrayed by the petitioners.

SEC. 13. The said appraisers shall, before entering on the duties of their office, take an oath to faithfully and impartially perform the duties as such appraisers and make a true and just award of the amount of the compensation to be paid for the right of way-over and use of the lands to be crossed by such ditch, canal, or other conduit. They shall hear the allegations and proofs offered by the respective parties, and, after viewing the lands and premises, shall ascertain and certify the compensation which, in their judgment, it is just and proper to make to the parties owning or interested in the lands to be crossed for the use of the same, and for damages, if any, on account of injury to other portions of the tract of land of any owner or interested party, after making allowance and deduction for real and direct benefits which such owner or party interested will derive from the making of such ditch, canal, or other works. The appraisers, or a majority of them, shall subscribe such certificate, and the same shall be recorded in the office of the county recorder, and upon the payment of the compensation and damages, if any, or the tender thereof to the proper parties, or in the absence of such parties from the county, then upon deposit of the amount in the county treasury to the credit of the said party, the persons, company, or corporations petitioners shall have the right of entry upon and of way for the proposed ditch, canal, or other works.

SEC. 14. All persons, companies, and corporations owning or having the possessory title or right to lands adjacent to any stream shall have the right to place in the channel of, or upon banks or margin of the same, rams or other machines for the purpose of raising the waters thereof to a level above the banks requisite for the flow thereof to and upon such adjacent lands; and the right of way over and across the lands of others for conducting said waters may be acquired in the manner prescribed in the last two sections.

SEC. 15. Where the owners of any spring, or the appropriators thereof, or of any stream, may desire to conduct the waters thereof to any lands for purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object it may be necessary to cross with ditches, flumes, or other conduit the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right of way over and across the lands of others for conducting said water may be acquired in the manner prescribed in sections 12 and 13 of this act.

SEC. 16. The owners or constructors of ditches, canals, works, or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works, or aqueducts be upon the lands owned or claimed by them or upon other lands, shall carefully keep and

maintain the same, and the embankments, flumes, or other conduit by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others.

SEC. 17. Nothing in this act contained shall be so construed as to interfere with or impair the rights to water appropriated and acquired prior to the passage of this act; but this reservation in behalf of existing rights shall not exempt such appropriators from liability as provided in the last section.

SEC. 18. In case the volume of water in any stream shall not be sufficient to supply continually the wants for irrigating purposes of the owners or proprietors of land in any district or neighborhood in which customs exist for distributing the waters amongst such owners or proprietors, under the direction or supervision of persons recognized by the community interested to have authority therein, the waters diverted shall, in such case, be held to be a common right in those accustomed to a participation in the use and enjoyment of such distribution, and such customs shall be upheld in all courts as conferring such common right in the same: *Provided*, This section shall not be construed to affect any prior vested rights.

SEC. 19. In case any person, company, or corporation shall have constructed a ditch for the purpose of directing the water of any river, creek, cañon, ravine, or spring, for the purpose of selling the water thereof for irrigating purposes, the owners or cultivators of land along the line of and covered by said ditch or canal shall be entitled to, and have the right to, the use of water from said ditch or canal for the purpose of irrigating said land so owned or cultivated in the following order: First, all persons through whose land said ditch or canal runs shall be entitled to the use of the water thereof in the order of their location along the line of said ditch or canal. Second, after those through whose land the ditch or canal runs, those upon either side of the line of the ditch or canal shall be entitled to the use of the water thereof; those equally distant from the line of said ditch or canal shall be entitled to priority in the order of their location along the line of said ditch or canal: *Provided always*, That the owners or cultivators of such lands shall pay the usual and customary rates for the use of said water. And whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it shall be unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal. And it is hereby made the duty of the owner or owners of any such ditch or canal to keep the same in good repair, and to cause the water to flow through said ditch or canal to the extent of its capacity, provided so much may be needed, during the entire time that water may be necessary for irrigating purposes: *And provided further*, That the river, creek, cañon, ravine, or spring from which the water is taken furnishes an amount of water sufficient for such purpose, subject to the appropriation of the owner or owners of such ditch or canal. For a failure to cause the water to flow as aforesaid the owner or owners or lessees of any such ditch shall be personally liable to any one for any damage resulting from such failure, and in addition to such personal liability, such damages shall be a lien upon such ditch or canal, which lien shall continue in force until such damages are paid. No person entitled to the use of water from any such ditch or canal shall, under any circumstances, use more water than good husbandry shall require for the crop or crops that he shall cultivate, and any person using an excess of water shall be liable to the owner or owners of such ditch or canal for the value of such excess; and in addition thereto shall be liable to all damages sustained by any other person who would have been entitled to the use of such excess of water, as fixed by this section.

SEC. 20. This act shall take effect and be in force from and after its passage.

## M O N T A N A .

### REVISED STATUTES TO FEBRUARY 21, 1879.

#### CHAP. XLV.—ART. I.—QUARTZ-LODES.

Sec.

873. Discoverer to record declaratory statement.

874. What to entitle party to record.

875. Extent of location.

Sec.

876. Extent of lodes discovered and recorded prior to passage.

877. Penalty for removing stakes or destroying notice.

SECTION 873. Any person or persons who shall hereafter discover any mining-claim, upon any vein or lode bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, shall within twenty days thereafter make and file for record in the office of the recorder of the county in which said discovery is made a declaratory statement thereof, in writing, on oath, before some person authorized by law to administer oaths, describing such claim in the manner provided by the laws of the United States.

SEC. 874. That in order to entitle any person or persons to record in the county recorder's office of the proper county any lead, lode, or ledge, there shall first be discovered on said lode, lead, or ledge a vein or crevice of quartz or ore with at least one well-defined wall.

SEC. 875. Claims on any lead, lode, or ledge bearing gold, silver, cinnabar, lead, tin, copper, or other valuable

deposits, hereafter discovered, shall consist of not more than fifteen hundred linear feet along the lead, lode, or ledge, and not more than three hundred feet and not less than twenty-five feet on each side from the center of said lead, lode, or ledge, for working purposes: *Provided*, That the provisions of this article shall not be so construed as to include claims recorded prior to the passage of this article.

SEC. 876. All lode-claims heretofore discovered and recorded pursuant to the law, and the possessory title to which shall have been preserved according to law, shall entitle the owner or owners thereof to surface-ground along the course of the vein three hundred feet on each side from the center of said vein: *Provided*, That such width shall not be permitted to interfere with any vested or possessory rights of any person or persons, corporation or corporations, which have intervened and have been preserved to the time of the taking effect of this article, but parties desiring to avail themselves hereof shall so signify by a record which shall show that they so elect, or if they so desire, they may limit the surface-ground on each side of the center of the vein to any width not less than twenty-five feet.

SEC. 877. Any person who shall remove any stake or monument placed on any mining-claim, or who shall obliterate, deface, or destroy any notice placed thereon, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court.

NOTE.—Act February 11, 1876 (Sess. Laws, 1876, p. 127).

#### ART. II.—Mining tunnels.

Sec.  
878. Location of tunnel to be recorded.  
879. Persons pre-empting tunnel to have 300 feet on each side.  
880. Right of way through other claims.

Sec.  
881. To run one hundred feet on tunnel within one year.  
882. Pre-emptor's right for ore-yard.

SECTION 878. That if any person or persons shall locate a tunnel-claim for the purpose of discovery and mining, he or she shall record the same, specifying the place of commencement and the course thereof, with the names of the parties interested therein.

SEC. 879. That any person or persons so pre-empting any tunnel shall have the exclusive right to three hundred feet on each side from the center of said tunnel on any and all lodes that he or they may discover in the course of said tunnel: *Provided*, That none of said lodes, leads, or ledges were discovered and recorded previous to the pre-emption of said tunnel, in accordance with an act passed by the legislative assembly of the territory of Montana, entitled "An act relating to the discovery of gold and silver quartz leads, lodes, or ledges, and the manner of their location".

SEC. 880. That any person or persons who may work any tunnel or tunnels shall have the right of way through any and all lodes, leads, or ledges that may lie in the course of any of said tunnels: *Provided*, That all quartz, ore, or mineral taken from said tunnel from leads, lodes, or ledges belonging to parties other than the said tunnel company, shall be deposited on the surface by said tunnel company and belong to the original occupants or owners of said lead, lode, or ledge.

SEC. 881. That in order to hold any tunnel-claims to the use of themselves, their heirs, and assigns they shall, before the expiration of one year from the date of pre-emption, run to the distance or depth of one hundred feet on said tunnel.

SEC. 882. That any person or persons who shall pre-empt any tunnel-claim shall be entitled to three hundred feet on each side of the mouth of said tunnel for the purpose of a quartz or ore yard.

NOTE.—Act January 12, 1872 (Cod. Stats., 1871-'72, p. 524).

#### ART. III.—Mining-district records.

Sec.  
883. All mining-district records to become county records on being deposited in recorder's office.

Sec.  
884. Duty of district recorder to deposit records in county recorder's office.  
885. Penalty for refusal of county recorder to receive records.

SECTION 883. That all mining-district records of all lead, lode, ledge, ranch, water, or mill claims that are now or shall be deposited, within the next ninety days hereafter succeeding the passage of this article, in their respective county recorder's office, shall become a part and parcel of said county records, and shall be evidence in any court or courts of competent jurisdiction, and have the same force and effect as if such records had been recorded in the county recorder's office when first filed with the mining-district records.

SEC. 884. That it shall be the duty of all mining-district recorders to file any and all records pertaining to all lead, lode, ledge, ranch, water, and mill claims in their respective county recorder's office, and upon failure to do

so they shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

SEC. 885. That it shall be the duty of the county recorder, when any such district records are tendered him, to receive the same and place them on file in his office, for which he shall receive a fee of fifty cents, to be paid by the district recorder; and upon his refusal to receive said district records he shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

NOTE.—Act January 12, 1872 (Cod. Stats., 1871-'72, p. 525).

#### ART. IV.—*Rights of way for the development of mines.*

<p>Sec. 886. Right of way over and across the lands of others. 887. For convenience of working, owner of mining-claim to have right of way for ditch, tunnel, etc. 888. Petition to judge for right of way. 889. Citation to require appearance of parties. 890. Hearing of petition and order awarding right of way; appointment of commissioners to assess damages. 891. Commissioners to examine and report.</p>	<p>Sec. 892. Report may be set aside and other commissioners appointed. 893. Upon payment of damages awarded, petitioners entitled to right of way. 894. Appeals from assessment of damages. 895. Trial of appeal. 896. Rights of appellee upon giving bond. 897. When appellee to pay costs. 898. Costs on appeal; tender of payment of damages.</p>
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Whereas the Congress of the United States, by an act approved July 26, 1866, and an act amendatory thereto, approved July 9, 1870, has provided that the local legislatures of the several states and territories may provide rules for working mines, involving easements, drainage, and other necessary means to complete development of mines upon which patents shall be granted by the United States, in the absence of necessary legislation by Congress; and whereas there has been no legislation by Congress upon this subject: Therefore,

*Be it enacted by the legislative assembly of the territory of Montana,* SECTION 886. The proprietor, owner, or owners of mining-claims, whether patented under the laws of the United States or held under the local laws and customs of this territory, shall have a right of way for ingress and egress, for the necessary purposes, over and across the lands or mining-claims (patented or otherwise) of others, as hereinafter prescribed.

SEC. 887. Whenever any such mine or mining-claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch to convey the water thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or a tunnel thereto, which road, ditch, cut, flume, shaft, or tunnel shall necessarily pass over, under, through, or across any lands or mining-claim owned or occupied by others, either under a patent from the United States or otherwise, then shall such first-mentioned owner or owners be entitled to a right of way for such road, ditch, cut, flume, shaft, or tunnel over, under, through, and across such other lands or mining-claims, upon compliance with the provisions of this article.

SEC. 888. Whenever the owner or owners of any mine or mining-claim shall desire to work the same, and it is necessary, to enable him or them to do so successfully and conveniently, that he or they shall have a right of way for any of the purposes mentioned in the foregoing sections, and if such right of way shall not have been acquired by agreement between him or them, and the claimants or owners of the land or claims over, under, across, and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the district court of the territory of Montana within and for the county in which such right of way, or some part thereof, sought to be enforced is situated, or to which such county is attached for judicial purposes, a petition praying that such right of way be awarded to him or them. Such petition shall be verified, and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims and the lands to be affected by such right or privilege, with the names of the occupants or owners thereof. It may also set forth any tender or offer hereinafter mentioned, and shall demand the relief sought.

SEC. 889. Upon the receipt of such petition and filing thereof with the clerk of such court, the judge shall direct a citation to issue, under the seal of such court, to the owners named in the petition of mining-claims and lands to be affected by the proceedings, requiring them, and each of them, to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for; such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

SEC. 890. Upon the return day of the citation, or upon any day to which the hearing shall be adjourned, the



judge shall proceed to hear the allegations and proofs of the respective parties, and if upon such hearing he is satisfied that the claims of the petitioner can only be conveniently worked by means of the privilege prayed for, he shall make an order adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners, who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order.

SEC. 891. The commissioners so appointed shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed without unreasonable delay to examine the premises, and shall assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them; and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person.

SEC. 892. For good cause shown, the judge may set aside the report of such commissioners, and appoint three other commissioners, whose duties shall be the same as above mentioned.

SEC. 893. Upon the payment of the sum assessed as damages, as aforesaid, to the persons to whom it shall be awarded, or a tender thereof to them, then the person or persons petitioning, as aforesaid, shall be entitled to the right of way as prayed for in their or his petition, and may immediately proceed to occupy the same, and to erect thereon such works and structures, and make therein such excavations, as may be necessary to the use and enjoyment of the right of way so awarded.

SEC. 894. Appeals from the assessment of damages made by the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten days after the filing of the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summonses are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made a bond, with sureties to be approved by the clerk, in the amount of the assessment appealed from, in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee and abide any judgment that may be rendered in the cause.

SEC. 895. Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or before a jury as other cases in the court.

SEC. 896. The prosecution of any appeal shall not hinder, delay, or prevent the appellee from exercising all the rights and privileges mentioned in section 893 of this article: *Provided*, That the appellee shall file with the clerk of the court in which the appeal is pending a bond, with sufficient sureties to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action.

SEC. 897. If the appellant recover fifty-dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal; otherwise the appellant shall pay such costs.

SEC. 898. The costs and expenses of proceedings under the provisions of this article, except as herein otherwise provided, shall be paid by the party making the application: *Provided, however*, That if the applicant shall, before the commencement of such proceedings, have tendered to the parties owning or occupying the lands or mining-claims a sum equal to or more than the amount of damages recovered by the defendant or defendants, then all of the costs and expenses shall be paid by the party or parties owning the lands or mining-claims affected by such right of way, and who appealed and resisted the claim of the applicants thereto.

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• CHAP. III.—CODE OF CIVIL PROCEDURE.

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SECTION 363. In actions respecting mining-claims proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this territory, must govern the decision of the action.

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TITLE III.—CHAP. II.

SECTION 40. No action for the recovery of mining-claims (lode-claims excepted), or for recovery of possession thereof, shall be maintained, unless it appear that the plaintiff or his assigns was seized or possessed of such mining-claims within one year before the commencement of such action.

## CHAP. XV.—CORPORATIONS.

## ART. I.—Corporations for industrial or productive purposes.

- | Sec.   | Sec.   |
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| 244. Parties to sign and acknowledge a certificate in writing, setting forth terms of corporation. | 268. Trustees assenting, when personally liable.   |
| 245. Copy certified by secretary of the territory to be evidence; to have a corporate seal.        | 269. Treasurer to keep a book, with names of all stockholders; penalty for refusing inspection of books. |
| 246. Certificate may designate more than one place of business.                                    | 270. Persons owning 15 per cent. of capital stock may demand statement of treasurer.                     |
| 247. Certificate to state place of business outside of territory.                                  | 271. What certificate of ditch company to contain.   |
| 248. Notice of election; how elected, etc.   | 272. Priority of right to govern direction of water.   |
| 249. Election not held on day appointed not to dissolve corporation.                               | 273. Rates for water to be fixed by county commissioners.  |
| 250. How president designated, and to give security.   | 274. Company to keep banks of ditch in good order.   |
| 251. Trustees to demand subscription not exceeding 20 per cent.                                    | 275. What certificate of flume company to specify.   |
| 252. Powers of trustees.   | 276. What certificate of quartz company to specify.  |
| 253. Stock to be deemed personal property, and how transferred.                                    | 277. Tunnel company to have right of way.  |
| 254. Certificate deemed <i>prima-facie</i> evidence of incorporation.                              | 278. What certificate of telegraph company to specify.   |
| 255. Stockholders individually liable to amount of unpaid stock.                                   | 279. When companies to begin and complete work.  |
| 256. Trustees to make purchases and issue stock in payment.  | 280. Powers of corporation under this act.   |
| 257. President and trustees to make certificate of amount of stock paid in.                        | 281. How powers restricted.  |
| 258. Report to be published annually.  | 282. Persons liable to fine and imprisonment for damaging corporation's property.                        |
| 259. Trustees to be liable if they pay dividend while company is insolvent.                        | 283. Nothing in this act to authorize issuing paper money.   |
| 260. No loan to be made to stockholders.   | 284. How companies heretofore formed organize under this act.  |
| 261. Officers liable for signing false report.   | 285. How land required by company to be appraised and condemned.   |
| 262. Party pledging stock liable as stockholder.   | 286. How companies formed under this act may be disincorporated.   |
| 263. Representative of stock may vote as stockholder.  | 287. Powers of trustees after dissolution.   |
| 264. Legislature may amend or repeal act.  | 288. How place of business removed.  |
| 265. Corporation may increase or diminish capital stock.   | 289. Foreign corporations file copy of charter with secretary of territory and county recorder.          |
| 266. Publication of meeting to increase or diminish stock.   | 290. If charter not filed with secretary within thirty days; act of incorporation, how proved.           |
| 267. Representation of two-thirds of stockholders to increase or diminish stock.                   | 291. Ferries, toll-bridges, and toll-roads not to be established.  |

SECTION 244. At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business, dig ditches, build flumes, run tunnels, or to carry on any branch of business designed to aid in industrial or productive interest of the country, make, sign, and acknowledge before some officer competent to take acknowledgments of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and the duplicate thereof in the office of the secretary of the territory, a certificate in writing, in which shall be stated the corporate name of said company, and the object for which the company shall be formed, the amount of capital stock of the said company, the term of its existence, not to exceed twenty years, the number of shares of which the said stock shall consist, the number of trustees, and their names, who shall manage the concerns of said company for the first three months, and the name of the city, town, or locality, and the county in which the operations of said company shall be carried on.

SEC. 245. When the certificate shall have been filed, as aforesaid, the secretary of the territory shall record and carefully preserve the same in his office, and a copy thereof, duly certified by the secretary of the territory, under the seal of the territory of Montana, shall be evidence of the existence of such company, and 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 such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this territory; and they and their successors may have a common seal, and may make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of acquiring, by purchase, pre-emption, donation, or otherwise, and holding or conveying, by deed or otherwise, any real or personal estate whatever which may be necessary to enable the said company to carry on their operations named in the certificate.

SEC. 246. Any certificate hereafter filed and recorded under the provisions of this article may designate one or more places where the company may carry on their business in the territory of Montana.

SEC. 247. If any company shall be formed under this article for the purpose of carrying on any part of its business in any place outside of this territory, the said certificate shall so state, and shall also state the name of the city, town, or locality, and county in which the principal part of the business of said company within this territory is to be transacted, and said town and county shall be deemed the town, place, and county in which the operations and business of the company are to be carried on, and its principal place of business within the meaning and provisions of this article.

SEC. 248. The stock, property, and concern of such company shall be managed by not less than three nor more

than nine trustees, who shall respectively be stockholders in said company, who shall, except the first three months, be annually elected by the stockholders at such time and place as shall be directed by the by-laws of said company; and public notice of the time and place of holding such elections shall be published, not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one-half of the stock is represented. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as shall be prescribed by the laws of said company.

NOTE.—The preceding five sections are from the act of January 12, 1872.

The trustees of every corporation, heretofore or hereafter organized under the laws of this territory providing for the formation of corporations for the conduct of any business for pecuniary profit, shall be chosen at one time and on a general ticket. At such election for trustees each stockholder shall have as many votes as the number of shares of stock held by him multiplied by the number of trustees to be chosen, and may cast all his votes for one candidate or distribute them, as he may see fit, and the persons having the greatest number of votes shall be trustees; and section 5 of Chapter XVIII of "An act revising, re-enacting, and codifying the general and permanent laws of Montana territory", approved January 12th, 1872, is hereby amended accordingly.

NOTE.—Act of February 21, 1879 (Sess. Laws, 1879, p. 42).

SEC. 249. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company for that reason shall not 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 by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

SEC. 250. There shall be a president of the company, who shall be designated from the number of trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company by its by-laws may require.

SEC. 251. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the trustees shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payments shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

SEC. 252. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of the United States and of this territory, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

SEC. 253. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company, but no transfer shall be valid, except as between the parties thereto, until the same shall have been so entered upon the books of the company as to show the names of the parties by and to whom transferred, the numbers and designation of the shares, and the date of the transfer.

SEC. 254. The copy of any certificate of incorporation filed and recorded in pursuance of this article, certified by the secretary of the territory under the great seal of the territory of Montana to be a true copy, and the whole of such certificate, shall be received in all courts and places as *prima-facie* evidence of the facts therein stated.

SEC. 255. All stockholders of every company incorporated under the provisions of this article shall be severally and individually liable to the creditors of the company in which they are stockholders to the amount of unpaid stock held by them, respectively, for all acts of, and contracts made by, such company, until the whole amount of capital stock, fixed and limited, shall be paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following sections; and the capital stock so fixed and limited shall all be paid in, one-half thereof within two years and the other half thereof in four years from the incorporation, or said corporation shall be dissolved.

SEC. 256. The trustees of such company may purchase mines, manufactories, and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock and not liable to any further call; neither shall the holders thereof be liable for any further payments under the provisions of section 253 of this article, but in all statements and reports of the company to be published this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts.

SEC. 257. The president and a majority of the trustees, within thirty days after the payment of the first installment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of said company is carried on.

SEC. 258. Every such company shall, annually, within twenty days from the first day of September, make report, which shall be published in some newspaper published in the town, city, or village, or, if there be no newspaper published in said town, city, or village, then in some newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital and the proportion actually paid in, and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on, and, if any of said company shall fail to do so, all the trustees of the company shall be jointly and severally liable for all debts of the company then existing, and for all that shall be contracted before such report shall be made.

SEC. 259. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office: *Provided*, That if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the company, and with the clerk of the county, they shall be exempt from the said liability.

SEC. 260. No loan of money shall be made by any such company to any stockholder therein, and, if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the repayment of the sum loaned.

SEC. 261. If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this article, 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.

SEC. 262. No person holding stock in any such company as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly, 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 person interested in such trust fund, would have been if he had been living and competent to act, and held the same stock in his own name.

SEC. 263. Every such executor, administrator, guardian, or trustee shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock, as aforesaid, may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

SEC. 264. The legislature may, at any time, alter, amend, or repeal this article, but such amendment or repeal shall not take away or impair any rights acquired, or remedy given against any such corporation, its stockholders, or officers, for any liability which shall have been previously incurred.

SEC. 265. Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this article, may increase or diminish its capital stock by complying with the provisions of this article to any amounts which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section 244 of this article, subject to the provisions and liabilities of this article; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amounts of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company, heretofore formed under any special act, may come under and avail itself of the provisions of this article by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties, and liabilities of this article.

SEC. 266. Whenever any company shall desire to call a meeting of stockholders for the purpose of availing itself of the privilege of this article, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder, at his usual place of residence, at least six weeks previous to the day fixed for holding such meeting, specifying the object of the meeting, the time

and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed; and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this article.

SEC. 267. If, at any time and place specified in the notice provided for in the preceding sections of this article, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes have been in favor of increasing or diminishing the amount of capital, or of extending or changing its business, as aforesaid, or for availing itself of the privileges and provisions of this article, a certificate of the proceedings, showing a compliance with the provisions of this article, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debt and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by section 244 of this article, and when so filed and so recorded the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this article, as the case may be.

SEC. 268. If the indebtedness of any such company shall, at any time, exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally liable for such excess to the creditors of such company.

SEC. 269. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who have been or shall, within the provisions of this article, become stockholders of such company, showing their places of residence, the number of the shares of stock held by them respectively, and the time when they became respectively the owners of such shares, and the amount of the stock actually paid in, which book shall, during the usual business hours of the day, and on every day except Sunday and the fourth of July, be open for the inspection of stockholders and creditors of the company, and their personal representatives, where the office or principal place of business operation shall be located, and any and every such stockholder, creditor, or representative shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this article, until it shall have been entered therein, as required by this section, by an entry showing to and from whom transferred; such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff to any suit or proceeding against such company, or against any one or more stockholders. Every officer or agent of such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to make any proper entry in such book, or shall make any improper entry, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid shall forfeit to the people of Montana the sum of fifty dollars for every day it shall so neglect, to be sued and recovered in the name of the people of said territory, by the district attorney of the county in which the business of such corporation shall be located, and when so recovered the amount shall be paid into the treasury of such county for the use of common schools therein.

SEC. 270. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this article shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of the company, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office, for six months thereafter, a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this article, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

SEC. 271. Whenever any three or more persons associate under the provisions of this article to form a company for the purpose of constructing a ditch for the purpose of conveying water to any mines, mills, or lands, to be used for mining, milling, or the irrigation of lands, they shall, in their certificate, in addition to the matters required in

section 244 of this article, specify as follows: The stream or streams from which the water is taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch, as near as may be; and the use to which the said water is intended to be applied.

SEC. 272. Any ditch company formed under the provisions of this article shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this article and by virtue of said certificate; nor shall the water of any stream be diverted from its original channel to the detriment of any mines, mill-men, or others along the line of, said stream who may have priority of right.

SEC. 273. Any company constructing a ditch under the provisions of this article shall furnish water in the way and manner named in the certificate, in the way and manner the water is designated to be used, whether miners, mill-men, or farmers, whenever they shall have water in their ditch unsold; and shall, at all times, give the preference to the use of the water in said ditch to the class of persons so named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners, or the tribunal transacting county business, as soon as such ditch shall be completed and prepared to furnish such water.

SEC. 274. Every ditch company organized under the provisions of this article shall be required to keep the banks of their ditch in good condition, so that the water shall not be allowed to escape from the same to the injury of any mining-claim, road, ditch, or other property; and whenever it is necessary to convey any ditch over, across, or above any lode or mining-claim, that the company shall, if necessary to keep the water of said ditch out or from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch.

SEC. 275. That when any company shall organize under the provisions of this article to form a company for the purpose of constructing a flume, their certificate, in addition to the matter required in section 244 of this article, shall specify as follows: The place of beginning, termini, and route, so near as may be, and the purpose for which such flume is intended; and when organized according to the provisions of this article said company shall have the right of way over the line proposed in such certificate for such flume, provided it does not conflict with the right of any former fluming, ditching, or other company.

SEC. 276. Whenever any three or more persons shall associate under the provisions of this article for the purpose of running a tunnel for mining for gold, quartz, or other ore, their certificate of incorporation shall specify, in addition to the matters required by section 244 of this article, as follows, to wit: Where said tunnel is to be run, the place of commencement, course, and termination, and the minerals or ore designed to be excavated.

SEC. 277. Any company formed under the provisions of this article for the purpose of excavating a tunnel shall have and hold eleven hundred feet on each side of said tunnel on all lodes discovered by them while excavating said tunnel, and through all lodes discovered previous to the commencement of said tunnel they shall have the right of way.

SEC. 278. Whenever any three or more persons associate under the provisions of this article to form a company for the purpose of constructing a line or lines of magnetic telegraph in this territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point along and upon any of the public roads, by the erection of any necessary fixtures, including posts, piers, and abutments necessary for the wires: *Provided*, That the same shall not incommode the public in the use of said roads or highways.

SEC. 279. Any company formed under the provisions of this article for the purpose of constructing any ditch or flume shall, within sixty days from the date of their certificate, commence work on such ditch or flume as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed, and the time of completion of any such ditch shall not be extended beyond a period of three years from the time the work was commenced as aforesaid; and any company failing to commence work within sixty days from the date of certificate, or failing to complete the same within three years from the time of commencement as aforesaid, shall forfeit all the right to the route so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume constructed under the provisions of this article shall not be extended beyond a period of three years, and the county commissioners of the counties in which roads and bridges may have been constructed under the provisions of the act of which this is amendatory shall have the right to purchase the same, upon agreement with said company or companies, and declare them free for public use.

SEC. 280. Every corporation formed under the provisions of this article has power:

*First.* To have succession by its corporate name for the period limited in its certificate of charter.

*Second.* To sue and be sued, complain and defend, in any court of law or equity.

*Third.* To make and use a common seal, and alter the same at pleasure.

*Fourth.* To hold, purchase, and convey such real and personal estate as the purposes of the corporation may require.

*Fifth.* To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.



*Sixth.* To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock: *Provided*, That no corporation formed under the provisions of this article shall own or hold possession of more than six hundred and forty acres of land.

SEC. 281. The powers enumerated in the preceding section shall vest in any corporation that shall hereafter be created, although they may not be specified in the certificate; but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated.

SEC. 282. Any person who shall willfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, telegraph-line, or any of the fixtures, tools, implements, appurtenances, or any property of any company which may be organized under the provisions of this article, upon conviction thereof before any court of competent jurisdiction in the county where the offense shall have been committed shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, and to be paid into the county treasury for the use of the common schools; and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

SEC. 283. Nothing in this article shall be so construed as to authorize any company authorized under the same to issue notes or bills for circulation as money.

SEC. 284. That any company organized under the provisions of this article, and other companies who have become bodies corporate, heretofore formed under the provisions of any general law or any special act, who may desire to come under and avail itself of the privileges and provisions herein granted, shall give notice to the secretary of the territory of their surrender of their rights and privileges under any previous law or act, said notice to be certified to by the president of said company, and to be filed in the office of the secretary of the territory, and become a body corporate and politic by complying with all and singular the provisions of this article.

SEC. 285. Whenever any road, ditch, telegraph, or fluming company, organized under the provisions of this article, shall not have acquired, by gift or purchase, any land, real estate, or claim required for the construction or maintenance of any road, ditch, telegraph, or flume, or which may be affected by any operations connected with the construction or maintenance of the same, the said corporation may present, to the probate judge of the county wherein such lands, real estate, or claims shall be, a petition, signed by the president, attorney, or agent of the same, describing with convenient accuracy and certainty, by maps or otherwise, the lands, real estate, or claims so required to be taken or affected as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, lessee, or incumbrancer, as far as known to such president, attorney, or agent, or appearing of record upon local or county records, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and person interested for the taking or injuriously affecting such land, real estate, or claims, as aforesaid. The probate judge shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of appraisers between said corporations and the owners and the persons interested in such lands, real estate, and claims has been given, at least ten days previously, to such owners, personally, at their residence, or on the premises, or by the publication thereof in a newspaper printed in the county in which such lands, real estate, or claims shall be, or if no newspaper is published in said county, then by posting three or more notices in some public place in said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county known to such president, attorney, or agent, which notice shall be published at least thirty days prior to the time fixed for the application aforesaid. The court may adjourn the proceedings from time to time; shall direct any future notice thereof to be given that may seem proper; shall have proofs and allegations of all parties interested touching the regularity of the proceedings; and shall, by an entry in its minutes, appoint three disinterested appraisers, as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers, before entering upon the duties of their offices, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpoenas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall have the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear or favor or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested for the lands, real estate, or claims to be taken or affected, as well as all damages accruing to the owners or parties interested in consequence of the condemnation of the same, taking, or injuriously affected, as aforesaid, making such deductions or allowance for the real benefits or advantages which such owners or parties interested may derive from the construction of said road, ditch, telegraph, or flume. They, or a majority of them, shall make, subscribe, and file, in the office of the clerk of the county in which such lands, real estate, or claims shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate, or claims shall be described with convenient certainty and accuracy. The probate judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place for that purpose approved by

the court, shall make and cause to be entered in its minutes a rule describing such lands, real estate, or claims, in manner aforesaid, such ascertainment of compensation, with mode of making it, and each payment or deposit of the compensation, as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of such rule the said corporation shall become seized in fee, or shall have the exclusive right, title, and possession of all such lands, real estate, or claims described in said rule, as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of and hold and use the same for the purpose of such said road, ditch, telegraph, or flume, and shall thereupon be discharged from all claims for any damage by reason of any matter specified in such petition, certificate, or rule of said probate judge. If at any time after an attempted or actual ascertainment of compensation under this article, or any purchase by or donation to said corporation of lands or claim for purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands, for the use of said corporation, of, or if said assessment shall fail or be deemed defective, the said corporation shall proceed and perfect such title by procuring an assessment of the compensation proper to be made to any person who has title, claim, or interest in or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this article, the probate judge may, by rule in that behalf made, authorize the said corporation, if already in possession, and if not in possession, to take possession of and use said premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof: *Provided*, Such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained. And, in every case when possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive five dollars per day as compensation for each day actually employed, such compensation to be taxed and allowed by the probate judge. If any appraisers so appointed shall die, be unable, or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the probate judge. Applications may be made to the district court in the same manner as herein provided, and the district court may thereupon cause such proceedings to be had and taken in like manner and with the same effect as herein required respecting the probate court.

SEC. 286. Any corporation formed under this article may dissolve and disincorporate itself by presenting to the judge of the district court of the district in which the principal place of business of such corporation is situated a petition to that effect, accompanied by a certificate of the proper officers, and setting forth that, at a general or special meeting of the stockholders called for that purpose, it was decided, by a vote of two-thirds of all the stockholders, to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk of the court, which notice shall set forth the nature of the application, and shall specify the time when and the place where it is to be heard, and shall be published in some newspaper of the county where the principal place of business of said company is located for at least four consecutive weeks before the time of the hearing of such application, or if no newspaper be published in the county, then by advertisement posted up for thirty days in three of the most public places in the county. At the time and place appointed, or any other to which the judge may postpone it, he shall proceed to hear and consider such application, and, if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary votes to dissolve itself, he shall enter an order declaring it dissolved, and the rights of franchise acquired by said corporation shall cease and become null and void after such dissolution.

SEC. 287. Upon the dissolution of any corporation formed under this article, the trustees at the time of dissolution shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full 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.

SEC. 288. Any corporation, desiring at any time to remove its principal place of business into some other county of the territory, shall file in the office of the county recorder of such county a certified copy of its certificate of incorporation, and shall give notice of such removal by publication in some newspaper of the county in which such principal place of business was located at least once a week for four weeks, and if no newspaper be published in such county, then by advertisement posted up for thirty days in three of the most public places in said county.

SEC. 289. That hereafter all mining, manufacturing, and other companies or incorporations incorporated by the legislature of any state or territory of the United States, or incorporated under the general laws of incorporation of any state or territory other than this territory, and incorporated for the purpose of carrying on or doing business of any kind, nature, and description whatever in this territory, shall, before they proceed to do business under the charter or certificate of incorporation in this territory, file for record with the secretary of the territory, and also in the office of the recorder of the county in which they are carrying on business, the charter or certificate of incorporation of said company or corporation, duly authenticated, or of the copy of said charter or certificate of

incorporation, and the certificate of the president and secretary of said company or corporation, verified under oath by either of the said officers, or the superintendent or managing agent thereof, that the copy of said charter or certificate of incorporation is a true and correct copy of the original charter or certificate of incorporation granted to the persons therein named or their successors, and the charter or certificate of incorporation was granted at the time and place therein mentioned, and under the law of the state or territory designated; and said foreign incorporations shall remunerate the secretary and recorder for the recording of the same, and said charter so recorded shall be recognized in the courts of this territory as their foreign act of incorporation.

SEC. 290. That any company or corporation, incorporated as in section 244 of this article, that shall neglect or refuse, for the period of thirty days, to file for record their charter or certificate of incorporation, or copy thereof, with the secretary of the territory and county recorder of the county wherein such business may be carried on, shall be deemed guilty of willful negligence on the part of said company or corporation; and thereafter any person or persons maintaining or prosecuting any civil action in any court of this territory against said company or corporation so neglecting or refusing to file for record their charter or certificate of incorporation, or copy thereof, with the secretary of the territory and county recorder, as hereinbefore provided, shall not be held to prove on trial the incorporation of said company or corporation by the original charter or certificate of incorporation, or act of incorporation, but the same may be proved by general reputation; and the provisions of this section shall also apply to all companies and incorporations incorporated by the legislature, or under the general laws of incorporation of any state or territory of the United States other than this territory, that shall have failed or refused to file its charter or certificate of incorporation, or act of incorporation, or a copy thereof, duly authenticated, as provided in section 289 in this article, with the secretary of the territory and the county recorder of the county in which such company or corporation is carrying on business prior to the commencement of the civil action mentioned in this section.

NOTE.—Act February 3, 1876 (Sess. Laws, 1876, p. 41).

SEC. 291. From and after the passage of this article no corporations shall be formed under its provisions for the purpose of establishing ferries, toll-bridges, or toll-roads.

NOTE.—All sections of the preceding article, except where otherwise specially noted, are from the act of January 13, 1872 (Cod. Stats., 1871-72, p. 404).

NOTE.—See act of July 22, 1879, "Foreign corporations" (Sess. Laws, Ex. sess. 1879, p. 8).

#### CHAP. LIII.—REVENUE.

##### ART. I.—Of the levying and collection of taxes, and of taxable property generally.

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SECTION 1002. All property of every kind and nature in this territory on the first day of January of each year, or which shall arrive or be found in this territory before the last day of December ensuing, shall be subject to taxation, except:

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*Ninth.* Mines and mining-claims, except those held under a patent from the United States: *Provided*, That all machinery used in mining-claims, and all property and improvements appurtenant to or upon mining-claims, which have an independent and separate value, shall be subject to taxation; tools of mechanics, farming tools of husbandmen, all libraries of professional men and private citizens, household furniture of families or householders, which do not exceed in value the sum of two hundred and fifty dollars.

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SEC. 1007. The property of corporations or companies constructing bridges, canals, ditches, flumes, railways, plank-roads, grading-roads, turnpike-roads, telegraph-lines, and similar improvements shall be assessed to each corporation or company, and their interests are to be taxed in this territory in the county or localities in which such bridges, canals, flumes, railways, plank-roads, grading-roads, turnpike-roads, telegraph-lines, and similar improvements may be in, and to the extent of such improvements as may be found to be in the county or counties in which the same may be situated; and to this end the assessor is directed to require the secretary or clerk, or whatever officer of corresponding duties there may be, to render, under oath, a list of the number of miles and value of such improvements as may be in each separate county through which the same may be constructed or in which the same may be situated.

SEC. 1008. All taxable property is to be listed and valued each year, and shall be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvement in the vicinity, and all other elements of its value.

## CHAP. XXXIII.—IRRIGATION—WATER—RIGHTS.

## ART. I.—Rights of persons and corporations.

<p>Sec. 731. Any person or company holding land entitled to water for irrigation.</p> <p>732. Persons to have right of way for ditch or canal.</p> <p>733. Right to extend only so far as is necessary.</p> <p>734. Date of appropriation to determine rights.</p> <p>735. Water to be made available without injury to prior appropriator.</p>	<p>Sec. 736. Person digging ditch to be liable for damages.</p> <p>737. This act not to interfere with rights acquired; its passage.</p> <p>738. This act not to prevent use of water for mining, etc.</p> <p>739. Persons constructing ditches across roads to repair same.</p> <p>740. Penalty for violating preceding section.</p> <p>741. Rights of persons to be governed by local laws, rules, and customs, decisions of supreme court, etc.</p>
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SECTION 731. That any person or persons, corporation, or company who may have or hold a title, or possessory right or title, to any agricultural lands within the limits of this territory, as defined by the organic act thereof, shall be entitled to the use and enjoyment of the waters of the streams or creeks in said territory for the purposes of irrigation and making said land available for agricultural purposes to the full extent of the soil thereof: *Provided*, That in all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream for such purpose of irrigation, and there shall at any time be a surplus of such waters so diverted over and above what is actually used for such purpose by such prior appropriator, such person shall be required to turn and cause to flow back into such stream such surplus water, and upon failure to do so within five days after demand being made upon him in writing by any person having a right to the use of such surplus water, such person so diverting the same shall be liable to the person aggrieved thereby in the sum of twenty-five dollars for each and every day such water shall be withheld after such notice, to be recovered by civil action by any person having a right to the use of such surplus water.

NOTE.—Act February 21, 1879 (Sess. Laws, 1879, p. 52).

SEC. 732. That when any person or persons, corporation, or company owning or holding land as provided in section 731 of this article shall have no available water facilities upon the same, or whenever it may be necessary to raise the waters of said stream or creek to a sufficient height to so irrigate said land, or whenever such lands are too far removed from said stream or creek to so use the waters thereof as aforesaid, such person or persons, corporation, or company shall have the right of way through and over any tract or piece of land for the purposes of conducting and conveying said water by means of ditches, dykes, flumes, or canals, for the purpose aforesaid.

SEC. 733. That such right to so dig and construct ditches, dykes, flumes, and canals over and across the lands of another shall only extend to so much digging, cutting, or excavations as may be necessary for the purposes required.

SEC. 734. That in all controversies respecting the rights to water, under the provisions of this article, the same shall be determined by the date of the appropriation as respectively made by the parties.

SEC. 735. That the waters of the streams or creeks of the territory may be made available to the full extent of the capacity thereof for irrigating purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator; but in no case shall the same be diverted or turned from the ditches or canals of such appropriator so as to render the same unavailable.

SEC. 736. That any person or persons, corporation, or company damaging or injuring the lands or possessions of another by reason of cutting or digging ditches or canals or erecting flumes, as provided by section 732 of this article, the party so committing such injury or damage shall be liable to the party so injured therefor.

SEC. 737. That this article shall not be so construed as to impair or in any way or manner interfere with the rights of parties to the use of the water of such streams or creeks acquired before its passage.

SEC. 738. That this article shall not be so construed as to prevent or exclude the appropriators of the waters of the said streams or creeks for mining, manufacturing, or other beneficial purposes, and the right also to appropriate the same is hereby equally recognized and declared.

SEC. 739. That any person or persons, corporation, or company who may dig and construct ditches, dykes, flumes, or canals over or across any public roads or highways, or who use the waters of such ditches, dykes, flumes, or canals, shall be required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes, or canals may flow over or in anywise injure any roads or highways, either by bridging or otherwise.

SEC. 740. Any person or persons offending against section 739 of this article, on conviction thereof, shall forfeit and pay for every such offense a penalty of not less than twenty-five dollars nor more than one hundred dollars, to be recovered, with costs of suit, in civil action, in the name of the territory of Montana, before any court having jurisdiction; one-half of the fine so collected shall be paid into the county treasury for the benefit of the common schools of the county in which the offense was committed, and the other half shall be paid to the person or persons informing the nearest magistrate that such offense has been committed. All such fines and costs shall be collected

without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fine and costs shall have been paid.

SEC. 741. That in all controversies respecting the right to water in this territory, whether for mining, manufacturing, agricultural, or other useful purposes, the rights of the parties shall be determined by the dates of appropriation, respectively, with the modifications heretofore existing under the local laws, rules, or customs and decisions of the supreme court of the territory.

NOTE.—Act of January 12, 1872 (Cod. Stats., 1871-'72, p. 498).

ART. II.—*Regulating the sale of water.*

Sec.

742. Owners of water must sell surplus, if demanded.

743. Duty of purchaser to dig ditches, etc.

Sec.

744. Right to surplus, and enforcement thereof.

745. Purchaser acquires no right to sell.

SECTION 742. That any person or persons, company, or corporation having the right to use, sell, or dispose of water, and engaged in using, selling, or disposing of the same, who shall have a surplus of water not used or sold, or any person or persons, corporation, or company having a surplus of water and the right to sell and dispose of same shall, and they or it are hereby required, upon the payment or tender to the person or persons entitled thereto an amount equal to the usual and customary rates per inch, to convey and deliver to the person or persons, company, or corporation such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water shall exist and said payment or tender made as aforesaid.

SEC. 743. That any person or persons, corporation, or company desiring to avail themselves of the provisions of this article shall, at their own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by it or them, and shall pay or tender to the person or persons, corporation, or company having a right to the use, sale, or disposal thereof an amount equal to the necessary costs and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct, and putting in gates, gauges, or other proper and necessary appliances usual and customary in such cases, and until the same shall be so done the delivery of the said surplus water shall not be required as provided by section 742 of this article.

SEC. 744. That any person or persons, corporation, or company constructing the necessary ditches, aqueducts, or flumes, and making the payments or tenders hereinbefore provided, shall be entitled to the use of so much of the said surplus water as said ditches, flumes, or aqueducts shall have the capacity to carry, and for which payment or tender shall have been made as aforesaid, with all the rights and privileges incidental thereto, so long as said unsold or surplus water exists and said payment or tender shall be or have been made, and may institute and maintain any appropriate action, at law or in equity, for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

SEC. 745. That nothing in this article shall be so construed as to give the person or persons, corporation, or company acquiring the right to the use of water, as hereinbefore provided, the right to sell or dispose of the same after being so used by it or them, or prevent the original owner or proprietor from retaking, selling, and disposing of the same in the usual and customary manner after it is so used as aforesaid.

NOTE.—Act of February 16, 1877 (Sess. Laws, 1877, p. 406).

CHAP. XLI.—LIENS.

Sec.

820. Mechanics to have liens, extent of.

821. Lien of subcontractor, notice of.

822. Subcontractor to file statement, when.

823. Employer to become surety to subcontractor, when.

824. Notice may be served by sheriff.

825. Time of filing statement of indebtedness by all persons other than subcontractors.

Sec.

826. Recorder to keep index of liens filed.

827. Liens to have priority in the order of filing by classes.

828. Employer's interest in land subject to lien; building may be sold and removed.

829. When lien shall attach; purchaser of building may remove same.

830. Suit may be brought in district court to enforce lien.

SECTION 820. Every mechanic, builder, lumberman, artisan, workman, laborer, or other person who shall do or perform any work or labor upon, or furnish any material, machinery, or fixtures for, any building, erection, bridge, flume, canal, ditch, mining-claim, quartz-lode, ranch, city or town lots, or other improvements upon land, or for repairing the same, upon complying with the provisions of this chapter shall have, for his work or labor done, or material, machinery, or fixtures furnished, a lien upon such building, erection, bridge, flume, canal, ditch, mining-claim, quartz-lode, ranch, city or town lots, or other improvements, to secure the payment of such work or labor done, or material, machinery, or fixtures furnished.

SEC. 821. Every subcontractor wishing to avail himself of the benefits of this chapter shall give notice to the

owner or proprietor, or his agent or trustee, before or at the time he furnishes any of the things aforesaid, or performs any of the labor, of his intention to furnish or perform the same, and the probable value thereof; and if afterwards the things are furnished, or labor done, the subcontractor shall settle with the contractor therefor, and having made the settlement in writing, the same, signed by the contractor and certified by him to be just, shall be presented to the owner or proprietor, or his agent or trustee, and left with him; and within thirty days from the time the things shall have been furnished, or the labor performed, the subcontractor shall file, with the recorder of the county in which the building, erection, or other improvement is situated, a copy of the settlement between himself and the contractor, which shall be a lien upon the building, erection, or improvement for which the things were furnished, or on which the labor was performed, and shall at the time file a correct description of the property to be charged with the lien, the correctness of all which shall be verified by affidavit.

SEC. 822. In case the contractor shall, for any reason, fail or refuse to make and sign such settlement in writing with the subcontractor when the same is demanded, then the subcontractor shall make a just and true statement of work and labor done, or things furnished by him, giving all credits, which he shall present to the owner or proprietor, or his agent or trustee, and shall also, within said thirty days, file a copy of the same, verified by affidavit, with the recorder of the county in which the building, erection, or other improvement is situated, together with a full and correct description of the property to be charged with the lien.

SEC. 823. The certificate of settlement, made as aforesaid, or statement of the subcontractor, shall be a justification to the employer in withholding from the contractor the amount appearing thereby to be due to the subcontractor until he is satisfied that the same has been paid; and the employer shall become surety of the contractor to the subcontractor for the amount due for such work and labor or things, not, however, exceeding the value thereof, as notified under section 821.

SEC. 824. The notice mentioned in the preceding sections may be served by the sheriff or any constable of the county in which such building, erection, or other improvement is situated, and the return thereon of such sheriff or constable shall be received in evidence without further proof.

SEC. 825. It shall be the duty of every person and all persons, except as has been provided for subcontractors, who wish to avail himself or themselves of the benefits of this chapter, to file, with the recorder of the county in which the building, erection, bridge, flume, canal, ditch, mining-claim, quartz-lode, ranch, city or town lots, or other improvements upon lands to be charged with lien is situated, and within ninety days after the things aforesaid have been furnished, or the work or labor done or performed, a just and true account of the amount due or owing to him after allowing all credits, and containing a correct description of the property to be charged with said lien, verified by affidavit.

SEC. 826. It shall be the duty of the recorder of the county to indorse upon every account the day of its filing, and make an abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person laying or imposing the lien, the amount of such lien, the name of the person against whose property the lien is filed, and the description of the property to be charged with the same; for all of which he shall receive the sum of one dollar from the person laying or imposing the lien, which shall be taxed and collected as other costs in case there be suit thereon.

NOTE.—Sections 825 and 826 are from act February 13, 1874 (Sess. Laws, 1874, p. 84).

SEC. 827. That the lien given by section 820 of this chapter shall extend to the lot or land upon which any such building, improvement, or structure to the extent of one acre, if outside any town or city, or if within any town or city, then to the extent of the whole lot or lots upon which the same is situated, if the land belonged to the person who caused said building 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. All liens for work or labor done, or material furnished, upon the same premises, which shall be filed within thirty days after the filing of the first lien on such premises, shall entitle the holder thereof to share equally, *pro rata*, according to the amount of their respective liens, in the proceeds arising from the sale of such premises upon the foreclosure of such liens. If, after the expiration of thirty days, other liens shall be filed against such premises, then all liens filed within sixty days after the filing of such subsequent lien shall be liens of the second class, and share *pro rata* in any proceeds arising from the sale of the said premises which may remain after all liens of the first class have been paid. The liens for work or labor done, or material furnished, as specified in this chapter, shall be prior to, and have precedence over, any mortgage, incumbrance, or other lien made subsequent to the commencement of work on any contract for the erection of such building or other improvement.

NOTE.—Section 827 is from act of February 16, 1877 (Sess. Laws, 1877, p. 238).

SEC. 828. The entire land, to the extent aforesaid, upon which any such building, erection, or other improvement is situated, including as well that part of said land which is not covered with such building, erection, or other improvement, as that part thereof which is covered with the same, shall be subject to all liens created by this chapter, to the extent, and only to the extent, of all the right, title, and interest owned therein by the owner or proprietor of such building, erection, or other improvement for whose immediate use or benefit the labor was done,



or things were furnished; and when the interest owned in such land, by such owner or proprietor of such building, erection, or other improvement, is only a leasehold interest, the forfeiture of such lease for the non-payment of rent, or non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns the buildings, erections, and improvements thereon put by such owner or proprietor charged with such lien, but such building, erection, or improvement may be sold to satisfy said lien, and be moved, within twenty days after the sale thereof, by the purchaser.

SEC. 829. The liens aforesaid, or work, shall attach to the buildings, erections, or improvements for which they were furnished, or the work was done, in preference to any prior lien, or incumbrance, or mortgage upon the land upon which said buildings, erections, or improvements have been erected or put; and any person enforcing such lien may have such building, erection or improvement sold under execution, and the purchaser may remove the same within a reasonable time thereafter.

SEC. 830. Any person having a lien under or by virtue of this chapter may bring suit to enforce the same, and to obtain the benefits thereof, in the district court of the county wherein the property on which the lien is attached is situated, without regard to its amount.

NOTE.—The remaining sections of this act are not essential to the purpose of the quotation, to wit, the fact of the existence and extent of this class of liens.

#### ART. II.—Taxation of mines.

Sec.  
1047. Annual statements of persons owning or working mines.  
1048. Credit for expenditures; improvements not exempt.  
1049. Annual tax on net proceeds.

Sec.  
1050. Duty of assessor upon failure of owner to make statement.  
1051. Limitation to assessable value of mines, etc.

SECTION 1047. That every person, corporation, or association engaged in mining upon any quartz vein or lode, or placer-mining claim, containing gold, silver, copper, or lead, is hereby required, between the first and tenth days of August in each year, to make out a statement of the gross yield of the above-named metals from each of such mine or mines being owned or worked by such person, corporation, or association during the year next preceding the first day of August in each year, and the value thereof, which said statement shall be verified by the oath of such person, or the superintendent or managing agent of such corporation or association, and deliver the same to the assessor of the county in which such mine or mines are situated between the dates above mentioned. That said statement, verified as above provided, shall also contain a true and correct amount of the actual expenditures of money and labor in and about extracting such ore, the reduction thereof, and the conversion of the bullion derived therefrom into money or its equivalent during such year.

SEC. 1048. That in making the statement of the expenditures mentioned in the foregoing section such person, corporation, or association shall be allowed to include therein all sums of money that have been expended for necessary labor, machinery, supplies of every kind and character needed and used in his or its mining operations, for improvements actually necessary in and about the working of such mine or mines, reducing the ores therefrom, and expended in and about the construction of mills or reduction-works used and operated in connection with said mine or mines for the purpose of reducing and extracting the precious metals therefrom, and shall not include any money invested in said mines or improvements made on the same during any year except the year immediately preceding such statement: *Provided*, That nothing herein contained shall exempt such improvements, mills, reduction-works, and supplies from taxation as now provided by law: *Provided*, That the expenditures referred to herein shall not include the salaries, or any portion thereof, of the officers of any corporation not actually engaged in the working of such mine or mines, or personally superintending the management thereof.

SEC. 1049. That a tax shall be levied annually upon the net proceeds of all mines above named, such net proceeds to be ascertained and determined in the manner provided in the foregoing sections of this article; and that such tax shall be collected and the payment thereof enforced as now provided by law for the collection of other taxes.

SEC. 1050. That if any person, corporation, or association engaged in the kind of mining named in this article shall refuse or neglect to make and deliver to the assessor of the county where his or their mines are situated the statement mentioned in sections 1047 and 1048 of this article, during the time herein specified, the assessor of such county is hereby authorized and empowered, and it is hereby made his duty, to proceed to fix and assess, according to his best knowledge and information, the amount upon which the tax mentioned in section 1049 of this article shall be levied, in the manner now provided by law relating to the assessment of other property, and shall add a like penalty of twenty per centum to the amount and value thereof.

SEC. 1051. That from and after the passage of this article no direct tax shall be levied upon any placer-claim, quartz-lead, or lode except to the extent of the price paid for any mining-claim in obtaining patent therefor from the government of the United States, and the only taxation of the proceeds thereof shall be that provided in this article: *Provided*, That this article shall not be so construed as to exempt from taxation improvements consisting of buildings, erections, or machinery placed upon any quartz-lead or lode or used in connection therewith: *Provided further*, That the assessor shall, at the time of assessing any person, firm, corporation, or association, have the

power to examine the books and accounts of said person, firm, corporation, or association, to fully satisfy said assessor that he has been furnished with a truthful report; and if satisfied from such examination that the report is false, he shall assess the same at the true amount of the net proceeds, so near as he can arrive at the same: *Provided*, That no one, by virtue of the provisions of this article, shall be deprived of his right to appear before the proper board of equalization as other taxpayers under existing laws.

CHAP. II.—FORCIBLE ENTRY AND UNLAWFUL DETAINER.

Sec.	Sec.
696. Forcible entry and detainer, what constitutes.	705. If jury cannot agree.
697. Any justice of the peace authority to inquire into.	706. Damages, how assessed.
698. Justice to issue summons when complaint made.	707. If rent of land not paid, defendant to quit possession.
699. Summons, upon whom served.	708. Preceding section, whom not to apply to.
700. Justice to hear complaint after return of summons.	709. Juror or witness not appearing, to be fined.
701. Trial, when postponed.	710. Appeals.
702. Testimony to be taken in same manner as in other cases.	711. Appeals to be tried in district court.
703. Trial.	712. Amendments to complaint.
704. If defendant found guilty, punishment and costs.	713. Rules and regulations to apply as in other cases

SEC. 696. No person or persons shall hereafter make any entry into lands, tenements, or other possessions, or by entering upon any gulch mining-claim, or quartz-lode mining-claim, or other mining-claim, in the temporary absence of the party or parties in possession, or by entering peaceably, and the turning out by force, or frightening by threats, or other circumstances of terror, the party or parties out of possession, and detain and hold the same. In every such case the person so offending shall be deemed guilty of a forcible entry and detainer within the meaning of this act; but not in cases where entry is given by law, and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do the contrary, and thereof be duly convicted, he shall be punished by fine.

SEC. 697. Any justice of the peace shall have authority to inquire as hereinafter directed, as well as against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully detain the same; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, or that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

SEC. 698. When any complaint shall be made in writing to any justice of the peace of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made to appear before said justice on a day named in the summons, which shall not be more than ten days from the issuing of such summons, and at the place therein mentioned.

SEC. 699. Such summons shall be served upon the person or persons against whom the same is issued as other summons are served issued by a justice, at least four days before the return day thereof, and the officer serving the same shall make return of the time and manner of such service.

SEC. 700. After the return of the summons, served as hereinbefore provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party demand a jury, in which case a jury shall be summoned in the same manner and on the same terms, and the trial shall be had as in other cases of trial by jury before a justice.

SEC. 701. If, at the time set for trial, the defendant, his agent, or attorney shall make oath that he cannot safely proceed to trial for want of some material witness, naming him, that he has made due exertion to obtain such witness or his testimony, and believes if an adjournment be allowed he will be able to procure the testimony of such witness, in which case, if such person or persons will give bond, with sufficient surety, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding one month.

SEC. 702. The testimony of any witness which may be considered necessary by either party may be taken in the same manner and with like effect as is provided for the taking of testimony in other cases in justices' courts.

SEC. 703. On the trial the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of the forcible entry, or was entitled to the possession of the premises at the time of the unlawful holding over. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not yet ended or determined; and such showing shall be a bar to the prosecution; and in no case where the title to land is involved shall a justice of the peace have cognizance.

SEC. 704. If upon the trial upon any complaint under this act the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations of the complaint, said justice shall enter judgment for the complainant to have restoration of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said justice shall award and issue a writ of restitution. But if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant and issue execution therefor.

SEC. 705. If the jury impaneled cannot agree upon a verdict, the justice may, with the consent of the parties, discharge them and issue a *venire*, returnable forthwith, or at some other time agreed upon by the parties.

SEC. 706. In all cases of a verdict by the justice or jury for the complainant the damages shall be assessed as well for the waste and injury committed upon the premises as for the rents and profits during such detainer; and the verdict shall also find the monthly rents and profits of the said premises, and the complainant shall be entitled to recover treble damages against the person against whom the judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice and entered as a judgment in the cause, upon which execution may issue.

SEC. 707. When any person shall hold over any lands, tenements, or other possession, after the termination of the time for which they are demised or let to them, or to the person under whom they hold possession, or contrary to the covenants or conditions of the lease or agreement under which they hold, or after any rent shall become due according to the terms of the lease or agreement, and shall remain unpaid for the space of three days, in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent, or attorney shall make demand in writing of such tenant that they shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements, or to pay the rent thereof due and unpaid as aforesaid, upon complaint thereof to any justice of the peace of the proper county, the justice shall proceed to hear, try, and determine the same in the same manner as in other cases hereinbefore provided for, but shall impose no fine in any such case mentioned in this section.

SEC. 708. The preceding section shall not extend to any person who has or who shall have continued in possession one year after the termination of the time for which the premises were demised, or leased, or let to them, or those under whom they hold possession, or to any person who continues in possession three years quietly and peaceably.

SEC. 709. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or who, appearing, shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for every such default or refusal, to the use of the county, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

SEC. 710. Appeals may be taken from all judgments rendered under this act to the district court, under the same rules and restrictions as to notice, appeal bond, and other matters, as are required on appeals from justices' courts in other cases; but in case such appeal be taken by the defendant, the undertaking shall contain an additional condition to the effect that he will pay to the plaintiff all rents, profits, and other damages that may accrue during the pendency of the appeal. If the appeal should be decided against him beyond the filing of the appeal bond, all proceedings shall be stayed.

SEC. 711. Such appeals shall be tried in the district court as other appeals from justices' courts are tried.

SEC. 712. Amendments to the complaint, answer, or other proceedings in matters of form only may be allowed by the justice or the district court, on appeal, at any time before judgment, upon such terms as may be just, and all matters of excuse, justification, or evidences of allegations in the complaint may be given in evidence under the answer.

SEC. 713. All rules and regulations relating to trial before justices of the peace in other cases, and not inconsistent with the provisions of this title, shall be applicable, and be observed in trials arising under this title.

#### CHAP. XVIII.—MISCELLANEOUS PROVISIONS.

\* \* \* \* \*  
SECTION 461. In all cases when a person shall be arrested for any criminal offense, his real estate and mining-claims shall be liable for the payment of any judgment imposing any fine or costs upon such person, and such judgment shall be a lien on such real estate or mining-claims from the time of such arrest.

SEC. 462. The real estate and mining-claims of all persons who sign or enter into any recognizance for the appearance of any person charged with any criminal offense shall, if such recognizance be forfeited, be liable for the payment of any judgment which may be recovered thereon, and such judgment is hereby declared to be a lien upon such property from date of recognizance. Nothing in either of the above sections shall be construed so as to prohibit the issuing of execution and the enforcing of the collection thereof out of any other property of the defendant's than above enumerated.—(Rev. Stats., 1879, p. 343.)  
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## CHAP. XI.—OFFENSES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

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**SECTION 167.** If any owner, manager, or agent of any species of quartz-mill, arrastra, furnace, or cupel employed in extracting gold from quartz, pyrites, or other minerals, who shall neglect or refuse to account for or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, he shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned not more than one year, or both, at the discretion of the court, for each such offense.—(Rev. Stats., 1879, p. 386.)

## CODE OF CIVIL PROCEDURE.

## CHAP. I.—THE EXECUTION.

## TITLE IX.—Of the execution of the judgment in civil actions.

\* \* \* \* \*  
**SECTION 310.** The following property shall be exempt from execution, except as herein otherwise provided;  
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*Second.* To a mechanic or artisan: Tools or implements necessary to carry on his trade.  
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*Fifth.* To a miner: His cabin or dwelling, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, windlasses, derrick, cars, pump, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars, and one horse, mule, or two oxen, with their harness, and food for such horse, mule, or oxen for three months, when necessary to be used for any whim, windlass, derrick, car, pump, or hoisting gear.—(Rev. Stats., 1879, p. 97.)

## EXTRAORDINARY SESSION, 1879.

## FOREIGN INCORPORATIONS.

AN ACT concerning foreign incorporations. (Approved July 22, 1879, p. 8.)

**SECTION 1.** That all foreign incorporations or joint-stock companies, organized under the laws of any state or territory of the United States, or by virtue of any special act or acts of the legislative assembly of any such state or territory, or of any foreign government, shall, before doing business of any kind, nature, or description whatever within this territory, file in the office of the secretary of the territory, and in the office of the county recorder of the county wherein they intend to carry on or transact business, a duly-authenticated copy of their charter or certificate of incorporation, and also a statement, to be verified by the oath of the president and secretary of such incorporation, and attested by a majority of its board of directors, showing:

*First.* The name of such incorporation and the location of its principal office or place of business without this territory; and if it is to have any place of business or principal office within this territory, the location thereof.

*Second.* The amount of its capital stock.

*Third.* The amount of its capital stock actually paid in money.

*Fourth.* The amount of its capital stock paid in any other way, and in what.

*Fifth.* The amount of the assets of the incorporation, and of what [the] assets consist, with the actual cash value thereof.

*Sixth.* The liabilities of such incorporation, and if any of its indebtedness is secured, how secured, and upon what property. Such incorporation or joint-stock company shall also file, at the same time and in the same offices, a certificate under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this territory upon all causes of action arising against it in this territory, and that service of process may be made upon some person a citizen of this territory, whose name and place of residence shall be designated in such certificate, and that process, when so served upon such agent, shall be taken, deemed, and held to be as valid to all intents and purposes as if served upon the company in the state or territory under the laws of which it is organized.

**SEC. 2.** The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. The person designated may from time to time change his place of residence or office to some other place within the territory by a writing executed by him and filed in like manner. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

SEC. 3. All foreign incorporations now doing business within this territory shall, within four months from and after the publication of this act in the newspaper having the contract to do the public printing in this territory, file in the office of the secretary and in the office of the county recorder of the county wherein they are, respectively, doing business, the statement and certificate required to be filed by the first section of this act. If any such corporation shall fail, for more than four months from the said publication hereof, so to file said statements and certificates, or any or either thereof, or if any foreign incorporation shall hereafter attempt or commence to do business in this territory without having first filed said statements and certificates required by this act, [it] shall forfeit to the people of Montana the sum of ten dollars for every day it shall so neglect to file the same, and all acts and contracts made by such incorporation, or any agent or agents thereof, during the time it shall so fail and neglect to file said statement and certificates, shall be void and invalid as to such incorporation. It shall be the duty of the district attorney of the county in which the business of such corporation shall be located to sue for and recover, in the name of the people of the territory, the penalty above provided, and the same, when so recovered, shall be paid into the treasury of such county, for the use of the common schools therein.

SEC. 4. Every such incorporation shall, annually, and within twenty days from the first day of September of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in the first section of this act, which report shall be filed in the office of the county recorder of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of the territory.

SEC. 5. That sections forty-six and forty-seven of Chapter XVIII of an act entitled "An act revising, re-enacting, and codifying the general and permanent laws of Montana territory", approved January 12, 1872, and all acts and parts of acts in conflict herewith, be, and the same are hereby, repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

#### GENERAL LAWS, 1881.

AN ACT to amend the Code of Civil Procedure. (Approved February 23, 1881; Sess. Laws, 1881, p. 8.)

SECTION 8. That there be added to Chapter III of Title IX of said code the following additional section, to wit:

"SEC. 363 A. Whenever any person shall have any right to, or interest in, any lead, lode, or mining-claim which is in the possession of another person, and it shall be necessary, for the ascertainment, enforcement, or protection of such right or interest, that an inspection, examination, or survey of such mine, lode, or mining-claim should be had or made, or whenever any inspection, examination, or survey of any such lode or mining-claim shall be necessary to protect, ascertain, or enforce the right or interest of any person in another mine, lead, lode, or mining-claim, and the person in possession of the same shall refuse, for a period of three days after demand therefor in writing, to allow such inspection, examination, or survey to be had or made, the party so desiring the same may present to the district court, or a judge thereof, of the county wherein the mine, lead, lode, or mining-claim is situated, a petition, under oath, setting out his interest in the premises, describing the same, that the premises are in the possession of a party, naming him, the reason why such examination, inspection, or survey is necessary, the demand made on the person in possession so to permit such examination, inspection, or survey, and his refusal so to do. The court or judge shall thereupon appoint a time and place for hearing such petition, and shall order notice thereof to be served upon the adverse party, which notice shall be served at least one day before the day of hearing. On the hearing either party may read affidavits, and if the court or judge is satisfied that the facts stated in the petition are true, he shall make an order for an inspection, examination, or survey of the lode or mining-claim in question, in such manner, at such time, and by such persons as are mentioned in the order. Such persons shall thereupon have free access to such mine, lead, lode, or mining-claim for the purpose of making such inspection, examination, or survey, and any interference with such persons while acting under such order shall be a contempt of court. If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order shall abide the result of the action, but all costs of making such examination or survey shall be paid by the petitioner"

AN ACT concerning property subject to taxation. (Approved February 22, 1881; Sess. Laws, 1881, p. 67.)

SECTION 1. That section 1003, Chapter LIII, of the fifth division of Revised Statutes shall be amended so as to read as follows:

"SEC. 1003. All other property, real or personal, within the territory is subject to taxation in the manner herein directed, and this is intended to embrace \* \* \* ditches and flumes, \* \* \* money in coin or gold dust, whether in possession or on deposit, \* \* \* stocks or shares in any bank or company, incorporated or otherwise, and whether incorporated by this or any other territory or state, or whether situated in the territory or not, except that where the entire capital stock of any incorporated company shall be invested in assessable property in the territory of Montana, such stock shall not be taxed".

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## NEVADA.

## COMPILED LAWS OF 1861-1873.

AN ACT empowering corporations and associations for mining to sue individual members. (Approved December 19, 1862, vol. 1, p. 32.)

SECTION 1. Corporations and associations and companies formed for mining purposes are hereby authorized, in their corporate or associated name, to institute suits against any one or more of their members who may be delinquent in the payment of their assessments.

SEC. 2. Before such suit is brought, before any court having jurisdiction of the amount, such delinquent, and the amount he may owe, and the intention to institute suit thereon shall be advertised in a newspaper published in the county where the mining-claim is located, and if no newspaper be published in such county, then in a newspaper published in the nearest adjoining county, for at least once a week for one month before such suit is instituted.

SEC. 3. It shall be proved on the trial of such suit that the trustees or managing agents of said corporation or association or company were fully authorized to institute such suit by a majority of the members of said corporation or association or company.

SEC. 4. The members of such corporation, association, or company shall be competent witnesses to establish the assessment and indebtedness of the delinquent member.

SEC. 5. This act shall apply only to such corporations, associations, and companies who are actually engaged in mining, and for delinquency in assessments for mining.

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AN ACT for the encouragement of mining. (Approved March 7, 1865, vol. 1, p. 33.)

SECTION 1. When three or more persons, owning or claiming, as joint tenants, 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 the 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.

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.

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 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.

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.

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 non-resident 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 non-resident 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.

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.

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.

SEC. 8. An act entitled "An act for the encouragement of mining", passed by the legislative assembly of the territory of Nevada, approved February twentieth (20th), eighteen hundred and sixty-four (1864), is hereby repealed, and all rights of action accrued under said act shall be commenced and prosecuted under the provisions of this act: *Provided*, That such repeal shall not in any manner affect any action already commenced under said act, but all such actions shall be prosecuted thereunder the same as though said act was not hereby repealed.

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AN ACT to amend an act of the legislative assembly of the territory of Nevada, entitled "An act for the encouragement of mining", approved February twentieth, eighteen hundred and sixty-four (Sess. Laws, 1864, p. 53). (Approved March 9, 1865; Sess. Laws, 1865, p. 135.)

SECTION 5. This act shall apply to all corporations or associations actually engaged in mining in this state, whether formed under the laws of any other state, country, or territory, or having their principal place of business out of this state, or whose trustees, managing agents, or directors, or a majority thereof, reside out of the state.

NOTE.—The act which this amends was repealed by act of March 7, 1865 (Comp. Laws, vol. 1, p. 35).

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AN ACT to provide for the condemnation of real estate and other property required for mining purposes. (Approved March 3, 1866; Comp. Laws, vol. 1, p. 42.)

SECTION 1. Whenever any real estate or other property in this state is or becomes necessary for the convenient and successful working of a mining-claim, and the person or persons owning or possessed of the same refuse to sell or convey the same to any person, mining company, or corporation needing the same for mining purposes at such valuation or price as such person, company, or corporation may deem reasonable and just, said person, mining company, or corporation shall select one appraiser, and said owner or owners shall select one: *Provided*, That if the owner or owners of such property as aforesaid shall refuse or fail to appoint or select an appraiser, as provided for in this section, it shall be the duty of the district court to appoint such appraiser, and the two so selected shall select a third, and the three shall appraise the real estate or property sought to be appropriated, after having been first sworn, before some officer entitled to administer oaths, to make a true appraisement thereof to the best of their knowledge and ability. Within five days after the report of said appraisers, notice of which shall be given to both parties, the person or persons owning the property shall deliver to the person, company, or corporation requiring said property a good and sufficient deed or conveyance of the premises, upon the payment of the amount named in the report of the appraisers; and upon such person or persons failing so to do, it shall be lawful for the person, company, or corporation requiring said property as aforesaid to petition the district court of the judicial district within which said real estate or other property is situated for a condemnation and sale of the same to such person, mining company, or corporation.

NOTE.—See act to encourage the mining, milling, smelting, or other reduction of ores in the state of Nevada, approved March 1, 1875, which superseded this act.

SEC. 2. Said petition shall set forth, amongst other things, that said real estate or property, particularly describing the same, is needed by said person, mining company, or corporation for the convenient and successful working of his, or their, or its mining-claim or ground, owned or possessed by said person, company, or corporation, or for the erection of buildings, roads, or works, to be used in working the same, the fair valuation of such real estate or other property so needed and sought to be condemned; that petitioner has tendered the amount of its value to the defendant or defendants, their agents, or other legal representatives before the commencement of the action, or caused it to be done; that the defendant or defendants, their agents, or legal representatives have refused to accept the sum so tendered; and shall conclude with a prayer that the defendant or defendants be summoned to appear in the action, and show cause, if any can be shown, why the said property should not be by the court condemned, and he or they, said defendants, be compelled to convey and deliver a deed of the same to said petitioner or petitioners.

SEC. 3. At the time of the commencement of the action the petitioner or petitioners shall pay, or cause to be paid, to the clerk of the district court the sum or amount of money so tendered to the defendant or defendants before the commencement of the action, and the same shall remain in the custody of the clerk for and on behalf of the defendant or defendants in said action, and subject to his or their acceptance until the said cause is tried and determined.

SEC. 4. Upon the trial of the cause either party shall be entitled, if demanded, to a trial by jury, as in civil cases at law, and upon the trial it shall be made satisfactorily to appear that said real estate or other property is necessary for the convenient and successful working of the mining-claim or ground mentioned in the petition, in order to entitle the plaintiff or plaintiffs in said action to recover; and, if said fact satisfactorily appear from the evidence, said court (if the same is tried without the intervention of a jury), or the jury before whom said cause is tried, shall proceed in the same action to assess and determine the value of said real estate or other property at the time of the institution of said action; and upon the payment of said sum or amount of money by the petitioner to the defendant or defendants in said action, or to the clerk of said court, for his or their use, said petitioner or petitioners shall be entitled to have and recover a judgment and decree of said court in its, his, or their favor, condemning said real estate or other property to his, its, or their own sole use and possession, and shall direct and decree that the defendant or defendants, or in their stead a commissioner (to be appointed for such purpose by the court), proceed to make, execute, acknowledge, and deliver to the plaintiff or plaintiffs in said action a deed or conveyance thereof.

SEC. 5. Costs in said action, except the costs of making, executing, and delivering the deed of conveyance, shall abide the event of the suit, as in other cases: *Provided, however,* That in case the value of the land or other property so condemned shall not exceed the sum shown to have been originally tendered therefor, the defendant or defendants shall be liable for the costs of said action.

SEC. 6. The practice in actions brought under this act shall be governed by the same rules as other civil actions at law, except as is otherwise provided in this act.

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AN ACT to provide for the conveyance of mining-claims. (Approved December 12, 1862; Comp. Laws, vol. 1, p. 96.)

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.

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.

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.

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AN ACT concerning records now in the custody of county recorders of this state. (Approved February 20, 1873; Sess. Laws, 1873, p. 63; Comp. Laws, vol. 1, p. 102.)

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.

SEC. 2. Copies of the records of all such instruments mentioned in section one 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.

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AN ACT concerning conveyances of mining locations and claims by minors. (Approved February 27, 1869; Sess. Laws, 1869, p. 96; Comp. Laws, vol. 1, p. 101.)

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.

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.

AN ACT defining the time of commencing civil actions. (Approved November 21, 1861; Sess. Laws, 1861, p. 26; Comp. Laws, vol. 1, p. 243.)

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SECTION 4. No action for the recovery of mining-claims or for the recovery of the possession thereof shall be maintained unless it appear that the plaintiff or those through or from whom he claims were seized or possessed of such mining-claim or were the owners thereof, according to the laws and customs of the district embracing the same, within two years before the commencement of such action. Occupation and adverse possession of a mining-claim shall consist in holding and working the same in the usual and customary mode of holding and working similar claims in the vicinity thereof. All the provisions of this act which apply to other real estate, so far as applicable, shall be deemed to include and apply to mining-claims: *Provided*, That in such application "two years" shall be held to be the period intended whenever the term "five years" is used: *And provided further*, That when the terms "legal title" or "title" are used, they shall be held to include title acquired by location or occupation, according to the usages, laws, and customs of the district embracing the claim.

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AN ACT concerning the determination of conflicting rights to mining-claims in certain cases. (Approved February 10, 1873; Sess. Laws, 1873, p. 50; Comp. Laws, vol. 1, p. 452.)

SECTION 1. In all actions brought to determine the right of possession of a mining-claim or metalliferous vein or lode, where an application has been made to the proper officers of the government of the United States by either of the parties to such action for a patent for said mining-claim, vein, or lode, it shall only be necessary, to confer jurisdiction on the court to try said action and render a proper judgment therein, that it appear that an application for a patent for such mining-claim, vein, or lode has been made, and that the parties to said action are claiming such mining-claim, vein, or lode, or some part thereof, or the right of possession thereof.

CHAP. X.—OF POSSESSORY ACTIONS.

AN ACT prescribing the mode of maintaining and defending possessory actions on public lands in the state. (Approved March 9, 1865; Sess. Laws, 1865, p. 343; Comp. Laws, vol. 1, p. 25.)

SECTION 1. Any person now legally occupying and settled upon, or who may hereafter occupy or settle upon, any of the public lands in this state for the purpose of cultivating or grazing the same may commence and maintain any action for interference with or injuries done to his or her possession of said land against any person or persons so interfering with or injuring such land or possession: *Provided*, That if the lands so occupied and possessed contain mines of any of the precious metals, the possession or claim of the person or persons occupying the same for the purposes aforesaid shall not preclude the working of such mines by any person or persons desiring so to do as fully and unreservedly as they might or could do had no possession or claim been made for grazing or agricultural purposes.

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CHAP. XIV.—OF SECURITY FROM DANGER FROM EXCAVATIONS.

AN ACT to secure persons and animals from danger arising from mining and other excavations. (Approved February 8, 1866; Sess. Laws, 1866, p. 59; Comp. Laws, vol. 1, p. 39.)

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| <p>Sec. 109. Safeguards to be erected.</p> <p>110. Notice of violation of preceding section may be filed; what notice shall state.</p> <p>111. Upon filing notice, the justice or judge to issue an order, etc.</p> | <p>  </p> | <p>Sec. 112. What notice shall require; liable to fine in addition to judgment.</p> <p>113. Suits to be in the name of the state.</p> <p>114. County commissioners shall fence abandoned excavations; expenses, how paid.</p> |
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(109.) 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.

(110.) SEC. 2. Any person, being a resident of the county and knowing or having reason to believe that the provisions of section one 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.

(111.) 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 two of this act.

(112.) 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.

(113.) 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.

(114.) 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.

#### CHAP. XVI.—OF THE PROTECTION OF MINES AND MINING-CLAIMS.

AN ACT for the protection of mines and mining-claims. (Approved December 17, 1862; Sess. Laws, 1862, p. 33; Comp. Laws, vol. 1, p. 41.)

<p>Sec. 117. Actions for injuries sustained by mismanagement of adjacent companies. 118. Lien of judgment and continuation thereof.</p>	<p>   </p>	<p>Sec. 119. Survey may be applied for; what affidavit shall state; notice of application, and how served; order of court; costs.</p>
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(117.) SECTION 1. Any person or persons, company, or corporation, being the owner or owners of or in possession, under lease or contract, for the working of any mine or mines within the territory of Nevada, shall have the right to institute and maintain an action, as provided by law, for the recovery of any damages that may accrue by reason of the manner in which any mine or mines have been or are being worked and managed by any person or persons, company, or corporation who may be the owner or owners or in the possession of and working such mine or mines under a lease or contract, and to prevent the continuance of the working and managing of such mine or mines in such manner as to hinder, injure, or by reason of tunnels, shafts, drifts, or excavations, the mode of using, or the character and size of the timbers used, or in anywise endangering the safety of any mine or mines adjacent or adjoining thereto.

(118.) SEC. 2. Any judgment obtained for damages under the provisions of this act shall become a lien upon all the property of the judgment debtor or debtors not exempt from execution in the territory of Nevada, owned by him, her, or them, or which may afterwards be acquired, as is now provided for by law, which lien shall continue two years, unless the judgment be sooner satisfied.

(119.) SEC. 3. Any person or persons named in the first two sections of this act shall have the right to apply for and obtain from any district court, or the judge thereof, within this territory, an order of survey, in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and, as far as known, the names of such parties; also the location of the mine or mines of the parties making such application, and that he has reason to believe, and does believe, that the said parties complained of, their agent, or employes are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant. Upon the filing of the affidavit as aforesaid, the court or judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application will be heard, and shall cite the party to appear in not less than five nor more than ten days from the date thereof, to show cause why an order of survey should not be granted; and, upon good cause shown, the court or judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the court, and report the result and conclusions to the court, which report shall be filed with the clerk of said court. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in the first two sections of this act, by reason of a trespass or damage done or threatened prior to such survey or examination having been made; and in that case such costs shall be taxed against the defendant as other costs in the suit. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey.

CHAP. CXIV.—OF THE FORMATION OF CORPORATIONS.

Sec.	Sec.
3389. Purposes for which corporations may be formed; proviso.	3403. Not to issue bills, etc.
3390. Formation.	3404. Trustees shall keep book for names of members.
3391. Evidence of incorporation.	3405. Penalty for making false entry.
3392. Powers and privileges.	3406. Change in capital stock.
3393. Board of trustees.	3407. How made.
3394. Corporation not dissolved by failure to elect trustees; duty of officers when majority of trustees fail to qualify, etc.	3408. Same.
3395. Quorum.	3409. Powers of trustees after dissolution of company.
3396. First meeting.	3410. Dissolution, how effected.
3397. Transfer of stock.	3411. Removal of place of business.
3398. Powers of trustees; assessments; notice; sale of shares; public auction.	3412. Capital stock.
3399. Stocks held by executors.	3413. To be governed by district mining laws; proviso.
3400. Pledge of stocks.	3414. Trustees to convey property in dissolution of corporation.
3401. Capital stock not to be reduced, etc.; proviso.	3415. Acts repealed.
3402. Debts not to exceed amount of stock paid in; trustees liable for excess.	3416. Corporations may become stockholders.
	3417. Illegal acts of corporations made valid.
	3418. Not to impair vested rights.

AN ACT to provide for the formation of corporations for certain purposes. (Approved March 10, 1865; Sess. Laws, 1865, p. 359; Comp. Laws, vol. 2, p. 272.)

(3389.) 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.

NOTE.—This act was amended February 27, 1869 (Sess. Laws, 1869, p. 95).

(3390.) 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 the court 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.

(3391.) 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.

(3392.) 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 fulfillment 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.

(3393.) 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 selected, be annually elected by the stockholders, at such time 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 each stockholder, either in person or by proxy, shall be entitled to as many votes as he or she may own or represent by proxy shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees. It shall be competent at any time for two-thirds of the stockholders of any corporation organized under this act to expel any trustee from office, and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. 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.

(3394.) SEC. 6. If it shall happen at any time that an election of trustees shall not be had 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.

NOTE.—This act was amended February 24 (Stats. 1866, p. 79).

(3395.) 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.

(3396.) 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.

(3397.) 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 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.

(3398.) SEC. 10. The stockholders of any corporation formed under this act may, in the by-laws of the company, prescribe the times, manner, 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. In all cases 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 if none be published in such county, then in the newspaper nearest to 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 assessment upon all the shares held by him, her, or them. The sale of said shares shall be made as prescribed in the by-laws of the company, but shall in all cases be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section; 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.

(3399.) 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.

(3400.) 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.

(3401.) 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 payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

NOTE.—This act was amended March 3 (Stats. 1866, p. 188).

(3402.) 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 the event of dissolution, to any of the creditors thereof, for the full amount of such excess.

(3403.) 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.

(3404.) 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 proceedings against the company, or any one or more of the stockholders.

(3405.) 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.

(3406.) 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 purposes 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.

(3407.) 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.

(3408.) 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.

(3409.) 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.

(3410.) 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.

(3411.) 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 a 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.

(3412.) SEC. 24. In corporations already formed, or which may hereafter be formed under this act, 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 on the execution and delivery to 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 trustees of such corporation, 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 subscription to its capital stock and calling in the same by by-laws or expressed contract.

(3413.) SEC. 25. 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: *Provided*, That the amount of money so expended in incorporating said company and the procuring of the necessary books for said corporation shall be deemed in law as so much money expended in working said claim.

(3414.) SEC. 26. When any mining incorporation, holding or working any mine or mines in this state, shall disincorporate under the provisions of this act, the board of trustees of said corporation shall convey by deed to the stockholders of said company all mines and other property of said corporation, in proportion to the amount of stock each stockholder shall hold in the mine or mines and other property owned by said corporation, which deed shall be recorded in the office of the county recorder of the county in which the mine is located.

(3415.) SEC. 27. An act entitled "An act to provide for the formation of corporations for certain purposes", approved December twentieth, one thousand eight hundred and sixty-two, also an act amendatory of and supplementary to an act entitled "An act to provide for the formation of corporations for certain purposes", approved December twentieth, one thousand eight hundred and sixty-two, approved February nineteenth, one thousand eight hundred and sixty-four, are hereby repealed.

(3416.) SEC. 28. Corporations formed 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.

NOTE.—Act of February 1 (Stats., 1867, p. 44).

NOTE.—This act is amended by act approved February 17, 1875 (Stats., 1875, p. 68). The amendatory act was also amended by act approved February 11, 1881 (Sess. Laws, 1881, p. 34).

AN ACT concerning corporations. (Approved March 11, 1865; Sess. Laws, 1865, p. 388; Comp. Laws, vol. 2, 281.)

(3417.) SECTION 1. All associations or companies heretofore organized and acting in the form and manner of corporations, and that have filed certificates for the purpose of being incorporated in the office of the county clerk in which the principal place of business of the company is intended to be located, and a certified copy of the same in the office of the secretary of state, but whose certificates are in some manner defective, or have been improperly acknowledged, or have been acknowledged before a person not authorized by law to take such acknowledgments, or where a conveyance has been made to the persons named in the certificate of incorporation as trustees, prior to the filing of the certificate of incorporation as above stated, are hereby declared to be and to have been a corporation from the date of filing of such certificates in the same manner and with like effect and intent as if such certificates were without fault and properly acknowledged before an officer having authority to take such acknowledgments, and such conveyances or deeds shall be held and construed to convey to the corporations, respectively, the title and estate mentioned therein for the uses and purposes in such conveyances or deeds as expressed therein.

(3418.) SEC. 2. Nothing herein contained shall be held or construed so as to impair any rights which have heretofore been acquired by or vested in any person or persons whatsoever.

CHAP. CXV.—OF EXTENDING THE PROVISIONS OF THE GENERAL INCORPORATION ACT TO CORPORATIONS CREATED PRIOR TO ITS PASSAGE; CONFIRMATION OF PROCEEDINGS FOR DISINCORPORATING AND IN INCREASING CAPITAL STOCK AND PURCHASE OF MINING PROPERTY.

Sec.  
3419. Preamble; act to apply to corporations formed prior to its passage.  
3420. Orders, decrees, etc., made prior to March tenth, eighteen hundred and sixty-five, ratified.

Sec.  
3421. Power of corporations to purchase and hold mining property.  
3422. How exercised.

AN ACT to extend the provisions of an act entitled "An act to provide for the formation of corporations for certain purposes", approved March tenth, eighteen hundred and sixty-five, to corporations created prior to that time, and to confirm proceedings taken for the purpose of disincorporating corporations, and for the purpose of increasing the capital stock of corporations. (Approved January 16, 1866.)

Whereas it is doubtful whether certain sections of the act referred to above apply to corporations created and formed prior to the passage of said act: Therefore,

*The people of the State of Nevada, represented in senate and assembly, do enact as follows:*

(3419.) SECTION 1. The act entitled "An act to provide for the formation of corporations for certain purposes",

approved March tenth, eighteen hundred and sixty-five, and each section and provision thereof, shall apply to all corporations created or formed or doing business in this state, or the late territory of Nevada, prior to the passage of said act, and shall constitute the rule for the government and management of the affairs and business of such corporations.

(3420.) SEC. 2. All orders or decrees made by any court or judge in this state since March the tenth, one thousand eight hundred and sixty-five, disincorporating or dissolving any corporation created or formed or doing business in this state, or the late territory of Nevada, prior to said date, and all certificates of the proceedings of stockholders' meetings of such corporations, held for the purpose of increasing or diminishing the amount of the capital stock of the same, are hereby ratified, confirmed, and made valid; and all orders made as aforesaid, and all proceedings had and taken in pursuance to and by virtue thereof, are hereby ratified and made valid, and all the certificates aforesaid having for their object the increase or diminution of the capital stock of such corporations, and filed as provided in section two of said act of March tenth, are made valid, and from the time of the filing thereof the capital stock of the corporation named in any such certificate shall be deemed increased or diminished as therein provided, and all proceedings subsequently had and done under, in pursuance to, and having reference to said certificate and the laws applying thereto shall be valid and effectual for all purposes.

AN ACT concerning the powers of corporations. (Approved March 3, 1866; Stats., 1866, p. 204; Comp. Laws, vol. 2, p. 283.)

(3421.) SECTION 1. All corporations for the purpose of mining, formed, or which may be hereafter formed, under the laws of the state of Nevada, or which were formed under the laws of the territory of Nevada, shall have power to purchase and hold such mining property as they may deem meet.

(3422.) SEC. 2. The power to make such purchases by any corporation shall be exercised only by a majority in interest of all the stockholders in any such corporation, or by such person or persons as may, by such majority, be duly appointed to act in their stead.

#### CHAP. CXVI.—OF THE PROOF OF THE EXISTENCE AND CORPORATE NAME OF FOREIGN CORPORATIONS.

Sec.  
3423. Foreign corporations required to file copy of certificate.

Sec.  
3424. Carrying on business without filing deemed misdemeanor; penalty.

AN ACT to require foreign corporations to furnish evidence of their incorporation and corporate name. (Approved March 3, 1869; Sess. Laws, 1869, p. 115; Comp. Laws, vol. 2, p. 283.)

(3423.) 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 corporations 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.

(3424.) 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, as provided in section one herein, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not exceeding five hundred dollars, to which may be added imprisonment not exceeding six months.

NOTE.—This act is amended by act approved January 30, 1877 (Sess. Laws, 1877, p. 57).

#### CHAP. CXLVII.—OF THE DIVERSION OF WATER, AND RIGHT OF WAY THROUGH THE LANDS OF OTHERS.

Sec.  
3852. Manner of constructing and maintaining a ditch or flume.  
3853. Right conferred to enter and appropriate private lands; compensation, how made; duty of appraisers; tender to be made; proviso; appeal.

Sec.  
3854. Act not to interfere with prior right.  
3855. Act to apply to ditches and flumes already constructed.

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; Sess. Laws, 1866, p. 202; Comp. Laws, vol. 2, p. 415.)

(3852.) 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.

(3853.) 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 appraisal 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.

NOTE.—As amended March 5 (Stats., 1869, p. 129).

(3854.) SEC. 3. Nothing in this act contained shall be so construed as to interfere with any prior or existing claim or right.

(3855.) 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 one 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 two of this act.

#### CHAP. CLVIII.—OF THE BUSINESS OF ASSAYING.—REGULATIONS OF ASSAYING.

<p>Sec. 4032. Assayers required to make monthly returns; what return to set forth.</p> <p>4033. What deemed a misdemeanor; penalty.</p>	<p>Sec. 4034. Assayers required to place description on bars of bullion.</p> <p>4035. Penalty for neglect or refusal.</p>
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AN ACT to regulate the business of assaying within the state of Nevada. (Approved February 13, 1867; Sess. Laws, 1867, p. 57; Comp. Laws, vol. 2, p. 468.)

(4032.) SECTION 1. Every person or firm now engaged in, or who may hereafter engage in, the business of assaying within the state of Nevada, shall make and file, at the end of each and every month, with the county clerk of the county where such business is pursued, a sworn return, subscribed with the name and verified by the oath of the person having the charge and control of such business; which return shall set forth the name and place of residence of every person within such month depositing or selling bullion or amalgam for melting, retorting, refining, or assaying, together with the date of the deposit, the amount then deposited, the name of the mine and mill, blanket, sluice, or other source from which the same was obtained.

(4033.) SEC. 2. Every person or firm, within the state of Nevada, engaged in or carrying on the business mentioned in the first section of this act, who shall neglect or refuse to comply with its provisions, or any of them, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than one thousand dollars and not more than five thousand dollars, and shall be imprisoned in the county jail not less than one month nor more than six months, for each and every such refusal or neglect.

AN ACT to regulate the business of assaying within the state of Nevada. (Approved March 3, 1869; Sess. Laws, 1869, p. 113.)

(4034.) SECTION 1. Every person or firm now engaged in, or who may hereafter engage in, the business of assaying within the state of Nevada shall be required to place a written description, pasted on or stamped upon





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, association, or firm engaged in extracting ores or minerals within his county, and from any person so engaged other than as a corporation, association, or firm, a statement, under oath or affirmation, of the total number of tons extracted by him or them, the gross yield or value of the same in dollars and cents, the actual cost of extracting the same from the mine, the actual cost of transportation of same to the place of reduction or sale, and the actual cost of reduction or sale of same for the 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 is provided by law for the punishment of the crime of perjury.

(3247.) SEC. 3. The account books relating to or used in the transaction of the business of any person, firm, company, association, or corporation engaged in extracting ores or minerals bearing gold or silver, or other metals, 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 whoever has charge of said books of such company, association, corporation, or firm, 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, and shall be arrested on complaint of the assessor or his deputy, and, on conviction thereof 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 more than three months, or by both such fine and imprisonment.

(3248.) SEC. 4. In case of neglect or refusal of any person, firm, president, superintendent, treasurer, secretary, or managing agent, or whoever has charge of the books or mines of any person, firm, company, association, or corporation engaged in extracting ores or minerals for reduction or sale, to give, under oath or affirmation, the statement required in this act, the assessor or his deputy shall make an estimate from the best sources within his reach of the number of tons of all ores or minerals 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 binding, lawful, and effectual, as if made upon a sworn or affirmed statement.

(3249.) SEC. 5. Any person, firm, incorporated company, or association, excepting such as shall have persistently refused to give the assessor, on his demand, access to the books of said person, firm, incorporated company, or association, feeling aggrieved on account of the assessment made as in this statute provided, may appear before the board of county commissioners, at any regular term, or special term 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, and such other evidence as may be produced, 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, when had, shall be final.

(3250.) SEC. 6. Every tax levied under the authority or provisions of this act on the proceeds of the mines is hereby made a lien on the mines or mining-claims from which ores or minerals bearing gold and silver, or either, or any other valuable metal, is extracted for reduction, which lien shall attach on the first days of January, April, July, and October of each year, for the quarter year commencing on those days respectively; and shall not be satisfied or removed until the taxes, as provided in this act, on the proceeds of the mines are all paid, or the title to said mines or mining-claims has absolutely vested in a purchaser under a sale for the taxes levied on the proceeds of such mines or mining-claims.

(3251.) SEC. 7. The county assessor may at any time serve a notice, which shall be in writing, signed by him, upon any person or firm, or upon the superintendent, managing agent, foreman, or any other person having charge or control of the business of any incorporated company or association engaged in reducing ores taken from any mine or mining-claim, setting forth the amount of taxes assessed and unpaid on account of ores or minerals extracted or taken from such mine or mining-claim, and from the time of receiving such notice the person or firm, incorporated company, or association so notified shall be held liable for the amount of such unpaid taxes to the extent of the value of the ores and minerals then in possession of the person or firm, incorporated company, or association extracted or taken from such mine or mining-claim.

(3252.) SEC. 8. The assessors in the several counties in this state shall be allowed to retain to their own use, for collecting the tax as provided in this act on the proceeds of the mines and mining-claims, three per centum on all moneys by them collected, and no more. The assessor and his deputies shall keep a correct account of the number of days they have been actually employed in assessing the proceeds of mines, as provided in this act, and including therein the time employed in making the assessment for both state and county purposes on the proceeds of the mines, and shall verify the same under oath before the clerk of the board of county commissioners, or other person authorized to administer oaths, and then present said account to the board of county commissioners, who, if satisfied of the correctness of the same, shall allow it, or so much thereof as they may find correct, and order payment therefor to be made at the rate of eight dollars per day, which shall be in full for all services in making the assessment for both state and county purposes, and shall be paid as in this statute provided. The county auditor shall receive, for extending the taxes on the quarterly assessment roll of the proceeds of the mines, an amount not to exceed fifteen cents per folio of one hundred words. No county treasurer shall be allowed to receive to his own use any percentage or compensation from the tax on the proceeds of the mines.

(3253.) SEC. 9. The amount allowed and paid out to the assessor and county auditor for services under this act shall be apportioned by the auditor in the proportion the state tax bears to the county tax on proceeds of mines, and the amount shall be charged to the state and county in said proportion, and a verified statement of the amount allowed by the board of county commissioners shall entitle the controller to credit the county treasurer with such amounts as shall have been charged against the state.

(3254.) SEC. 10. The collection of the tax authorized to be levied under this act shall be enforced in the same manner in which the tax on any other kind of personal property is enforced and collected.

AN ACT providing for the location and taxation of borax and soda mines and claims. (Approved March 7, 1873; Sess. Laws, 1873, p. 178; Comp. Laws, vol. 2, p. 228.)

(3255.) SECTION 1. The ownership of, or claim to, or possession of, or right of possession to any lands in this state containing, and held for the purpose of obtaining, borax or soda, shall be assessed annually for taxation, for state and county purposes, at not exceeding five dollars per acre. The annual payment of said taxes and the compliance with the provisions of an act entitled "An act to provide for the location of lands containing salt", approved February twenty-fourth, eighteen hundred and sixty-five, shall be held as a recognition on the part of the state of the validity of said ownership of, or claim to, or possession of, or right of possession to said lands: *Provided*, That where borax and soda mines and claims are being worked for borate of soda, borate of lime, boracic acid, or carbonate of soda, then the net proceeds thereof shall be taxed, in the event that the tax on such net proceeds shall equal or exceed in amount what would be derived from said mines or claims, taxing them at five dollars per acre as aforesaid, and when the net proceeds are taxed the ownership of, claim to, possession of, or right of possession to the said lands shall not be taxed.

(3256.) SEC. 2. Sections two, three, four, five, six, seven, eight, nine, and ten of an act entitled "An act providing for the taxation of the net proceeds of mines", approved February twenty-eighth, eighteen hundred and seventy-one, shall be, and are hereby, made applicable as to time and manner of assessing and collecting the revenue derived from the net proceeds of borax and soda mines and claims.

(3257.) SEC. 3. The officers whose duty it is to enforce the provisions of "An act providing for the taxation of the net proceeds of mines" (referred to in section two of this act) shall enforce the provisions of this act so far as it relates to the taxation of the net proceeds of borax and soda mines and claims, and shall receive the same compensation as provided in said act.

(3258.) SEC. 4. The state controller is hereby authorized and directed to prepare and furnish the necessary blanks and instructions to carry this act into effect.

#### CHAP. I.—THE EXECUTION.

##### TITLE VII.—*Of the execution of the judgment in civil actions.*

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SECTION 221. The following property shall be exempt from execution, except as herein otherwise specially provided:

\* \* \* \* \*  
*Fourth.* The tools and implements of a mechanic or artisan necessary to carry on his trade. \* \* \*

\* \* \* \* \*  
*Fifth.* The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also his sluices, pipes, hose, windlass, whim, derrick, cars, pumps, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars; and two horses, mules, or oxen, with their harness, and food for such horses, oxen, or mules for one month, when necessary to be used for any whim, windlass, derrick, car, pump, or hoisting apparatus.  
\* \* \* \* \*

NOTE.—"An act to regulate proceedings in civil cases in the courts of justice of this state, and to repeal all other acts in relation thereto." (Approved March 8, 1869; Comp. Laws, vol. 1, p. 358; Sess. Laws, 1869, p. 196.)

#### STATUTES OF 1875.

AN ACT to encourage the mining, milling, smelting, or other reduction of ores in the state of Nevada. (Approved March 1, 1875, p. 111.)

SECTION 1. The production and reduction of ores are of vital necessity to the people of this state; are pursuits in which all are interested, and from which all derive a benefit; so the mining, milling, smelting, or other reduction of ores are hereby declared to be for the public use, and the right of eminent domain may be exercised therefor.

SEC. 2. Any person, company, or corporation engaged in mining, milling, smelting, or other reduction of ores may acquire any real estate, or any right, title, interest, estate, or claim therein or thereto, necessary for the

purposes of any such business, 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 name of the person, company, or corporation presenting the petition; that they are engaged in the business of mining, milling, smelting, or other reduction of ores as aforesaid; the description by the metes and bounds, or by some accurate designation, of the tract or tracts of land desired to be appropriated for the purposes of such business; and that a necessity exists therefor; setting forth the names of those in possession of said lands, and of those claiming any right, title, or interest therein, so far as the same can be ascertained by reasonable diligence.

SEC. 3. 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.

SEC. 4. 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.

SEC. 5. The petitioner 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 the said petition, such petitioner 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.

SEC. 6. 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 petitioner, 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 petitioner. 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.

SEC. 7. The said court or judge shall appoint the time and place for the first meeting of said commissioners and the time for filing 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.

SEC. 8. 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 proof of said parties, and shall ascertain and assess the compensation for the land sought to be appropriated, to be paid by said petitioner to the person or persons having or holding any right, title, or interest in or to each of the several tracts of land; 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, or a majority of 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 claim 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 cases such petitioner may pay the amount of such compensation to the clerk of said court, to abide the order of the court or judge in said proceedings, and said petitioner shall not be liable for any of the costs caused by the adjudication of such conflicting claims.

SEC. 9. The said petitioner, or any of said defendants, if dissatisfied with the report, may, within twenty days after the time of filing 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, on 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 matter shall not be more than twice recommitted to commissioners.

SEC. 10. 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.

SEC. 11. 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 petitioner. 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 also the compensation of the commissioners, which shall be fixed by the court or judge, and shall be paid by said petitioner, 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 costs.

SEC. 12. 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 petitioner 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 by order in their behalf made, authorize such petitioner, 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 petitioner on account thereof, provided such petitioner shall pay a sufficient sum into court or give security, to be approved by such court or judge, to pay the compensation in that behalf when ascertained.

SEC. 13. Upon the filing of the report of the commissioners 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 such petitioner for the purpose of the business of mining, milling, smelting, or other reduction of ores, as aforesaid, so long as the same shall be continued, and shall be deemed to be acquired for and appropriated to public use.

SEC. 14. Such petitioner shall, within thirty days after the final confirmation of the report 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 as if the said sum of money had been personally paid to each and all of the persons entitled thereto.

SEC. 15. If it shall become necessary for any of the purposes aforesaid for such petitioner to acquire any real estate, or any right, title, or interest therein, which is the property of any infant, idiot, or insane person, the guardian, executor, or administrator, as the case may be, shall be subject to process, judgment, and decree, as herein provided for persons of full age or capable of contracting, or without such process, judgment, or decree they may sell and convey the property desired to said petitioner; 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.

SEC. 16. The said court or judge shall, at the time of the payment of any sum of money to the said clerk, under the provisions of this act, 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.

SEC. 17. In all the proceedings in relation to the sale or appropriation of real estate, and ascertaining and receiving the compensation therefor, for the purposes as prescribed in this act, the term "person" shall be deemed to include municipal or other corporations, and the word "petitioner" to designate any person or number of persons, company, or corporation who may in any case petition as provided in this act.

SEC. 18. 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.

## CHAP. XXVI.

AN ACT to amend an act entitled "An act to provide for the formation of corporations for certain purposes", approved March tenth, eighteen hundred and sixty-five. (Approved February 17, 1875, p. 68.)

SECTION 1. Section five of said act, of which this act is amendatory, is hereby amended so as to read as follows:

"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 each stockholder, either in person or by proxy, shall be entitled to as many votes as he or she may be entitled to represent, by proxy, shares of stock; 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 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 contempts 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".

SEC. 2. This act shall take effect immediately.

NOTE.—This act is amended by act approved February 11, 1881 (Sess. Laws, 1881, p. 34).

## CHAP. LXIV.

AN ACT to secure liens to mechanics and others, and to repeal all other acts in relation thereto. (Approved March 2, 1875; Sess. Laws, 1875, p. 122.)

SECTION 1. Every person performing labor upon or furnishing materials of the value of twenty-five dollars, to be used in the construction, alteration, or repairs of any building or other superstructure, railroad, tramway, toll-road, canal, water-ditch, flume, aqueduct, or reservoir, building, bridge, fence, or any other structure, or who performs labor in any mining-claim, has a lien upon the same for the work or labor done or materials furnished by

each respectively, whether done or furnished at the instance of the owners of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder, or other persons having charge of any mining-claim, or of the construction, alteration, or repairs, 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 purpose of this chapter.

\* \* \* \* \*  
 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.

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 lienholder 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.

\* \* \* \* \*  
 NOTE.—This act is amended by act approved February 24, 1877 (Sess. Laws, 1877, p. 90), and was further amended by act approved February 23, 1881 (Sess. Laws, 1881, p. 49). The remaining sections of the above act relate to the recording, limitation, and enforcement of the lien, and to further matters concerning the subject, not essential to the purpose of this quotation.

#### CHAP. XV.

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; Sess. Laws, 1877, p. 57.)

SECTION 1. Section one of said act is hereby amended so as to read as follows:

"SEC. 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 certificates, 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".

SEC. 2. Section two of said act is hereby amended so as to read as follows:

"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 one 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".

#### CHAP. XIX.

AN ACT to abolish the office of state mineralogist, and to provide for the care and preservation of the state museum. (Approved February 1, 1877; Sess. Laws, 1877, p. 59.)

SECTION 1. The office of state mineralogist of the state of Nevada is hereby abolished.

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.

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 is 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. For the services rendered and expenses incurred by the state superintendent of public instruction as curator of the state museum, as aforesaid, he shall be allowed a sum of not exceeding five hundred (500) dollars per annum, and he shall have further power to engage the services of one or more employes, at such times as he may deem necessary, to clean, rearrange, and catalogue all specimens that are now or that may hereafter be placed in said state museum, who shall be paid a compensation, subject to the approval of the board of state examiners, and on the certificate of the said curator, of a sum not exceeding five hundred dollars per annum.

SEC. 5. All claims for services rendered, as is provided in section four of this act, shall be allowed by the board of state examiners, and paid by the state treasurer out of any moneys not otherwise appropriated, on the warrant of the state controller.

SEC. 6. An act entitled "An act to provide for establishing and maintaining a mining school, and to create the office of state mineralogist", approved March ninth, one thousand eight hundred and sixty-six, is hereby repealed.

SEC. 7. An act entitled "An act to create the office of state mineralogist and define the duties of such officer", approved March first, one thousand eight hundred and sixty-nine, is hereby repealed.

SEC. 8. This act shall not take effect and be in force until on and after the first Monday in January, A. D. one thousand eight hundred and seventy-nine.

#### CHAP. XLI.

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; Sess. Laws, 1877, p. 80.)

SECTION 1. Any person who shall be the *bona fide* owner of stock shares representing the value of one per cent. of the 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 the *bona fide* owners of an aggregate number of mining shares amounting to one per cent. of said capital stock, standing in their own names on the books of the company at the time application for the permit is made, shall be a duly-accredited agent, upon a written order from the clerk or 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 such mining company: *Provided*, Such privilege for examination shall not be permitted except during one day during each calendar month. The superintendent shall keep posted in some conspicuous place the day of the month the person may be admitted into the mine under the provisions of this act.

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 applicant 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.

SEC. 3. Upon making application for the privilege of entering and examining any of the mines or mining properties mentioned in section one of this act, the applicant shall present to the county clerk or justice of the peace certificates of stock shares representing in value one per cent. of the capital stock of the company whose mine he desires to examine; thereupon the applicant shall make oath or affirmation that he is a party in interest in the stock shares of the mines and mining property which he or she desires to examine; that the stock certificates presented by him or her are actually his or her own property, or that such certificates of stock really belong to the parties which he or she is authorized to represent.

SEC. 4. Immediately upon complying with the provisions of section three 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 to which he or she may desire to examine.

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 one 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.

SEC. 6. This act shall take effect from and after the first day of April, eighteen hundred and seventy-seven.

NOTE.—This act is amended by act approved March 1, 1879 (Sess. Laws, 1879, p. 57).