

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

IN FORCE

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COMPLETE IN TWO VOLUMES.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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SUPPLEMENT

TO THE

GENERAL STATUTES OF 1878.

[In cases of apparent typographical errors in the printed Session Laws, the enrolled bills have been examined, and such errors corrected.]

CHAPTER 1.

OF ELECTIONS.

[Chapter 1, Gen. St. 1878, and all acts amendatory thereof, are declared to be repealed by § 98, *post*. But how far said repeal applies to provisions governing elections in cities having over twelve thousand inhabitants,* see § 71, *post, et seq.*]

***§ 1. Time of holding elections.**

On the first Tuesday after the first Monday in November of each even numbered year an election shall be held in the several election districts of the state, which shall be known as the general election; and the several state and county officers, judges of the supreme and district courts, members of the legislature, and representatives in congress of the United States shall be elected at the general election next preceding the expiration of the term of each of the said officers, respectively; and, on a year when a president and a vice-president of the United States are to be chosen, a number of electors of president and vice-president of the United States equal to the number of senators and representatives to which this state is entitled in the congress of the United States, shall be elected at said election. (1887, c. 4, § 1.)†

See *State v. Benedict*, 15 Minn. 198, (Gil. 153, 156;) *State v. Sherwood*, 15 Minn. 221, 224, (Gil. 172.)

***§ 2. Election districts — How formed.**

Every organized township and every ward of each incorporated city shall form at least one [election] district; but no election district in any incorporated city shall contain more than four hundred voters; and whenever an

*Gen. St. 1878, c. 1, §§ 77-116, (Laws 1878, c. 84.) and amendments; Laws 1881, c. 79; 1883, c. 33; 1885, c. 56.

† "An act relating to elections, and to repeal chapter one of General Statutes of 1878, and all acts amendatory thereof." Approved March 8, 1887.

election district is found by the number of votes there cast at any election, to contain more than four hundred voters, it shall be the duty of the supervisors of the town, or the common council, village, borough, or municipal corporation of the city, if an incorporated city, to cause such districts, at least six weeks before the next ensuing general, town, or city election, to be divided into two or more districts, each containing, as nearly as may be, an equal number of voters. Whenever a ward shall be divided into two or more districts in an incorporated city, the common council, village, borough, or municipal corporation shall publish the same, by making a map or description of such division, defining it by known boundaries, and keeping such map or description open for public inspection in the office of the clerk of such city, and also by posting up copies of such map or description in at least ten of the most public places in every district of such ward; and the common council, village, borough, or municipal corporation shall also, prior to the next election, furnish copies of such map or description to the judges of election in each district of such ward.* (1887, c. 4, § 2.)

See *State v. Fitzgerald*, (Minn.) 32 N. W. Rep. 788.

*§ 3. Districts in unorganized counties.

Whenever any number of voters, not less than eight, residing in an unorganized or partially organized county, shall petition the governor to establish a new election district, designating the boundaries of the same, which shall not be within ten miles of the polling-place of any existing district, it shall be the duty of the governor, and he is hereby authorized, to cause to be established such district; and he shall select from the names of the petitioners three persons who shall be judges of election therein; such districts to be established at such place or places as the petitioners may require. The governor shall, within at least six weeks before a general election, and within at least three weeks before a special election, publish in some newspaper published in the state a list of all the election districts by him so established, and the places where the elections are to be held. (*Id.* § 3.)

*§ 4. Judges and clerks of election—How appointed—Places for holding elections.

The township supervisors of each township are the judges of election, and the town clerk of each township shall act as one of the clerks of election, in their respective election districts, and the judges of election shall appoint an additional clerk of election, who shall be of an opposite political party, if practicable, to the town clerk. The city council of all incorporated cities shall appoint three qualified electors of each election district of said city, who shall be judges of election in their election districts, respectively, and who shall appoint two qualified electors of their election districts as clerks of election. The election shall be held in such election district at the place where the last preceding election was held, except as hereinafter provided; but if in any town a vote is taken to hold it elsewhere, the next ensuing election shall be held at the place designated by such vote. The city council of every incorporated city shall, by ordinance, appoint the place of holding the election in each election district in such city; and when, in any township having over five hundred electors, the supervisors divide the same into two or more election districts, they shall designate the boundaries thereof, and thereafter there shall be elected, at the annual town meeting of such township, three judges of election and two clerks of election in each district, and the place of holding election in

*See, also, act of March 9, 1885, (Laws 1885, c. 172,) as follows:

§ 1. That the corporate authorities of any village, town, or city, which has been or which may hereafter be organized under the general laws of the state of Minnesota, shall establish as many voting precincts or voting places as may be convenient for the inhabitants of said village, town, or city.

each district shall be designated by said town meeting, or, in default of such designation, shall be appointed by the judges of election thereof. Not more than two judges and one clerk of election, except where town supervisors and town clerks so act, shall belong to the same political party. (*Id.* § 4.)

Change of voting place on the day of election is an irregularity, and will not render the election void, unless it appears that the result was changed thereby. *Farrington v. Turner*, (Mich.) 18 N. W. Rep. 544.

***§ 5. Notice of elections—How given.**

The secretary of state shall, between the first days of July and September in each year, direct and cause to be delivered to the auditor of each county a notice specifying all the officers whose term of office will expire on the first Tuesday of January, next succeeding, and specifying, also, the several officers to be chosen in such county at the next general election. The auditor to whom such notice is delivered shall, upon the receipt thereof, cause a like notice to be sent to each town and city clerk in his county. Every township and city clerk, at least fifteen days before the holding of any general election, and twenty days before the holding of any special election, shall give public notice of the time and place of holding such election, by posting in three public places in every election district three notices containing a list of the officers to be elected at such election, one of which notices shall be posted up at the place of holding the election. Said notices shall contain, also, the hours during which the polls will be open: *provided*, that no failure of any clerk to give such notice aforesaid shall invalidate an election. (*Id.* § 5.)

So, also, the facts that there were no register poll-lists at an election, that the judges and clerks did not take any oath, and that there was not transmitted with the returns to the county auditor a list of the qualified electors of the election district, do not invalidate the election. *Taylor v. Taylor*, 10 Minn. 107, 111, (Gil. 81, 85); *Edson v. Child*, 18 Minn. 64, 351 (Gil. 43, 223.)

As to notices for election districts not regularly established, see *State v. Emery*, (Neb.) 30 N. W. Rep. 57.

Necessity of notice in case of filling a vacancy at a regular election. See *People v. Thompson*, (Cal.) 9 Pac. Rep. 833.

Compelling the correction of a notice of election by *mandamus*, see *State v. Ware*, (Or.) 10 Pac. Rep. 885.

***§ 6. Voters must register—Register list—How made—Posting—Correction.**

The judges of election in each election district, except in cities having over twelve thousand inhabitants, at least twenty days before any election, shall make a list or register of the names of all persons who are entitled to vote in their respective districts at such election, which list shall contain the surnames of such persons in their alphabetical order. Three copies of said list shall, at least ten days before such election, [be posted in each election district,] together with a notice of the time and place when and where the judges of election will be present for the purpose of making corrections in said list. The said judges of election on Tuesday, two weeks preceding the election, and, if necessary, for the next three days, from the hour of nine in the morning until one in the afternoon, and, in cities containing a population of four thousand inhabitants and upwards, in addition thereto, from the hour of eight to the hour of ten in the evening, and on the Tuesday next preceding such election from nine o'clock in the forenoon until nine o'clock in the evening, shall be present at the place appointed for the holding of such election, in their respective election districts, for the purpose of making corrections in said list or register. In making such corrections, said judges of election shall enter upon such lists the additional names of all persons properly shown to be entitled to vote at such election, and erase from said list or register the names of all persons properly shown to be not entitled to vote at such election. The said judges, on first making out said lists, shall consult the poll-lists used

at the last preceding election in their election district, and shall place in said list or register the names of those persons whom they know, or with reasonable diligence ascertain, to be entitled to vote at such election in their respective election districts. In making the final correction of said lists or registers, to ascertain who are entitled to vote at such election, the said judges shall be governed by the rules and regulations hereinafter for that purpose prescribed; and at such election no person shall vote whose name is not upon said list or register at the time of opening the polls: *provided*, that if any person offering to vote, whose name is not on said lists or registers, can produce evidence which satisfies a majority of the judges that he has the qualifications of an elector in said district, and is entitled to vote at such election, but whose name has been accidentally omitted from said lists or registers, then the name of such person shall be added to the lists or registers, and he shall be allowed to vote; nor shall the vote of any person be rejected whose name is upon said lists at the time of opening the polls: *provided*, that if evidence satisfying a majority of the judges be produced, showing that the name was registered by mistake, and that the person so offering to vote has not the qualifications of an elector in said district, and is not entitled to vote at such election, then the name of such person shall be stricken from said list, and he shall not be allowed to vote; but in all such cases an entry shall be made opposite to each name added to or stricken from said lists or registers after the opening of the polls, and the judges of election shall make, or cause to be made, a duplicate of said lists or registers, so that there shall be two registers or lists at every election. (1887, c. 4, § 6.)

A statute requiring the registration of voters is not unconstitutional. *People v. Hoffman*, (Ill.) 5 N. E. Rep. 596; *Daggett v. Hudson*, (Ohio), 3 N. E. Rep. 538. But see *Dells v. Kennedy*, 49 Wis. 555, 6 N. W. Rep. 246; *White v. County of Multnomah*, (Or.) 10 Pac. Rep. 484. Such a statute, however, must be reasonable and impartial, and calculated to facilitate and secure the right of suffrage, and not to subvert or injuriously, unreasonably, or unnecessarily to restrain, impair, or impede that right. *Daggett v. Hudson*, *supra*.

As to the constitutionality of a statute providing for a registering board, members of which are to be selected from each of two leading political parties, see *Attorney General v. City of Detroit*, (Mich.) 24 N. W. Rep. 887.

Power of registering officer to refuse to allow an applicant to register, see *U. S. v. Eagan*, 30 Fed. Rep. 495.

Liability of registering officer for wrongfully erasing the name of a voter, see *Larned v. Wheeler*, (Mass.) 5 N. E. Rep. 290.

See, also, *State v. Piper*, (Neb.) 24 N. W. Rep. 204.

*§ 7. Residence of voters—How determined.

Provided, that any person, being an inmate of any soldiers' home in this state, shall, for the purposes of this act, have a legal residence thereat. The judges of election in determining the residence of any person, for the purpose of ascertaining who are qualified electors, shall be governed by the following rules so far as they are applicable:

First. The place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which whenever he is absent he has the intention of returning.

Second. A person shall not be considered to have lost his residence who leaves his home to go into another state, or county in this state, for temporary purposes merely, and with the intention of returning.

Third. A person shall not be considered to have gained a residence in any county, into which he comes for temporary purposes merely, without the intention of making such county his home.

Fourth. If a person go into another state, with the intention of making it his residence, he loses his residence in this state.

Fifth. If a person remove to another state, with the intention of remain-

ing there for an indefinite time, as a place of residence, he loses his residence in this state, notwithstanding he entertains the idea of returning at some future time.

Sixth. The place where a man's family resides shall be held to be his place of residence; but if it be a place of temporary establishment for his family, or for transient purposes, it shall be otherwise.

Seventh. If a man have a family fixed in one place, and he do business in another, the former shall be considered his place of residence; but any man having a family, who has taken up his abode with the intention of remaining, and whose family refuses to reside with him, shall be regarded as a citizen and voter where he has taken up his abode.

Eighth. The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal, without the intention. And no person employed temporarily in the construction or repair of any railroad, canal, or other work of a public nature, shall acquire a residence in any election precinct into which he came for that purpose, so as to entitle him to vote therein; but this provision shall not be held to extend to station agents, section-men who permanently reside in such election precinct. In any question that may arise as to the right of any person, in the employment of any railroad corporation, to be registered or to vote in any election precinct, it must first satisfactorily appear to all the judges of said election that the said party is an actual *bona fide* resident of said election district, and not there for temporary purposes merely; and the mere affidavit of such person shall not be received as conclusive as to any fact necessary to entitle him to vote. (*Id.* § 7.)

As to what constitutes residence, see *Vanderpoel v. O'Hanlon*, (Iowa,) 5 N. W. Rep. 119.

*§ 8. Filling vacancies in election board—Oath of election officers.

If either of the judges of election of any election district shall fail to attend at the time and place appointed for correcting the lists or registers, or holding an election, or if either of said judges be a candidate at such election, or refuse to act as judge, the qualified electors of such election district present shall elect *viva voce* some qualified elector of said election district to act as judge, instead of such judge so absent, disqualified, or refusing to act; and if any clerk of election be absent, disqualified, or refuse to act, the judges of election shall appoint some qualified elector in place of such clerk; and before any judge or clerk of election enters upon the discharge of the duties imposed upon him by this chapter, he shall take and subscribe the following oath, to-wit:

"I, A. B., (judge or clerk of the election, as the case may be,) do solemnly swear (or affirm) that I will perform the duties of judge or clerk of the election (as the case may be) according to law and the best of my ability, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting this election, so help me God;" which said oath, so taken, subscribed, and certified, shall be affixed to the said list of register provided for in section six. If there be no person present authorized to administer oaths, then the judges of election may administer to each other, and to the clerks, the oath above provided. (*Id.* § 8.)

*§ 9. Eligibility of judges and clerks.

No person shall be eligible as judge or clerk of election unless he be a qualified voter within the election district in which he acts, nor unless he can read and write and speak the English language understandingly. (*Id.* § 9.)

That some of the judges of election were not qualified, does not authorize the rejection of the vote of their precinct. In *re Quinn v. Markoe*, (Minn.) 35 N. W. Rep. 263.

***§ 10. When polls to be opened.**

The polls in the several election districts shall be opened at nine o'clock in the morning, and kept open until five o'clock in the afternoon; but in cities of five thousand inhabitants or more the polls shall be kept open until seven o'clock in the evening. No adjournment or intermission whatever shall take place until the same be closed, and until all the votes cast at such poll have been counted and the result publicly announced. (1887, c. 4, § 10.)

***§ 11. Special constables—Appointment—Duties.**

The judges of election may appoint one or more special constables to attend each place of election. It shall be the duty of the sheriff or constable to keep an open space of at least six feet square from the place of voting, so the person voting can do so unmolested by any other person. If any of the above-named officers neglect to perform that duty, then the judges of election shall swear in enough private citizens to enforce order, who shall have power, as constables or conservators of the peace, to make arrests for breach of the peace. And any police officer or constable attending the election may call to his aid a sufficient number of citizens to arrest any disorderly person or suppress any riot or disorder during the election. Whoever conducts himself in a riotous or disorderly manner at any election, and persists in such conduct after being warned to desist, may be arrested without warrant. (*Id.* § 11.)

***§ 12. Challengers.**

The judges of election shall allow at least one, and not more than two, eligible voters of each political party to the contest, to be chosen by the parties, respectively, in the room where the election is held, to act as challengers of voters at the election; and such challengers may remain with the board of election until the votes are all canvassed and the result declared. (*Id.* § 12.)

***§ 13. Ballot-boxes.**

At each general and special election boxes shall be provided in which all ballots required to be indorsed "State," as directed in the seventeenth section hereof, shall be deposited; also a box in which all ballots which are required by said seventeenth section to be indorsed "Judiciary" shall be deposited; also a box in which all ballots which are required by said seventeenth section to be indorsed "County" shall be deposited; also a box in which all ballots which are required by said seventeenth section to be indorsed "Town" or "City" shall be deposited; also a box in which all ballots which are required by said seventeenth section to be indorsed "Legislature" shall be deposited; also a box in which all ballots which are required by said seventeenth section to be indorsed "Congress" shall be deposited. At any election at which any officers are to be voted for by ballot, or subject to be submitted to vote, not otherwise in this section provided for, there shall be provided as many additional boxes as there are additional kinds of ballots required: *provided*, except in cases of voting amendments to the constitution or any county-seat removal, one additional box may, in the discretion of the judges of election, be provided for all subjects other than those specified in this section. The provisions of this section shall apply only to incorporated cities of more than five thousand inhabitants. (*Id.* § 13.)

***§ 14. Procedure on opening and closing polls.**

The judges of election, or one of them, immediately before the proclamation is made of the opening of the polls, shall open the ballot-boxes in the presence of the people there assembled, and turn them upside down, so as to empty them of anything that is in them, and then lock them; and the key thereof shall be delivered to one of the judges, and the said boxes shall not be reopened until for the purpose of counting the ballots therein at the close of the polls; and the judges forthwith shall proclaim that the polls are open.

Written notice of the hour of closing the polls shall be conspicuously posted up outside the polling place. (*Id.* § 14.)

***§ 15. Elector—Where to vote.**

No elector shall vote except in the district in which he actually resides. (*Id.* § 15.)

***§ 16. Method of voting.**

The only method of voting at any election shall be by ballot. Any person offering to vote shall deliver his ballot or ballots to one of the judges in the presence of the board. The ballots shall be printed or written, or partly printed and partly written, upon plain white paper, and shall contain the names of the person or persons for whom the elector intends to vote, designating the office to which each person so named is intended by him to be chosen. (*Id.* § 16.)

Plurality vote, by secret ballot, written or printed, necessary to election—Validity of ballot. *Barnum v. Gilman*, 27 Minn. 466, 8 N. W. Rep. 375.

***§ 17. Ballots—How composed.**

The ballots shall be composed as follows: I. The names of all the persons voted for by any elector, at any election, in whose election all of the voters of the state have the right alike to participate, except electors of president and vice-president, and chief justice and associate justices of the supreme court, shall be upon one ballot, which ballot shall be indorsed "State." II. The names of all persons voted for by any elector, at any election, for chief justice or associate justices of the supreme court, judges of the district court or probate judge, shall be upon one ballot, which ballot shall be indorsed "Judiciary." III. The names of the persons voted for by any elector, at any election, for any county office or offices, in whose election all of the voters of the county have the right alike to participate, shall be upon one ballot, which shall be indorsed "County." IV. The names of the persons voted for by any elector, at any election, for senators or members of the house of representatives, shall be upon one ballot, which shall be indorsed "Legislature." V. The name of the person voted for at any election for representative in congress shall be upon a separate ballot, and indorsed "Congress." VI. The names of the persons voted for by any elector, at any election for any town offices, or in an incorporated city for any city offices, shall be upon one ballot, which ballot shall be indorsed "Town" or "City," (as the case may be.) At a general election for representatives in congress, if any person named in the "Congress" ballot shall be intended to supply a vacancy in the office of such representative, the ballots shall designate the congress to which each person is designed to be chosen. When electors of president and vice-president are to be chosen, a separate ballot shall be given for them, which shall be indorsed "Electors," and shall contain the names of the persons designated, by the voters giving the same, to be electors of president and vice president, or any of them. The provisions of this section shall apply only to incorporated cities of over five thousand inhabitants. (*Id.* § 17.)

***§ 18. Ballots—How to be printed.**

Every printed ballot shall have a caption or indorsement as provided by law; but such caption or indorsement shall be printed in one straight line, in black ink and with plain type, of the size now generally known and designated as "Great Primer Roman Condensed Capitals," and the names of all candidates shall be printed in plain type, with letters of a uniform size. (*Id.* § 18.)

***§ 19. Unlawful to mark ballots.**

It shall be unlawful for any person to prepare or distribute or cast any ballots printed or partly printed contrary to the provisions of this chapter; or to

mark the ballot of any voter, or to deliver to any voter such marked ballot, for the purpose of ascertaining how he shall vote at any election. (1887, c. 4, § 19.)

A "paster" is not a "cut or device to distinguish one ballot from another." In re Quinn v. Markoe, (Minn.) 35 N. W. Rep. 263.

***§ 20. Duties of judges on receiving ballot.**

The judge to whom any ballot is delivered shall, upon the receipt of the same, pronounce in an audible voice the name of the person from whom the ballot is received; and if the name of the person is found on the lists or registers before mentioned, the said judge shall, without opening the said ballot or permitting the same to be opened or examined, deposit the same in the proper ballot-box, and the clerks or judges of election shall thereupon distinctly check the name of said person on the lists or registers. (*Id.* § 20.)

***§ 21. Duties of clerk—Poll-list.**

Each clerk of the polls shall make a poll-list, which shall contain one column headed "Number," one column headed "Residence," one column headed "Names of Voters," and as many additional columns as there are boxes kept at the election. The heading of each additional column shall correspond with the name of one of the boxes so kept. (*Id.* § 21.)

***§ 22. Entries in poll-list.**

The name of each elector voting shall be entered by each clerk in the column of his poll-list headed "Names of Voters," the place of residence of each elector so voting, in the column headed "Residence," and, when there shall be more than one box kept, opposite such name shall be written the figure I in every remaining column of such poll-list corresponding in heading with the name of each box in which a vote of the elector shall be deposited. In the column headed "Number," the clerk shall write, consecutively, the number of each person voting, the first voter being numbered one. Said clerk shall enter in a column opposite the name of each person not registered the words, "Not registered." (*Id.* § 22.)

***§ 23. Electors to state residence.**

Every elector, at the time of offering his vote, shall truly state the street in which he resides, and if the house, lodging, or tenement where he resides is numbered, the number thereof; but clerks of the polls, if the registers contain correctly such names and residence, need not make an entry of the residence. In case of his refusal to make the statement aforesaid, the vote of any elector shall not be received. (*Id.* § 23.)

***§ 24. Disposition of poll-lists.**

After the canvass of the votes, one of said poll-lists or registers so kept and checked as aforesaid shall be attached together, and, on the following day, shall be filed in the office of the city or town clerk. The other of said poll-lists or registers so kept and checked shall be returned to the office of the county auditor in said district at the time the returns of the election are made. The registers shall at all times be open to public inspection at the office of the authorities in which they shall be deposited, without charge. (*Id.* § 24.)

***§ 25. Judges to challenge unqualified elector.**

Each judge of election shall challenge any person offering to have his name inserted in the poll-list, or to vote at any election, whom he knows or suspects to be not duly qualified as an elector. (*Id.* § 25.)

***§ 26. Procedure on challenge.**

If any person offering to vote at any election shall be challenged in relation to his right to vote at that election by a judge, or by any other person

entitled to vote at the same poll, one of the judges shall tender him the following oath:

"You do swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualifications as an elector at this election." The judges, or one of them, shall then proceed to question the person challenged regarding his name, his age, his then place of residence, how long he has resided in the town, ward, or election district where the vote is offered; where was his last place of residence before he came to that town or ward, and as to his citizenship, whether a native or naturalized citizen, and, if the latter, when, where, and at what court, and before what officer he was naturalized; whether he came into the town or ward for the purpose of voting at that election, and how long he contemplates residing in the town or ward, and such other questions as tend to test his capabilities as a resident in the town or ward, and his right to vote at that poll. (*Id.* § 26.)

The ballot of a qualified elector is lawfully received though he is not sworn. State v. O'Day, (Iowa,) 23 N. W. Rep. 642.

***§ 27. Refusal to answer.**

If the person so challenged refuse to answer the questions which are put to him, as aforesaid, the judges shall refuse to insert his name in the poll-lists, and he shall not be allowed to vote. (*Id.* § 27.)

***§ 28. Further oath.**

If the challenge is not withdrawn after the person so offering to vote has answered the questions put to him as aforesaid, one of the judges of election shall tender him the following oath: "You do swear (or affirm) that you are a citizen of the United States, or that you have declared your intention to become such citizen conformably to the laws of the United States on the subject of naturalization; that you are twenty-one years of age, and have been an inhabitant of this state for four months immediately preceding this election, and an actual citizen of this election district for ten days immediately preceding this election; that you have not voted at this election." (*Id.* § 28.)

***§ 29. Refusal to take oath.**

If any person refuse to take the oath so tendered, his name shall not be inserted on the poll-list, and he shall not be allowed to vote. (*Id.* § 29.)

***§ 30. Canvass of votes—How made.**

As soon as the polls are finally closed, of which closing proclamation shall be made by one of the judges thirty minutes previous thereto, the judges shall proceed to canvass the votes taken at such election, and the said canvass shall be public and continued without intermission until completed and the result declared. The canvass shall commence by taking out of each box the ballots unopened, (except so far as to ascertain whether every ballot is single,) and counting the same to ascertain whether the number of ballots corresponds with the number appearing on the poll-lists to have been cast in such box; if two or more ballots be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the counting of the ballots is completed; then, if, on a comparison of the said count with the number of ballots so appearing to have been cast in such box, it appears that the two ballots so found folded together were cast by one elector, they shall be destroyed. If the ballots in any box be found to exceed in number the number of votes cast in such box, after destroying the ballots folded together, (if any,) they shall be replaced in the box, and one of the judges shall publicly, and without looking in the box, draw out therefrom, and destroy unopened, a number of ballots equal to such excess. The number of ballots agreeing, or being thus made to agree, with the number of votes appearing in the columns

of the poll-list, correspondent to the respective boxes, the lists shall be signed by the judges and attested by the clerks, and the number of names thereon checked as aforesaid shall be stated in words and figures at the foot of said list and over the signatures of the judges and the attestations of the clerks in the manner hereinafter provided in the form of said lists. (1887, c. 4, § 30.)

***§ 31. Form of list of electors.**

The lists of electors provided for herein shall be substantially in the following form, to-wit:

"List of qualified electors in the election district composed of the (township, ward, or town, as the case may be) of _____, in the county of _____, state of Minnesota, for an election to be held in the said election district, on the _____ day of _____, eighteen hundred and _____. (The surnames to be inserted in alphabetical order.)

"The whole number of the above-named persons who were present and voting at the above-named election was (the number to be written in words and in figures.) (Signed by the judges of election; attested by the clerks of election.)" (*Id.* § 31.)

***§ 32. Counting votes—Disposition and preservation of ballots—Form of returns.**

After the said lists are thus signed, the judges shall proceed to count and ascertain the number of votes cast for each person voted for, and the result shall then be distinctly read; and, as soon as read and canvassed, the tickets shall be strung by one of the judges upon a stout string, and, as soon as practicable after the completion of the said canvass, shall be deposited in the office of the town (or city) clerk, and carefully preserved therein until the next general election; and the clerks of election shall set down on a paper, to be known as the returns of the election, the names of each person voted for, written out at length, the office for which such person received any votes, and the number of votes he received; the number being written out in words and also in figures. The said returns shall be as nearly as possible in following form, to-wit:

"At an election held at _____, in the (number if any) election district composed of _____, (township, ward, or town, as the case may be,) in the county of _____, in the state of Minnesota, on the _____ day of _____, eighteen hundred and _____, the following named persons received the number of votes opposite their respective names for the following described offices, to-wit: For (specifying the office) A. received (the number to be written in figures and also at length) votes, (and likewise for every person voted for for any office;)" to be signed by the judges of election and attested by the clerks of election. Votes rejected by the judges, and not counted, for any reason, shall be strung separately and plainly marked "Rejected Ballots," and be deposited with the ballots counted, as above provided. (*Id.* § 32.)

Dividing the "straight" tickets into lots of ten or more, and then announcing them in the aggregate as so many votes for each candidate, is not a compliance with the statutory requirements, and is liable to result in mistakes by reason of the "split" tickets being frequently in close imitation of the "straight" tickets. *O'Gorman v. Richter*, 31 Minn. 25, 16 N. W. Rep. 416.

The provision of § 88 c. 1, Gen. St. 1878, for enveloping and sealing, was held directory only, and non-compliance therewith was held not to render the ballots inadmissible in evidence, where it clearly and satisfactorily appeared that they had been kept intact and inviolate, and in the same condition as when counted by the judges. *O'Gorman v. Richter*, 31 Minn. 25, 16 N. W. Rep. 416.

The provision of § 89, c. 1, Gen. St. 1878, giving the parties to a contest the right to have the package of ballots opened, was held to apply only after contest instituted, and to give contestant a right to have the ballots inspected, to enable him to prepare his case for trial, not to aid him in framing his notice to opposite party. *O'Gorman v. Richter*, 31 Minn. 25, 16 N. W. Rep. 416.

***§ 33. What ballots void—Order of canvass.**

If a ballot be found to contain a greater number of names for any one office than the number of persons required to fill the said office, the said ballot shall be considered void as to all the names designated to fill such office, but no further; but no ballot shall be void for containing a less number of names than is authorized to be inserted. No ballot, properly indorsed, found in a box different from that designated by its indorsement, shall be rejected, but shall be counted in the same manner as if found in the box designated by such indorsement: *provided*, that the counting of such ballot or ballots shall not produce an excess of votes above the number of votes designated on the poll-lists. The boxes used at such election shall be opened, and the votes therein canvassed, in the manner above provided, but as nearly as may be in the following order:

First. The box containing the ballots indorsed "Electors."

Second. The box containing the ballots indorsed "State."

Third. The box containing the ballots indorsed "Congress."

Fourth. The box containing the ballots indorsed "Legislature."

Fifth. The box containing the ballots indorsed "Judiciary."

Sixth. The box containing the ballots indorsed "Town" or "City."

Seventh. The box containing the ballots indorsed "County."

And if any other boxes shall be used at any election in pursuance of law, such other boxes shall be opened, and the votes therein canvassed, immediately after those hereinbefore specified, in such order as the judges of election at each poll may specify. (*Id.* § 33.)

As to the certainty required in a ballot, see *Hawes v. Miller*, (Iowa,) 9 N. W. Rep. 307; *Newton v. Newell*, 26 Minn. 529, 6 N. W. Rep. 346; *Clark v. County of Montgomery*, (Kan.) 6 Pac. Rep. 311; *Inglis v. Shepherd*, (Cal.) 8 Pac. Rep. 5.

***§ 34. Returns—To whom delivered.**

After the canvass is thus completed, the judges of election, before they disperse, shall inclose the said returns in an envelope, seal the same, and indorse thereon the following words: "Election returns of the election district of (naming name of town or ward of city) in the county of _____," and direct the same to the county auditor of that county; and the said returns shall forthwith be conveyed by one of said judges, to be chosen by lot if not otherwise agreed upon, and delivered to the said county auditor at his office: *provided*, that the returns of election in unorganized counties shall be made to auditor of the county to which they are attached for election purposes; and the votes shall be canvassed and certificates of election issued to the persons elected, in the manner provided in this chapter for canvassing votes and issuing certificates of election in organized counties. (*Id.* § 34.)

***§ 35. Same—Filing copy.**

A true copy of the returns made by the judges shall also be made and certified by them, and forthwith filed by them in the office of the town or city clerk. (*Id.* § 35.)

***§ 36. Fee for carrying returns.**

There shall be paid out of the county treasury of each county, to the person carrying the returns of the election to the auditor of the county, the sum of ten cents for every mile traveled in going to and returning from the office of the county auditor; this provision to extend to unorganized counties, and to be paid out of the treasury of the county to which they are attached. All fees for carrying election returns shall be audited and allowed by the board of county commissioners of the proper county, in the same manner as other claims are allowed, and may be paid upon the warrant of the county auditor. (*Id.* § 36.)

***§ 37. Compensation of election officers.**

At all elections to be held under this chapter, the judges and clerks of election shall receive, as compensation for their services, the sum of three dollars each per day, and all special constables the sum of two dollars per day, to be paid out of the treasury of the proper township, city, or town. (1887, c. 4, § 37.)

***§ 38. Returns not to be refused for informality.**

No election returns shall be refused by any auditor for the reason that the same are returned or delivered to him in any other than the manner directed herein; nor shall the canvassing board of any county refuse to include any returns in their estimate of votes, on account of any informality in holding any election or making returns thereof, but all returns shall be received and the votes canvassed by such canvassing board, and included in the statements, provided there is a substantial compliance with the provisions of this chapter. (*Id.* § 38.)

The addition of the words, "provided there has been a substantial compliance with the provision of this chapter," does not render the use of register poll-lists essential to the validity of an election, or change the rule as laid down in *Taylor v. Taylor*, 4 Minn. 107, (Gil. 81); *Edson v. Child*, 18 Minn. 351, (Gil. 323.)

It was held that the duties of the auditor and board of canvassers, under the corresponding section of the former act, were purely ministerial; and that their performance could be compelled by *mandamus*. *O'Ferrall v. Colby*, 2 Minn. 180, (Gil. 148;) distinguished in *Clark v. Buchanan*, *Id.* 346, (Gil. 298.)

As to the power of the court on proceedings for *mandamus* against canvassers of election, see *Dalton v. State*, (Ohio,) 3 N. E. Rep. 685.

As to what duties in canvassing returns are ministerial, and enforceable by *mandamus*, notwithstanding certain irregularities in the returns, see *Long v. State*, (Neb.) 22 N. W. Rep. 120.

See, also, *State v. Peacock*, 15 Neb. 442, 19 N. W. Rep. 685.

***§ 39. County canvassing board—How constituted—Duties.**

The county auditor, the chairman of the board of county commissioners, and two justices of the peace of the same county, of opposite political parties if possible, to be selected by the auditor, shall constitute the county canvassing board, and on or before the tenth day after the election said board shall proceed, after taking the usual oath of office, to openly and publicly canvass the returns made to the auditor's office. They shall make a separate statement containing the whole number of votes given in such county for the office of governor, or lieutenant governor, chief or associate justices of the supreme court, secretary of state, auditor of state, treasurer of state, clerk of the supreme court, judges of the district court, and all other officers of the state, the names of the persons for whom such votes were given, and the number of votes given for each. They shall make another statement for all county officers voted for, and the names of the persons for whom such votes were given; another statement of the votes given for senators and members of the house of representatives, and the names of the persons for whom such votes were given; another statement of the votes for the electors of president and vice-president, and the names of the persons for whom such votes were given; another statement of the votes given for representatives in congress in each district, or any or either of them, and the names of the persons for whom such votes were given; another statement of the votes upon any proposed change of county lines or county-seat; and another of the votes given for and against proposed amendments to the constitution. Such statements shall be signed and certified by the county canvassing board, and deposited in the said auditor's office, and two copies thereof shall be certified under the official seal of the auditor, one of which shall be inclosed and directed to the secretary of state, and be forwarded to the seat of government by mail, and the

other list shall be inclosed and forwarded to the secretary of state in like manner as the first copy, but by different mail, and within five days after such first copy shall have been so transmitted. In the event that neither of such copies so transmitted shall be received by the secretary of state within twenty days after the election, the county auditor shall transmit, by a messenger to be deputed by him, upon notification from the secretary of state, another copy of such statement. If within twenty days after such election no such copy shall have been received by the secretary of state from each county in the state, it shall be his duty to immediately notify the auditor of each county from which such returns have not been received, of such fact. The county auditor shall indorse on the envelope inclosing each of such statements or copies, the name of the auditor and his official residence, and the words "Election Returns." (*Id.* § 39.)

The abstract of the canvass by the county board, made under § 23, c. 1, Gen. St. 1878, is the official evidence by which the auditor is to be governed in issuing certificates of election. *State v. Churchill*, 15 Minn. 455, (Gil. 369.)

Where a board of canvassers met, canvassed the votes cast, and then adjourned *sine die*, held, that it thereby became *functus officio*, and could not be legally reconvened for any purpose, and *mandamus* would not lie to revive its powers, or any of them. *Clark v. Buchanan*, 2 Minn. 346, (Gil. 298.)

Under the former act, the duties of the board of canvassers, and of the clerk of the board, in canvassing votes and issuing certificates of election, were merely ministerial, and they had no power, in the performance of such duties, to reject election returns, because, in their opinion, they contained illegal votes. *O'Ferrall v. Colby*, 2 Minn. 180, (Gil. 148;) *Bryant v. Colby*, *Id.*

The canvassers cannot look beyond the returns. *Hagge v. State*, (Neb.) 4 N. W. Rep. 375; *State v. Hill*, *Id.* 514. Neither can they throw out the returns of a precinct, and refuse to canvass them, if sufficiently authenticated. *State v. Peacock*, (Neb.) 19 N. W. Rep. 685.

*§ 40. Quorum.

Any three of said county canvassing board shall constitute a quorum, and are authorized to make the canvass provided for in the last section. (*Id.* § 40.)

*§ 41. State canvassing board—How constituted.

The secretary of state* shall call to his assistance two or more judges of the supreme court and two disinterested judges of the district court of the state, who shall constitute the state canvassing board. The secretary of state shall appoint a meeting of the state canvassing board, to be held in his office, the third Tuesday of December after each general election, and within thirty days after a special election. If a majority of said board shall be unable or shall fail to attend on the day appointed, he shall select from the disinterested judges of the supreme court, and notify to attend, as many as may be necessary to constitute the required number. Upon being notified, said judges shall attend without delay, and, with the officers attending, shall form the board. (*Id.* § 41.)

*§ 42. Same—Duties.

The board, when formed, shall, upon the certified copies of the statement made by the county canvassing boards, proceed to make a statement of the whole number of votes given at such election for the various state officers; which statement shall contain the names of the persons to whom such votes have been given for any state office, and the whole number of votes given to each, distinguishing the several counties in which they were given. Said board shall certify such statement to be correct, and subscribe the same with their proper names. (*Id.* § 42.)

*§ 43. Canvass of votes for presidential electors and representatives in congress.

At the same time said canvassing board shall open the return made to the secretary of state for members of congress, and for electors of president and

* For § 23a, (sec. 20,) see post, page 1653.

vice-president of the United States, and shall forthwith proceed to make a statement of the number of votes given for the different persons voted for for the said offices, and the person or persons having the highest number of votes for each office shall be considered duly elected; but if it appear that more than the number of persons to be elected as electors of president and vice-president have the highest and an equal number of votes, the secretary of state, in the presence of the officers present, shall decide by lot which of the persons shall be elected as such electors; and to each person duly elected, the governor shall give a certificate of election, signed by him, sealed by the great seal, and countersigned by the secretary of state, and shall transmit the said certificate to each person so elected, and shall cause the election of electors to be published in the newspapers printed at the seat of government immediately after the said canvass is completed. If there shall be a tie in the number of votes received by candidates for representatives in congress who received the highest number of votes, a special election shall be called, as hereinafter provided, for the election of a representative or representatives in congress, in the district or districts in which said tie vote occurred. (1887. c. 4, § 43.)

***§ 44. Presidential electors—Meeting.**

The electors chosen as aforesaid shall, at twelve o'clock, on the day directed by the congress of the United States, meet at the seat of government of this state, and then and there perform the duties enjoined on them by the constitution and laws of the United States. (*Id.* § 44.)

***§ 45. Same—Notice to governor—Vacancies.**

Every elector of president and vice-president of the United States shall, before the hour of twelve on the day next preceding the day fixed by law of congress to elect a president and vice-president, give notice to the governor that he is at the seat of government, and is ready at the proper time to fulfill the duties of an elector; and the governor shall forthwith deliver to the electors present a certificate of all the names of the electors; and if any elector named therein fails to appear before nine o'clock on the morning of the day of election of president and vice-president of the United States, the electors then present shall immediately proceed to elect by ballot, in the presence of the governor, persons to fill such vacancies. (*Id.* § 45.)

***§ 46. Same—Vacancies—How filled.**

If more than the number of persons required to fill such vacancy as aforesaid have the highest and an equal number of votes, the governor, in the presence of the electors attending, shall decide by lot which of said persons shall be elected; otherwise, they, to the number required, having the greatest number of votes shall be considered elected to fill such vacancies. (*Id.* § 46.)

***§ 47. Notice to electors appointed to fill vacancies.**

Immediately after such choice is made, the names of the persons so chosen shall be certified to the governor by the electors making such choice, and the governor shall cause immediate notice to be given in writing to the electors so chosen, and to fill such vacancies, and the persons so chosen shall be electors, and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as electors aforesaid by the constitution and laws of the United States and of this state. (*Id.* § 47.)

***§ 48. Compensation of electors.**

Every elector attending at the seat of government, as aforesaid, shall receive three dollars for every day's attendance, and three dollars for every twenty miles' travel going to and returning from the seat of government,

estimated from his place of residence by the most usual route. Such sum shall be allowed by the auditor upon the certificate of the governor, and paid by the state treasurer out of any money in the treasury not otherwise appropriated. (*Id.* § 48.)

***§ 49. Board of canvassers to declare result of election—
Notice of appeal.**

At the close of the canvass as provided in section thirty-nine, the board of canvassers shall declare the person having the highest number of votes for any county office duly elected, subject to an appeal to the district court for the proper county; and, in case said county contain a senatorial or representative district, then the person having the highest number of votes for senator or representative shall be declared by said board duly elected. In case of appeal, notice thereof shall be entered with the clerk of said court within twenty days after the day of election. (*Id.* § 49.)

Under the former act, the appeal was perfected by entry of notice with the clerk. It was not necessary that notice served on contestee should state that appeal had been taken. *Newton v. Newell*, 26 Minn. 539, 6 N. W. Rep. 346.

The district court acquired jurisdiction only by notice of appeal from the decision of the board of canvassers being entered with the clerk of court. *Baberick v. Magner*, 9 Minn. 232, (Gil. 217.)

If the appeal is not taken in the time and manner prescribed, the court acquired no jurisdiction. *Borer v. Kolar*, 23 Minn. 445.

The canvass could not be reviewed on *mandamus*. *State v. Churchill*, 15 Minn. 455, (Gil. 369.)

***§ 50. County auditor to make certificates of election.**

The county auditor shall make out for every county officer elected, and also for each of the senators and representatives elected to the legislature, if such county constitutes a senatorial or representative district, a certificate of such election, and shall deliver the same to the person entitled thereto, upon demand, without fee; and he shall also make out for any candidate or elector of his county a statement of votes, as provided in sections thirty-nine, forty, and forty-one, upon being paid therefor one dollar. (*Id.* § 50.)

A holder of such certificate cannot be ousted from the office on *mandamus*. *State v. Sherwood*, 15 Minn. 221, (Gil. 172.) The auditor's certificate, when regular, is conclusive of the right of the party to whom issued to the office, except in a proceeding where the right is directly in issue. It cannot be questioned by *mandamus*. *State v. Churchill*, 15 Minn. 455, (Gil. 369.)

A certificate of election cannot be attacked collaterally; but in case of a direct contest, it is merely *prima facie* evidence of the election of the person named therein. *Parma-ter v. State*, (Ind.) 3 N. E. Rep. 382.

***§ 51. Duties of auditors in counties not representative or
senatorial districts.**

The county auditor of each county which does not constitute a representative or senatorial district shall make out from the returns of his office a statement of the votes for members of the senate and house of representatives, which he shall seal and direct to the county auditor of the senior county in each senatorial or representative district respectively, and if there be two or more counties in such district of the same age, then the returns shall be directed to the auditor of the county polling the greatest number of votes at the last preceding general election; and said auditor shall forward such statement to the proper auditor within fifteen days after the election. (*Id.* § 51.)

***§ 52. Canvass when two or more counties compose one
representative or senatorial district.**

When two or more counties are comprised in one senatorial district, the auditor of the senior county, or of the county to which returns are to be made,

shall, on the twentieth day after the election, with such other county auditors of the district as choose to attend at his office, call to his assistance two justices of the peace, and the chairman of the board of county commissioners of his county, and then and there open the returns of the votes given in the several counties, or portions of counties, comprising such senatorial district. Said auditor of the county to which the returns are made shall immediately make out certificates of election for the persons having the highest number of votes in such senatorial district for the members of the legislature, which certificate shall be delivered to the persons entitled thereto. (1887, c. 4, § 52.)

***§ 53. Correcting returns.**

If, on proceeding to canvass the votes, it shall appear to said board of canvassers, or a majority thereof, that in any statement produced to them certain matters are omitted in such statements should have been inserted, or that any mistakes, that are clerical merely, exist, they shall cause the said statement to be sent by one of their number or by messenger whom they shall depute for that purpose, to the county or district canvassers of the county, town, or district from which such statements were received, to have the same corrected; and the person so deputed shall immediately proceed and give notice to the said county, town, or district canvassers, whose duty it shall be forthwith to assemble together, and make such corrections as the facts of the case require; but such county, town, or district canvassers shall not, at such meeting, change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and such board of canvassers are authorized to adjourn from day to day, for the purpose of obtaining and revising such statement, such adjournment not to extend beyond ten days. (*Id.* § 53.)

As to the correction of errors apparent on the face of the returns, see *State v. Hill*, (Neb.) 29 N. W. Rep. 258.

***§ 54. Special election in case of tie vote or vacancy.**

Whenever there is no election of any state or county officers, or of the required number of members of the house of representatives or senate, or of representatives in congress, by reason of any two or more persons having an equal and the highest number of votes for any such office, or whenever any vacancy occurs in any of the said offices, which said vacancy is not otherwise provided for, the governor, within ten days after he is informed of such vacancy or failure to elect, shall issue a proclamation directing that a special election be held in the proper election district or districts, at a time to be specified in the proclamation, not more than twenty days from the date thereof, to fill such office; and said election shall be called in the manner hereinbefore provided for calling elections, and the same shall be held and conducted, and the returns thereof made and canvassed, in the same manner as general elections are held, conducted, and the returns thereof made and canvassed: *provided*, that if the vacancy occur in the office of representative in congress, or state senator, or member of the house of representatives, and there be no session of the legislature or congress between the happening of such vacancy and the next general election occurring fifteen or more days thereafter, such vacancy shall be filled at said general election. (*Id.* § 54.)

***§ 55. Special election—Auditor to transmit returns.**

On elections to fill any vacancy under the preceding section, the auditor shall, within fifteen days after such elections, transmit statements of the votes given to the office of the secretary of state, and take his receipt therefor, under the penalty of five hundred dollars fine, to be recovered from him in a civil action in the name of the county; and the county treasurer, for the time being, shall sue for and recover the penalty for the use of the county. (*Id.* § 55.)

***§ 56. Vacancy in senate or house of representatives—
How filled.**

If a vacancy occur in the senate or house of representatives for any cause, and if the county composing the district in which such vacancy occurs have been divided after the election of a member whose seat is vacant, such election shall be ordered in every county, or part of any county, of which such district was originally composed; but no person shall be permitted to vote at such election who does not at that time reside within the limits of the original county or district in which the vacancy occurred. (*Id.* § 56.)

***§ 57. Contest—Notice—Procedure.**

Any candidate or elector of the proper county, senatorial, judicial, or election district, wishing to contest the validity of an election, or the right of any person declared duly elected to the senate or house of representatives in this state, or to contest his right to a seat therein, shall give notice thereof in writing to the person whose election or right to a seat he intends to contest, or leave a written notice thereof at the house where such person last resided, within twenty days after the votes have been canvassed by the county canvassing board, specifying the points on which the election will be contested, and naming two justices of the peace, of the county in which he resides, who will officiate at the taking of the depositions, and when and where they will attend to take the same. All such notices shall be served at least ten days before the day designated therein for the taking of such depositions, but the time fixed for taking the same shall not exceed forty-five days from the day of election. (*Id.* § 57.)

***§ 58. Subpœnas—Testimony—Return to legislature.**

The said justices, or either of them, shall issue subpœnas to all persons whose testimony is required by either of the parties; and said two justices shall take, under oath, all testimony relating to such contested election, and certify the same under seal to the presiding officer in that branch of the legislature where the person whose seat is contested is returned to serve at the next session. (*Id.* § 58.)

It was held that testimony taken under Gen. St. 1878, c. 1, §§ 49-51, must be passed upon as to its propriety and sufficiency, by the house to which it was sent. The powers of the two justices were not judicial, but resembled those of commissioners, or of a committee of one of the houses. *State v. Peers*, 33 Minn. 82, 21 N. W. Rep. 860.

***§ 59. Additional points—Notice—Testimony.**

If a party whose election is contested desires to offer testimony upon points not specified in the notice of the contestant, he shall, within ten days after the contestant's notice is served upon him as aforesaid, serve upon said contestant, in the manner provided in section fifty-seven, a notice specifying such additional points, and specifying a place and day (which shall not be more than ten days later than the time fixed by the contestant in his notice for taking deposition) at which time testimony thereon will be taken before two justices of the same county, which notice shall be served at least ten days previous to the time of taking such testimony. No testimony shall be taken by the justices which does not relate to some point specified in said notice, copies of which shall be delivered to the justices taking testimony thereon, and by them transmitted to the presiding officer of that branch of that legislature where the contest is to be decided, with the other documents provided for by section fifty-eight. (*Id.* § 59.)

***§ 60. Rules for contesting elections in legislature.**

In conducting any contested election in the house of representatives, the following rules shall be observed:

First. On the day and at the hour appointed for that purpose, the house, with the proper officers, shall assemble at the usual place of meeting. The speaker of the house of representatives shall preside; but, when he is a contestant, a speaker *pro tem.* shall be elected.

Second. The parties to the contest shall then be called by the clerk, and, if they answer, their appearance shall be recorded.

Third. The contestant shall then first introduce his testimony, and, after the testimony is closed on both sides, the contestant, by himself or by his counsel, may open the contest, and the officer-elect may then proceed, by himself or counsel, to make his defense, and the contestant be heard in reply. After the argument of both parties is concluded, any member of the house may offer the reasons for the vote he intends to give.

Fourth. The clerk shall keep a regular journal of the proceedings.

Fifth. In deciding the contest, the members shall vote *viva voce*, and a majority of the votes given shall decide; but no party to the contest shall vote, either upon the final decision, or upon any preliminary question that has reference thereto.

Sixth. If the contest is in the senate, it shall proceed, as nearly as may be, according to the rules above prescribed. (1887, c. 4, § 60.)

*§ 61. Contesting election of county officer—Procedure.

Any candidate or elector of the proper county may contest the election of any person declared elected to any county office. He shall give notice thereof in the manner provided in section fifty-seven for service of such notice. If the person whose election is contested desire to offer testimony upon points not specified in the notice of the contestant, he shall, in the manner provided in section fifty-seven, serve notice on the contestant, specifying such additional points. Upon such notices, which are not to be taken as true until proved, and which may be amended, if the court, under all the circumstances, deem it just, all testimony shall be taken as in civil actions, and all matters relating to said contest shall be heard and tried by the district court of the proper county in the manner that civil actions are tried by the court. Said contest shall be brought on for hearing, and the costs therein taxed by said district court in the manner that civil actions are conducted. Said district court, at the next general or special term after the expiration of thirty days after the votes are canvassed, shall hear and determine the contest; and the judge of the said court, in case no general or special term thereof occur within ninety days after the canvass of [the] votes, shall appoint a special term of said court to convene within ten days after notice of such contest shall be given to him. When the judgment or decision of the district court shall be removed to the supreme court, the party removing the same shall file in the district court a bond to the opposite party in such sum, not less than five hundred dollars, and with such sureties, as shall be approved by the judge, conditioned for the payment of all costs incurred by the respondent, in case the applicant fail in his appeal. The return on said appeal shall be made, settled, certified, and filed in the supreme court within fifteen days after the date of service of notice of appeal, and upon perfecting said appeal the same may be brought on for hearing and determination before said supreme court at any time when the same shall be in session, and upon ten days' notice from either party; and the same shall be heard and determined in a summary manner. Such notice of hearing may be served during the term or in vacation. This act shall apply to any case now pending. (*Id.* § 61.)

An action to contest the election of a county officer is a special proceeding, and not a civil action, wherein a party is entitled to a jury trial. Whallon v. Bancroft, 4 Minn. 109. (Gil. 70;) Ford v. Wright, 13 Minn. 518, (Gil. 480.)

Section 76, c. 1, Gen. St. 1878, was held to make § 52 applicable to elections for city officers, including aldermen, unless the council was the sole judge of the election of its

officers. *State v. Dowlan*, 33 Minn. 537, 24 N. W. Rep. 188. And see *State v. Gates*, 35 Minn. 385, 28 N. W. Rep. 927.

As to the sufficiency of the specification of points on which a contest will be made, in the notice served on the contestee, see *O'Gorman v. Richter*, 31 Minn. 25, 16 N. W. Rep. 416. And see *State v. Penniston*, (Neb.) 7 N. W. Rep. 753. Want of sufficient notice of grounds of contest must be specifically objected to. A general objection to evidence will not raise the question of notice. *State v. Norton*, (Wis.) 1 N. W. Rep. 22.

District court may try contests without a jury. *Newton v. Newell*, 26 Minn. 539, 6 N. W. Rep. 346.

The party adjudged to be duly elected to the office is, pending an appeal from the judgment, entitled, upon qualifying, to possession. *Allen v. Robinson*, 17 Minn. 113, (Gil. 90.)

It was held that proceedings could only be instituted by an appeal from the county board of canvassers to the district court, within the time and in the manner therein specified. Such provisions in regard to appeal were held jurisdictional. *Borer v. Kolar*, 23 Minn. 445.

There is no right to amend as in civil actions. *Ford v. Wright*, 13 Minn. 518, (Gil. 480.)

A party charging that an election was carried by fraud, must state the facts on which he bases his charge. *Hunter v. State*, (Neb.) 16 N. W. Rep. 830.

As to irregularities at one of several polling-places of a township, which were held not to invalidate the election, see *Simons v. People*, (Ill.) 9 N. E. Rep. 220.

See *State v. Webber*, 31 Minn. 212, 17 N. W. Rep. 339; *Whallon v. Bancroft*, 4 Minn. 109, (Gil.) 70; *Barberick v. Magner*, 9 Minn. 232, (Gil. 217;) *Allen v. Robinson*, 17 Minn. 116, 119, (Gil. 90.)

*§ 62. Written and oral testimony.

On the trial of any contested election for any of the offices in the fifty-seventh or sixty-first sections of this chapter named, the parties to the contest may introduce either written or oral testimony, but no deposition shall be read at such trial unless the other party had reasonable notice of the time and place of taking the same. (*Id.* § 62.)

The court may receive oral evidence. *Ford v. Wright*, 13 Minn. 518, (Gil. 480.)

Ballots as evidence, see *Searle v. Clark*, (Kan.) 7 Pac. Rep. 630; *Coglan v. Beard*, (Cal.) 2 Pac. Rep. 737; *Welsh v. Mechem*, (Kan.) *Id.* 816; *Dorey v. Lynn*, (Kan.) 3 Pac. Rep. 557.

As to evidence of the intention of a voter, varying that manifested by his ballot, and as to the admissibility of evidence to show an alteration of the ballot after the count, see *People v. McNeal*, (Mich.) 29 N. W. Rep. 728; *Clark v. County of Montgomery*, (Kan.) 6 Pac. Rep. 311; *Dorey v. Lynn*, (Kan.) 3 Pac. Rep. 557.

*§ 63. Contest on question submitted to vote, for removal of county-seat, etc.—Procedure.

In any county in which there is a vote for the removing of the county-seat or changing the county lines of said county, or upon any other subject which by law may be submitted to the vote of the people of said county, any elector therein may contest the validity of such election as to the right of the place declared to be selected for the county-seat to be such; or as to the result when the proposition to remove a county-seat is declared defeated; or as to any county line declared established by said vote; or as to the result of any vote upon any subject submitted as aforesaid. Such elector shall give notice in writing of such contest to the county commissioners, or one of them, in the county in which said vote was taken, by serving copies of said notice personally upon said commissioners at their place of residence within thirty days after the result of said votes is declared or proclaimed. Said notice shall specify the points on which said election will be contested, and a copy thereof shall be filed with the district clerk of the proper county within ten days after the service thereof upon the county commissioners; and the district court, at its first general or special term, shall hear and determine on such contest upon the oral and written evidence of the parties; and depositions may be taken by any of the parties to the proceedings in the same manner as in civil actions; but no appeal to said district court shall be necessary in any such case. Such commissioners, or, upon their failure, any elector of the proper

county, may appear and defend in such contest, and introduce evidence as in other actions. (1887, c. 4, § 63.)

The prevailing party is not entitled to judgment for disbursements in the district court. *Bayard v. Klinge*, 16 Minn. 249, (Gil. 221.)

See *Taylor v. Taylor*, 10 Minn. 107, (Gil. 81.)

***§ 64. Terms of office—When to commence.**

The regular terms of office of all state and county officers shall commence on the first Tuesday of January next succeeding their election, unless otherwise provided by law. (*Id.* § 64.)

Where an officer dies between the day of his election and the first of January following, he cannot be considered as having been in possession of or an *incumbent* of the office, and his death does not cause a *vacancy* therein. *State v. Benedict*, 15 Minn. 198, (Gil. 153.)

See, also, *Territory v. Smith*, 3 Minn. 240, (Gil. 164.)

***§ 65. Officer to fill vacancy—Qualification—Term.**

Any state, county, or district officer, elected or appointed to fill a vacancy, shall qualify and enter upon the duties of his office immediately thereafter, and, when elected, hold the same during the unexpired term for which he was elected, and until his successor is appointed and qualified; but if appointed he shall hold his office until the next general election, when a successor for the remainder of the unexpired term shall be chosen, and until his successor is elected and qualified. (*Id.* § 65.)

See *Harkins v. Sencerbox*, 2 Minn. 344, (Gil. 297;) *Territory v. Smith*, 3 Minn. 240, (Gil. 164;) *State v. Benedict*, 15 Minn. 198, 203, (Gil. 153.)

***§ 66. No civil process to be served on election day.**

During any day on which any general, special, town, or charter election is held, no civil process shall be served upon any elector entitled to vote at such election. (*Id.* § 66.)

***§ 67. Blanks and election law to be provided.**

The secretary of state shall provide uniform blanks for making lists or registers, required by law, and affidavits and all other blanks necessary to be used in the several election districts at any election. He shall also provide copies of this law, and transmit the same to the auditor of each county, at least thirty days before any election; and the auditor shall forthwith deliver to the clerk of every town and city in his county necessary copies of each of said blanks, and one copy of the said law for each election district in his town or city. (*Id.* § 67.)

***§ 68. Fees for services under this chapter.**

Every auditor, chairman of the board of county commissioners, and justice of the peace shall receive for services performed under this chapter the following fees: For making the statements, for every one hundred words, ten cents; for every certificate with seal attached to statements, forty cents; which fees shall be allowed by the board of county commissioners of the proper county, and paid by the county treasurer upon the warrant of the county auditor. (*Id.* § 68.)

***§ 69. Proposed amendments to constitution—Posting.**

Whenever amendments to the constitution shall be submitted to the people for their approval or rejection, it shall be the duty of the judges of election, in each election district of the state, before the opening of the polls on election day, to post up, at the place of holding the election, the proposed amendments, so that the same can be seen and read. Said amendments shall be printed or written, or partly printed and partly written, in the English lan-

guage. Any judge of election violating the provisions of this section shall be subject to a fine not exceeding five dollars for each offense, which may be recovered before any justice of the peace, or any court of the county. (*Id.* § 69.)

***§ 70. Saloons must be closed on election days.**

No spirituous, malt, or intoxicating liquor shall be sold or given away, nor shall any store, saloon, or bar-room where such liquor is sold or given away, be open on any general or special election day from the hour of five o'clock in the forenoon to the hour of eight o'clock in the afternoon. Whoever violates the provisions of this section shall be fined not less than one hundred dollars, nor more than three hundred dollars, for each offense. It shall be the duty of the mayor, sheriff, constable, and other officers and magistrates, to see that the provisions of this section are enforced; and it shall be the duty of the mayor, on the day next preceding any election, to issue a proclamation that the provisions of this section will be strictly enforced. In case the mayor fail to perform the duties herein described he shall be subject to a fine of one thousand dollars, or imprisonment in the county jail for sixty days, or both, in the discretion of the court. (*Id.* § 70.)

***§ 71. This chapter to apply to towns or cities of less than 12,000.**

The provisions of this chapter shall apply, except in cities having over twelve thousand inhabitants, to all elections hereafter to be held for all or any state, district, county, town, city, or township officers, and for electors of president and vice-president of the United States, and to any vote hereafter to be taken on amendments to the constitution, laws changing the county lines, removing county-seats, or upon any subject which may by law be submitted to the vote of the people. But the registration of the names of electors previous to the time of voting at the town meeting in any newly-organized township shall not be required; but the manner of conducting the same shall be as provided in the general act for the organization of towns. (*Id.* § 71.)

Under § 76, Gen. St. 1878, § 52 (corresponding to § 61) was held applicable to elections of city officers. *State v. Dowlan*, 33 Minn. 536, 24 N. W. Rep. 188.

Notwithstanding the wording of the corresponding section (76) of the former act, the general election law was held not to apply to school meetings under c. 92, § 14, Sp. Laws 1869, called to determine upon purchasing a site, building a school-house, and issuing bonds. *Board of Education Sank Centre v. Moore*, 17 Minn. 412, (Gil. 391, 403.)

***§ 72. Cities of 12,000 or over—Board of registry—Sessions—Proceedings.**

In incorporated cities of over twelve thousand inhabitants, the persons authorized by, or appointed pursuant to, law to act as judges and clerks of election in any such city, or any ward or other election district in such city, in this state, shall constitute a board of registry for their respective cities, wards, or election districts, and shall meet on Tuesday, three weeks preceding any general state or city election, and fourteen days before any special election. Said board shall meet at nine o'clock in the morning at the place where the last election was held, or at such other place as may be lawfully designated for the polling-place, in the election district in which such board are judges and clerks, and shall continue in session until seven o'clock in the afternoon; they shall proceed to make a registration as hereinafter prescribed of all persons entitled to vote at the ensuing election in such election district. Such registration, when completed, shall constitute and be known as the register of electors of such election district. Two such registers shall be made by said board. Said board shall have and exercise the same right to preserve order at their meetings as is given to judges of election to preserve order on

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election day; and vacancies in said board shall be filled in the same manner as such vacancies are filled at elections. (1887, c. 4, § 72.)

***§ 73. Form of registers—Entries—Oaths—Certifying and depositing register.**

Said registers shall be in form substantially as follows:

Names.	Residence.		Place of Nativity.	Color.	Length of Residence.						Natural-ized or Declared Intent'n.	Date of Papers.	Court or Place.	Where last Registered.			Remarks.
	Number.	Street or Avenue.			State.	County.		District.		Years.				Months.	Days.	Years.		Months.	Years.	Ward.	District.
Anderson, John	213	Third av.	Norway	White	3	2	6	2	6	.....	Yes.	Dec. 1885.	St. Paul.	3	2	
Allen, Thomas	1314	Grant	Mass.	"	12	10	.....	2	2	15	Native.	.....	.....	6	1	
Austin, Geo.	27	Superior	Georgia	Color'd	.....	9	.....	.....	9	.....	"	.....	.....	1	6	Not qualified.

Said board shall enter all names in said registers alphabetically by surnames. They shall enter therein the names of all persons residing in their election district whose names appear in the poll-lists kept in said district at the last preceding election as having voted thereat, except such as are known to the board to have since died, removed from the district, or become disqualified; and, so far as known to any of said board, the proper entries shall be made opposite each name in the different columns of said registers. In addition to the names on such poll-lists, the board shall enter in said registers the names of all persons who shall personally appear before them for registration. One of the judges of election shall administer to all persons appearing for registration the following oath or affirmation:

"You do solemnly swear (or affirm) that you will fully and truly answer such questions as shall be put to you, touching your place of residence, name, place of birth, your qualifications as an elector, and your right to register and vote under the laws of this state." One of the judges shall then ask each of the said persons the questions necessary to properly fill out the spaces opposite the names of such persons in the various columns of the registers. The clerks, or other members of the board, shall enter the names of such persons in the registers, and the answers to the questions in the appropriate columns therein. In the column headed "Residence" shall be entered the name and number of the street, or other location of the dwelling, if there be a definite number; if not, such clear and definite description of the place of such dwelling as shall enable it to be readily ascertained. If more than one family be residing in the house, there shall be entered the floor on which the applicant resides, or the number of the room or rooms occupied by him. The registers shall be ruled, and one name shall be written on each line; but no name shall be written between the lines, and if the name of any person be so written, such person shall not be entitled or allowed to vote, unless his name shall also appear properly written on a line in said register. At the end of each day's registry the board shall carefully compare the registers, and make them to correspond and agree, and the judges of election shall sign their names at the end of the list on every page of such registers, so that no new name can be added without discovery, and shall also sign and attach to such registers a certificate, in substance as follows:

"We, the undersigned, judges of election in the _____ district of the _____ ward, of the city of _____, in the state of Minnesota, do jointly and severally certify that, at the general registration of electors in such election district, on the _____ day of _____, eighteen hundred and _____, there were registered by us in said election precinct the names which in this book are inserted, and that the number of registered and qualified voters was and is the number of _____, (number to be written in figures and in words.)" Such registers shall, before ten o'clock in the forenoon of the next day, be deposited by one of said board in the office of the city clerk or recorder, whose duty it shall be to safely keep the same. (*Id.* § 73.)

***§ 74. Further sessions of board—Proceedings—Posting register—Corrections.**

On Tuesday, two weeks preceding any general election, and on the thirteenth day preceding any special election, said board of registration shall again meet, at the same place as before, and remain in public session from nine o'clock in the forenoon until seven o'clock in the afternoon, for the purpose of registering all qualified voters whose names are not yet registered, and who shall apply in person for the purpose. They shall obtain from the city clerk or recorder and use the same registers as on the first day. The same forms shall be observed in regard to registration as were required upon the first day of registration. At the end of such day's registration, the registers shall be compared and made to agree, and shall be signed as at the end of the

first day's registration, and similar certificates attached thereto. It shall be the duty of the clerks of election composing said board, during the session of that day and before the board adjourns, to make a copy of all the names upon such registers, together with the addresses as indicated in such registers. Immediately after its completion, said copy shall be conspicuously posted up outside the place of registration, with a notice of the time when said board of registration will meet for completion and final correction of its registers, and shall be accessible to any elector who may desire to examine or copy the same. The registers shall be returned by one of said board to the office of the city clerk or recorder before ten o'clock on the forenoon of the day next succeeding such registration. (1887, c. 4, § 74.)

***§ 75. Same—Procedure—Copying and posting registers.**

On Tuesday, one week preceding the day of any general election, and on the day one week preceding any special election, said board of registration shall again meet, at the same place as before, for the completion and final corrections of said registers. They shall again obtain the same registers before used from the city clerk's or recorder's office, and shall be in session from twelve o'clock, noon, until nine o'clock in the afternoon. Any qualified elector, not already registered, may apply to said board to have his name inserted in said registers. The same rules for registration required on previous days shall be observed by the board. It shall be the duty of said board to erase from the registers the name of any person inserted therein who shall be proved on the oath of two qualified electors of such district, to the satisfaction of the board, to be in any way disqualified to vote in such district at the ensuing election. At the end of the session the registers shall be again compared and made to agree and correspond, and shall be signed and certified by the board, as before, and deposited in the city clerk's or recorder's office. Before the said board adjourn or separate they shall prepare a copy of all the names and their respective addresses appearing upon such registers, and post the same conspicuously forthwith outside the place of registration. (*Id.* § 75.)

***§ 76. Removal of elector into another district—Certificate of removal—Affidavit.**

Whenever it shall appear, by the answers of an applicant for registration, or shall be known to the board of registry that the applicant was registered in another district in the same city than the one at which he makes his application, the board shall not enter his name in said registers until he produces a certificate of removal to be given him by the board of such other district, which may be in the following form:

"This is to certify that the name of _____, heretofore residing at _____, in this election district, has been by us, the board of registry of this district, stricken from the registration of this precinct, at his request, upon his affidavit of removal. The following entries appear upon the register of this election district concerning him, (add entries in various columns of register.)" Signed by the board of registry of former place of registration. The above certificate shall be granted by such board upon and only upon the applicant making and subscribing the following affidavit, which shall be written or printed upon the back of such certificate:

"I, _____, do solemnly swear (or affirm) that I now reside at (street and number) in ward numbered _____, in the city of _____; that I am duly entered as a qualified voter in the registers of the _____ district in the _____ ward of said city as residing at number _____, (street or avenue;) that I have removed from the said last-mentioned residence, and do hereby request the proper entries and record be made, and that my name be erased from the registers of the last-mentioned district and a certificate of removal furnished me."

If a person remove from one place in a district to another place in the same

district, his vote shall not be received at any election unless he appear personally before the board of registration and cause the registers to be changed. (*Id.* § 76.)

***§ 77. No person to vote unless registered—Exception.**

The vote of no person whose name does not appear on said registers as a qualified voter shall be received by the judges at any election, except the vote of a person whose name was registered and erased, as provided in the last section, and who takes the oath and makes the proof required by section eighty. (*Id.* § 77.)

***§ 78. Duties of judges on day preceding election.**

On the day preceding any election, the judges of election shall procure such registers from the office of the city clerk or recorder, one being procured by a judge representing one of the two leading political parties, and the other by a judge representing the other of the two leading political parties. The ballot-boxes shall be delivered to the clerks of election, with the keys thereof, and with poll-books and all blanks and stationery necessary for such election. (*Id.* § 78.)

***§ 79. Election—How conducted.**

The election shall be conducted as hereinbefore provided, except as required by the next section. (*Id.* § 79.)

***§ 80. Receiving and depositing ballots—Entries in register—Challenge—Procedure.**

One of said judges of election shall receive the ballot or ballots from each person offering to vote, and shall announce the name and residence of said person, in an audible voice. The other two judges shall use and handle the two registers delivered to said judges by said city clerk or recorder, each using one. When the name is found by both upon the registers, and the residence given by the voter corresponds with the residence on such registers, and the name is not erased, then said judges shall receive such ballot or ballots, unless such voter is challenged. Said judges shall then put the ballot or ballots in the proper box or boxes, in the presence of the voter, and of the judges and clerks of election, and in the presence of the public. The judges having charge of such registers shall then, in a column prepared thereon, in the same line of the voter's name, mark "Voted" or the letter "V." If such person so registered shall be challenged as disqualified, the person challenging shall assign his reasons therefor, and thereupon one of said judges shall administer to him an oath to answer questions; and, if he shall take said oath, then he shall be questioned by said judges touching such cause of challenge, and touching any other cause of disqualification, and he may also be questioned by the persons challenging him in regard to his qualifications and identity. But if a majority of the judges are of opinion that he is the person so registered and a qualified voter, his vote shall be received accordingly. But if such vote be rejected by the judges, such person may afterwards produce and deliver to such judges an affidavit, subscribed and sworn to by him before one of said judges, or any other person authorized by law to administer oaths, who shall be present at such polling-place, in which it shall be stated how long he has resided in such district, county, and state; that he is a citizen of the United States, a duly-qualified voter in such district, stating with precision his place of residence, and is the identical person named in said registers. He shall also produce the affidavit of a registered voter who is known to all the judges of election, and is an householder in such district, stating his own residence, and that he knows such person offering to vote; that he does reside at the place he mentioned, and has resided in such district and county for the period stated by such person; and which affidavit shall be subscribed and sworn to in the same

way. Whereupon the votes of such person shall be received and numbered and entered as other votes. But such clerks and the judges in charge of the registers shall state in their respective books the facts in such case; and the affidavits so delivered to such judges shall be preserved and returned with the books and registers to the office of the city clerk or recorder. (1887, c. 4, § 80.)

Section 6, art. 7, of the constitution, excepting from election by ballot "such town officers as may be directed by law to be otherwise chosen," was held not to affect § 84 of c. 1, Gen. St. 1878; but the provision for numbering the ballots was held unconstitutional, as in violation of the secrecy of the ballot guaranteed by the constitution. *Brisbin v. Cleary*, 26 Minn. 107, 1 N. W. Rep. 825.

***§ 81. Misconduct of judge, clerks, etc.—Penalty.**

If any judge or clerk of election, or any other officer, or any other person, required by this chapter to perform any act or thing whatever, shall willfully fail or refuse to perform such act or thing, or shall be guilty of any fraud, corruption, partiality, or misbehavior in canvassing or making any returns of votes, or shall wrongfully refuse to make or deliver any certificate of election, or shall willfully perform any act or thing falsely or corruptly in any manner, he shall be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term of not less than six months nor more than one year, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both, in the discretion of the court. (*Id.* § 81.)

Sufficiency of indictment, see *U. S. v. Doherty*, 25 Fed. Rep. 28.

***§ 82. Illegal voting—Penalty.**

Whoever willfully votes in any election district in which he does not actually reside shall be guilty of a misdemeanor, and, on conviction thereof, be imprisoned in the county jail for a term not less than one month nor more than six months. (*Id.* § 82.)

***§ 83. Voting twice—Penalty.**

Whoever votes more than once at the same election shall be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than six months nor more than one year. (*Id.* § 83.)

It is no objection to the indictment that it also charges defendant with a misdemeanor in voting in an election district in which he did not reside. *State v. Welch*, 21 Minn. 22. Approved and followed in *State v. Davis*, 22 Minn. 423. Sufficiency of the averment that there was a lawful election in each ward at which defendant voted, and that it was all one election. *Id.*

The only question of fact for the jury is whether defendant, having already voted, voluntarily cast a second vote at the same election. *Id.*

***§ 84. Non-resident voting in this state—Penalty.**

Any resident of another state who votes in this state is guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one month nor more than one year. (*Id.* § 84.)

***§ 85. Illegal voting—Penalty.**

Whoever, not being a qualified voter, votes at any election with an unlawful intent, is guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison not less than one month nor more than one year. (*Id.* § 85.)

***§ 86. Aiding or advising illegal voting—Penalty.**

Whoever aids, assists, counsels, or advises another to vote, knowing that such person is not duly qualified to vote at the place where and the time when

the vote is to be given, is guilty of a misdemeanor, and, on conviction thereof, shall be subject to a fine of not more than five hundred dollars nor less than one hundred dollars, or be imprisoned in the county jail not less than one month nor more than six months. (*Id.* § 86.)

Sufficiency of indictment, see *U. S. v. Doherty*, 25 Fed. Rep. 28.

***§ 87. Aiding or advising illegal voting—Penalty.**

Whoever procures, aids, assist, counsels, or advises another to go or come into any county, town, or election district for the purpose of giving his vote therein, knowing that the person is not duly qualified to vote therein, is guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than six months nor more than one year. (*Id.* § 87.)

***§ 88. Influencing voter—Penalty.**

Whoever, by threat or bribery, attempts to influence any elector in giving his vote or ballot, or by such means attempts to deter him from giving his vote or ballot, is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than one month, nor more than six months. (*Id.* § 88.)

***§ 89. Deceiving voter—Penalty.**

Whoever furnishes an elector, who cannot read the language in which such ticket is printed or written, with a ticket, informing him that it contains a name or names different from those written or printed thereon, with an intent to deceive and induce him to vote contrary to his inclination, or who fraudulently changes a ballot of any elector, by reason of which such elector is prevented from voting for such candidates as he intended, is guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail not less than two months nor more than one year. (*Id.* § 89.)

***§ 90. Offering more than one ballot for same candidate—Penalty.**

Whoever, after proclamation is made of the opening of the polls, and at any time before the vote is fully canvassed, shall willfully offer or deliver to a judge of election, to be placed in a box or boxes, more than one ballot for the same candidate or candidates, or shall fraudulently put a ballot or ticket into any box or boxes, is guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison for a term not less than six months nor more than one year. (*Id.* § 90.)

***§ 91. False swearing—Penalty.**

If any person challenged, as unqualified to vote, be guilty of false or corrupt swearing or affirmation in taking any oath or affirmation prescribed by this chapter, he shall be deemed to have committed willful and corrupt perjury, and upon conviction thereof shall suffer the punishment attached by the laws of this state to the crime of perjury. (*Id.* § 91.)

***§ 92. Revealing how elector voted—Penalty.**

If any judge or clerk of election, or any other person, shall willfully or corruptly ascertain, in any manner, or shall [allow any other person to ascertain in any manner, or shall] willfully publish or reveal how any elector voted at an election, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, or both, in the discretion of the court. (*Id.* § 92.)

***§ 93. Mutilating or changing poll-book—Penalty.**

Whoever shall willfully take or carry away from the place where it has been deposited, or shall deface or mutilate, change, or add to any poll-book, ballot-list, or register, or any name or figures therein, shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, or be imprisoned in the state prison not longer than one year, or both, in the discretion of the court. (1887, c. 4, § 93.)

***§ 94. Taking down or defacing copy register—Penalty.**

Any person who shall take down or deface any list of names posted by any board of registration as hereinbefore provided for, shall be guilty of a misdemeanor, and on conviction thereof be punished by a fine of fifty dollars, or be imprisoned in the county jail for the term of sixty days, or both, in the discretion of the court. (*Id.* § 94.)

***§ 95. Registering in more than one district—Penalty.**

Any person who shall cause his name to be registered in more than one election district, or who shall cause his name to be registered knowing that he is not a qualified elector in the district where said registry is made, or who shall falsely represent any registered voter, and any person causing, aiding, or abetting any person to do either of said acts, shall, upon conviction thereof, be punished for each offense by imprisonment in the state prison for a term not less than one year. All intentional false swearing before a board of registration shall be deemed willful and corrupt perjury, and, on conviction thereof, punished as such. (*Id.* § 95.)

***§ 96. County attorney to prosecute election offenses.**

It shall be the duty of the county attorney in each county in this state to prosecute any persons violating any of the provisions of this chapter, and to sue for and enforce all penalties incurred for any violation of this chapter or any part thereof, upon his own motion, or upon the complaint of any elector of his county, accompanied by the requisite proof of such offense or offenses. (*Id.* § 96.)

***§ 97. Fines to go to school fund.**

All fines incurred and collected under this chapter shall be paid into the county treasury of the county where the offense is committed, for the use of the common schools of such county. (*Id.* § 97.)

***§ 98. Chapter 1, Gen. St., repealed.**

Chapter one of the General Statutes of eighteen hundred and seventy-eight, and all acts amendatory thereof, and of any part thereof, are hereby repealed. (*Id.* § 98.)

***§ 99. Offenses at primaries—Misdemeanor.**

If at any political primary election held by any political party, organization, or association in this state, any individual shall falsely personate and vote under the name of any other person, or shall intentionally vote without the right to do so, or shall willfully and wrongfully obstruct and prevent others from voting, who have the right to do so at such primary, or shall fraudulently and wrongfully conceal or destroy ballots cast, or in any manner intentionally and wrongfully deposit ballots in the ballot-box, or take them therefrom, or shall commit any other fraud or wrong, tending to defeat or affect the result of the election, he shall be deemed guilty of a misdemeanor. (*Id.* § 99.)

***§ 100. Primaries—Oath of officers—Challenge—False swearing—Penalty.**

The presiding officer and inspectors at any such election shall, before entering upon their duties, severally sign and swear to an oath in form now re-

quired by inspectors at general elections. The vote or ballot of any person offered at such election shall, upon challenge by any lawful voter thereat, be rejected, unless he be sworn as to his qualifications as such voter, and the presiding officer or any inspector of such primary is hereby empowered, and it shall be his duty, to administer an oath to such person, and to any other person offering to vote, as he may deem advisable, to the effect that he will true answers make to such questions as shall be put to him touching his qualifications as a voter, and his right to vote. He may then be examined as to such qualifications and right to vote: If he shall swear to the necessary qualifications of a voter, as prescribed by the regulations of the association holding the primary or convention, his vote shall be received. If the person so sworn and examined shall intentionally swear falsely as to his qualifications as a voter, he shall be deemed guilty of perjury, and shall, on conviction, be punished as now prescribed by law for the crime of perjury. (*Id.* § 100.)

***§ 101. Misconduct of officer—Penalty.**

If any person acting as inspector, teller, or canvasser at any such primary election shall knowingly receive the vote of any individual who shall have been challenged, or who is known to him not to be entitled, by the regulations of the association holding the primary election, to vote at such primary, unless the same shall be first sworn in as aforesaid, or shall in any manner fraudulently and wrongfully deposit or put any ballots into, or take any from, the ballot-box of said primary election, or shall fraudulently or wrongfully mix any ballots with those cast at said primary elections, or shall knowingly mix any false count, canvass, statement, certificate, or return of the ballots cast or vote taken at such primary, he shall be deemed guilty of a misdemeanor. (*Id.* § 101.)

***§ 102. Bribery of delegates—Misdemeanor.**

If any person elected a delegate at any such primary or convention shall accept or receive any money or valuable thing as a consideration for his vote as such delegate, he shall be deemed guilty of a misdemeanor. (*Id.* § 102.)

***§ 103. Primary election defined.**

The words "primary election," as used in this act, shall be construed so as to embrace all elections held by any political party, convention, organization, or association, or delegates therefrom, for the purpose of choosing candidates for office, or the election of delegates to other conventions, or for the purpose of electing officers of any political party, organization, convention, or association. (*Id.* § 103.)

***§ 104. Voters at primaries—Qualification.**

No person shall be entitled to vote at any primary election unless he is a qualified elector of this state. (*Id.* § 104.)

***§ 105. Punishment for misdemeanors — Application of regulations of primaries.**

The punishment of any of the offenses in this act declared to be misdemeanors shall be a fine not exceeding three thousand dollars, or imprisonment not exceeding three years, or both such fine and imprisonment: *provided, however,* that all herein contained relating to primary elections shall apply only to cities of five thousand or more inhabitants. (*Id.* § 105.)

***§ 106. When to take effect.**

This act shall take effect immediately, and shall be known as the general election law of the state of Minnesota. (*Id.* § 106.)

RIGHT OF WOMEN TO VOTE FOR COUNTY SUPERINTENDENTS OF SCHOOLS.

***§ 107. Women—Qualification to vote for county superintendent of schools.**

That any woman of the age of twenty-one years and upwards, belonging to either of the classes mentioned in section one of article seven of the constitution of the state of Minnesota, who shall have resided in the United States one year, and in this state for four months next preceding any election at which a county superintendent of schools is elected, shall be entitled to vote for county superintendent of schools at such election, in the election district of which she shall at the time have been for ten days a resident. (1885, c. 204, § 1.)

***§ 108. Required to register.**

Any woman entitled to vote under this act shall be required to register as now provided by law for male voters. (*Id.* § 2.)

***§ 109. Ballots—How prepared—Depositing—Canvass.**

The ballot offered by any woman entitled to vote under this act shall not contain the name of any person to be voted for at such election, except such county superintendent of schools; and all such ballots shall be deposited in a separate ballot-box, but canvassed with the other ballots cast for county superintendent of schools at such election. (*Id.* § 3.)

***§ 110. Separate boxes to be provided.**

The supervisors of the several townships, and the city council of the several cities, shall procure, at the expense of the said townships and cities respectively, a separate ballot-box for each election district destitute of the same, in which the ballots of women entitled to vote under this act shall be deposited. (*Id.* § 4.)

CONSTITUTIONAL AMENDMENTS—QUESTIONS SUBMITTED TO PEOPLE.

***§ 111. Questions submitted to people—Canvass of votes.**

The result of elections upon constitutional amendments and all questions submitted to the people of the state shall be ascertained, and returns made and canvassed in the same manner, at the same time, and by the same officers as is provided by law for the canvassing of votes cast at elections for state officers. (1881, *Ex. Sess.* c. 64.)

CHAPTER 2.

CONGRESSIONAL DISTRICTS.

***§ 1. Five districts.**

The state of Minnesota is hereby divided into five congressional districts, each of which is entitled to elect one representative to the congress of the United States. (1881, *Ex. Sess.* c. 70, § 1.)

***§ 2. First district.**

The counties of Houston, Fillmore, Mower, Freeborn, Steele, Dodge, Olmsted, Winona, and Wabasha shall constitute the first congressional district. (*Id.* § 2.)