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Selected Veto Messages

Governor Charles N. Herreid

STATE OF SOUTH DAKOTA

1901-1903

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STATE OF SOUTH DAKOTA
EXECUTIVE CHAMBER

To the Members of the Senate and House of Representatives:

I am unable to approve House Bill No. 90, which is herewith returned to the House of Representatives, although the record does not show a vote against said bill in either branch of the Legislature.

Section 1 of said bill provides: It shall be sufficient to describe lands in all proceedings relative to assessing, advertising, extending the same upon the tax lists, or selling the same for taxes, by initial letters to designate the subdivisions or parts of sections and figures to designate the townships, ranges and sections and also the numbers of lots and blocks.

This sentence was evidently intended to express some idea, but just what is meant is not evident to the average mind.

Continuing, said section reads as follows:

Whenever the abbreviation N. E. or N. E. 4 or N. E. shall be used in any such proceeding they shall be construed and held as meaning and being the North East Quarter. * * * Whenever the abbreviation N. 2 or N. 1/2 shall be used, etc., it shall be held to mean the North Half.

This bill aims to legalize blunders on the part of certain county officials and should be vetoed on the general ground of public policy. The only persons benefitted by this law are:

1. Incompetent public officials.

2. Speculators in tax sale certificates and tax titles.From the formation of our government the courts of our country have recognized the fact that tax laws,-whereby the holder of a tax sale certificate may for a very inadequate consideration obtain title to lands, where the owner through neglect or misfortune, has failed to pay his taxes,-provide a harsh remedy and accordingly have always mercifully construed such laws strictly, and as favorably as the rules of equity would justify, in favor of the owner of the land.Strict construction, " says Judge Cooley, "is the general rule in the case of statutes which may divest one of his freehold by proceedings not in the ordinary sense judicial, and to which he is only an enforced party. " (Cooley on Taxation, p. 266.)

The purposes in describing the land in all tax proceedings, are first, that the owner may have information of the claim made upon him or his property; second, that the public, in case the tax is not paid, may be notified what land is to be offered for sale for non-payment; and third, that the purchaser may be enabled to obtain a sufficient conveyance. Every lawyer knows that unless every step is regular and legal from the listing of the land for taxation to the execution of the tax deed, courts will set aside a tax deed and restore the land on payment of taxes, costs and interest, to the rightful owner. Among the variety of errors found in tax deed proceedings, erroneous descriptions such as are sought to be cured and legalized by the bill in question are the most common. Such errors, by an unbroken chain of decisions, have been held to be fatal to a tax deed

.In the case of Turner vs. Hand County, in the proceedings of the taxing officers, including the tax list and duplicate, appellant's land was described as follows:

NAME	DESCRIPTION OF LAND			
	SUBDIVISIONS			
		Sec. or Lot	Twp. or Blk.	Rng.
Mattie A. Turner	s2se&s2sw	30	113	69

Chief Justice Fuller who delivered the opinion of the Court, says:

"The foregoing is not such a tax list as the statute contemplates, nor is the description sufficient to identify anything according to the congressional system, or any other method of description pertaining to land, whether it be city property or fractional outlying lots. The combination `s 2 s e & s 2 s w see. or lot 30 twp. or blk 113 rug. 69' is an idealess jumble of letters and figures, confusing in the extreme, and intolerable when employed as a means by which to devest title to real estate without the consent of the owner. That a tax sale of property not described in the assessment roll is void, and passes no title to the purchaser, is a proposition in perfect consonance with reason, and conclusively established by authority. "

Wherever the English language is used N. E. stands for North East; North Eastern; New England. (See Webster's International Dictionary). Why give these letters a special significance, peculiar only to our state? The power of the Legislature to do so may well be questioned. "A description sufficient to give notice to the tax payer that his land is assessed is an essential which the Legislature cannot dis

pense with. " 1 Blackwell on Tax Titles, 223. To say that N. E. shall mean the North East Quarter is doing violence to the English language.

In patents from the United States the letters N. E. are never found as equivalent to the North East Quarter. No competent United States land office official, surveyor or conveyancer would rely alone upon the letters N. W. to designate a certain tract of land and there is no good reason why the description, for the purposes of assessment and taxation, should not be as definite and certain as the deed under which the owner holds the legal title.

This bill which aims to legalize official errors is also objectionable on the ground that it is not sufficiently comprehensive. Capital letters are not always used. Sometimes we find "n e" presumably used to express the North East quarter. Then why not legalize the use of small letters? Why discriminate against the fellow who does not use capital letters?

While the capital letters N. E. is a correct abbreviation for North East, n e does not represent anything. As these are abitrary signs used to express certain ideas, and as courts adhere to the rule of strict construction of tax laws, it is by no means certain that n e would be held to mean the North East quarter simply because the capital letters N. E. by statute have been given a special or peculiar significance in the tax proceedings in this state.

Again, Sec., is the correct abbreviation for Section, but the class of officials who write N E or n e where they should write N. E. J sometimes write S or s when they should write Sec., or Section. Then why not also give a legislative meaning which is not found in the dictionaries to the letter S? Some of the officials who blunder in the use of these abbreviations often make numerous other blunders. Whynot protect them by a statute and legalize a number of other common mistakes found in the assessment rolls and taxbooks?

This bill aims to give a peculiar meaning to certain letters and characters but specifically states that it shall apply only to tax proceedings. But having thus legalized their use, and popularized these abbreviations, they will soon be found in deeds, mortgages, leases, contracts-conveyances of all kinds, thus causing uncertainty and litigation.

The concluding portion of said bill reads as follows: Whenever the abbreviation ° 'do" or the character ° " or other similar abbreviations or characters shall be used in any such proceedings, they shall be respectively construed and held as meaning and being the same name, word, initial, or letter or letters, abbreviations, figure or figures as the last preceding such "do" or I " or other similar character.

Here again we have a remarkable perversion of wellknown marks and abbreviations. "Do."is an abbreviation for ditto, but "do" is "a syllable attached to the first tone of the major diatonic scale for the purpose of solmization, or solfeggio, " and the marks ",, ", doubtless intended for "turned commas" are, as found in this remarkable bill, the last half of quotation marks!

Whenever a county assessor, auditor or treasurer has occasion to describe a tract of land, let him do so by writing the words in full or using the correct abbreviation, for example: N. E. - which courts hold to mean the North East Quarter. There is no excuse for four different expressions, two of which would be peculiar to this state, thereby incurring the ridicule and just censure of our fellow citizens in other states. The tendency should be towards greater, not less accuracy, ability and fidelity on the part of public officials. Let the people elect their best men as county commissioners,-men who will scrutinize the work of county officials and refuse to pay for work that is defective, irregular and illegal, and refuse to recognize publications of tax lists that are illegal and void and there will be no need for special legislation legalizing official stupidity, encouraging careless

ness and incompetency. The proposed bill is a reflection upon the intelligence and integrity of the people. It has the most far-reaching consequences, and if sustained by the courts, amounts to a legislative reversal of the uniform current of American authority upon which the people have a right to rely.

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, February 16th, 1901.

STATE OF SOUTH DAKOTA
EXECUTIVE CHAMBER

To the Members of the Senate and House of Representatives:

I herewith respectfully return to the House of Representatives, without my approval, House Bill No. 191, entitled: "An Act To Amend Section 19 of Chapter 60 Session Laws of 1897 Relating to Style and Form of Ballot, " for the reason that said bill is defective because it does not authorize and direct the Secretary of State and town and village clerks to carry into effect the expressed object of said bill.

Very respectfully,
CHARLES N. HERREID,
Governor.

PIERRE, March 5th, 1901.

STATE O1' SOUTH DAKOTA
EXECUTIVE CHAMBER

To the Members of the Senate and House of Representatives:

I herewith respectfully return to the House of Representatives, without my approval House Bill No. 161, entitled, "An Act to Amend Section 12 of Chapter 58 of the Session Laws of 1897, entitled, an Act to provide for the appointment of a Board of Regents; to fix the number of regents and their term of office and to define their duties and powers in the control of the educational institutions, sustained either wholly or in part by the State of South Dakota. "

Section 12 of Chapter 58, Laws of 1897, provides that "The Regents of Education shall fix all rates of tuition and of other fees to be paid by students, but such rates must be the same in all the different institutions. They may receive, free of tuition, two students appointed by each state Senator and one by each Representative of the state legislature in any one of the institutions under their control."

This bill makes several remarkable changes in said section. Having just received said bill and having only a few moments in which to return it to the House of Representatives, in which it originated, before its abjournment, sine die, I can only very briefly mention a few of many serious objections to the bill. This bill provides that the State educational institutions "may receive, free of tuition, ten students appointed by each State Senator and ten students

appointed by each Representative of the State Legislature, " "not more than three of whom shall be students of the same institutions. " * *

Our educational institutions are supported by the people and for the people of our state. The tuition should either be free to all or all should pay tuition equally. This bill discriminates, and the discrimination will almost invariably be against those who are poor and without friends of prominence and influence; in other words, against those who are specially entitled to sympathy and assistance. Why should those only having a political " pull " receive free education at the expense of the state? Why should the young men and women of our state, who seek an education at our institutions, become the political trading stock of politicians? Those institutions of our state should be kept sacredly free from the influences that enter into political campaigns. The vicious principle involved, it seems to me, is too self-evident for an extended argument. I cannot believe that the members of this Legislature deliberately intended to violate a fundamental principle of equality which is specifically expressed in our Constitution with reference to the public schools, and which ought to apply to our higher institutions of learning, to-wit: "It shall be the duty of the Legislature to establish and maintain a general and uniform system of education of public schools, * * * *and equally open to all."*

Should this bill become a law, 1, 320 students would have to be admitted free of charge. The effect of this might be to reduce the tuition funds of these institutions one-half. In view of the appropriations, this reduction in the revenue might materially interfere with the financial affairs of said institutions during the next two years.

Said bill further provided that pupils may be appointed to said institutions who "shall have successfully passed the eighth grade in public schools. " According to this provision the educational institutions, built and supported by all the

people of the State, may be crowded with the infants from the towns where said institutions are located and the immediate vicinity; and the cry for new buildings will be heard in the land long before the opening of the next legislature. These institutions have just recovered from the prevailing belief that they were "high schools" maintained by the people for the benefit of a few favored towns.

In this bill we also find the following remarkable provision: "Provided, that in the admission of students to such institutions, no more shall be admitted from any county than the number herein provided, if such admissions shall make it necessary to exclude any students appointed under the provisions of this act. "

The iniquity of this bill is indeed complete. Those who desire to pay must be excluded for those receiving free tuition! A senior who has paid his tuition may be forced to leave to make room for someone on the "free list" and graduate from some institution in another state where the Legislative "pass" system does not exist.

Respectfully submitted,

CHARLES N. HERREID,

Governor.

PIERRE, March 8, 1901.

STATE OF SOUTH DAKOTA

EXECUTIVE CHAMBER

To the Honorable Secretary of State:

I herewith place on file in the office of the Secretary of State, without my approval, Senate Bill No. 68, entitled: "An act authorizing and directing the publication of the reports of the Board of Railroad Commissioners, State Oil Inspector, Board of Health, Board of Pharmacy and the State Mine Inspector of the State of South Dakota, for the years of 1899 and 1900. " This bill was passed during the closing hours of the session. It does not carry an appropriation, and I am informed the publication of these huge manuscripts-the largest containing about six hundred closely typewritten pages of typewriter paper-would result in a large deficiency in the general appropriation for printing. I am not aware that any member of the legislature felt sufficient interest in any of these reports to examine them during the session of the legislature when their contents might have been of some value to the legislature. Certainly, the publication of said reports now can be of no value whatever to the legislature which has just adjourned *sine die.*

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 12th, 1901.

STATE OF SOUTH DAKOTA

EXECUTIVE CHAMBER

To the Honorable Secretary of State:

I herewith place on file with the Secretary of State, without my approval, House Bill No. 257, entitled:

"An Act entitled an Act to Amend Section 5260 of the Compiled Laws of the State of South Dakota, being Section 446 of the Code of Civil Procedure, as Amended by Section 1 of Chapter 17 of the Laws of the Territory of Dakota of 1879, Relating to Witnesses and Evidence, " for the reason that it is identical with Senate Bill No. 203, which has been approved and duly filed.

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 13th, 1901.

STATE OF SOUTH DAKOTA
EXECUTIVE CHAMBER

To the Members of the Senate and House of Representatives:

GENTLEMEN: I herewith respectfully return to the House of Representatives, without my approval, House Bill No. 92, entitled: "An act to amend Section 2844 of the Revised Political Code of 1903, relating to intoxicating liquors. "

This is a most remarkable piece of legislation. Apparently the bill aims to make it illegal for one person to "buy for" another person intoxicating liquors under certain conditions. The existing law is changed by inserting the words "buy for" and "buying for" twice, and the change of numerous marks of punctuation and by devitalizing a sentence by the insertion of a period and commencing the next word with a capital letter. This peculiar division of this sentence makes this section of the liquor license law meaningless and simply a conglomeration of words. An examination of the engrossed bill shows that this is not an error in the enrolled bill, but that it is a part of the engrossed bill which passed both houses of the Legislature in this mutilated form.

The effect of this one change can be seen by turning to Section 2844 of the Revised Political Code of 1903 and changing the comma after the word "persons" in the sixth line to a period and commencing the word "that" with a capital letter.

In this connection it may be of interest to recall the fact

that this same section of the license law was amended by the Legislature of 1901 by chapter 141. This act contained some meritorious amendments. Two years ago the Legislature adjourned on the eighth day of March and on that day, the last day of the session, the Governor received from the Legislature for his consideration seventy-two (72) bills, most of them during the closing hours of the session. Senate Bill No. 49, being said chapter 141, was among the flood of bills which reached me during the closing hours of the session,-too late for consideration before the end of the session. On March 18th, 1901, on account of some of its good features this bill became a law, without the approval of the Governor.

The section under consideration when adopted in 1897, (Ch. 72) made it criminal "for any person to sell, furnish or give away any spirituous, malt, brewed, fermented or vinous liquors," to three classes, to-wit:

1. Minors;
2. Intoxicated persons;
3. Persons in the habit of getting intoxicated, otherwise known as habitual drunkards.

Making it unlawful to "sell, furnish, or give away" intoxicating liquors to habitual drunkards was presumably on the theory that of all men the bar-keeper was probably best informed as to who in each community constituted habitual drunkards. In the case of Sandige vs. Widman (Opinion filed September 2nd, 1899,) this law was upheld and construed:

"The saloon keeper is bound to ascertain and to know that the person to whom he sells intoxicating liquors is not a minor, is not intoxicated, and is not in the habit of getting intoxicated; and as to such persons no notice is required forbidding him to make sales. The law making power evidently intended to make it absolutely unlawful to sell intoxicating liquors to any of the three classes of persons mentioned in Section 11, and it also evidently intended to require of the

saloon keeper to ascertain at his peril whether or not the person to whom he was selling came within either of these classes." 12 S. D. 101.

But the Legislature of two years ago legalized the selling, furnishing and giving away of intoxicating liquors to habitual drunkards, unless perchance some one should make it his business to designate the drunkards and serve a written notice forbidding it.

The Legislature of 1901 may not have realized the full force and effect of the amendment aforesaid, and I am quite certain that the present Legislature did not intend, by passing the bill in question, to reduce Section 2844 of the Revised Political Code of 1903 to a meaningless jumble of words.

I have the honor to remain,

Very Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 4, 1904.

STATE OF SOUTH DAKOTA
EXECUTIVE CHAMBER

To the Honorable Secretary of State:

I herewith place on file in the office of the Secretary of State, without approval, as provided by law, House Bill No. 205, entitled: "An act pertaining to the keeping in the office of the County Auditor of records of real estate transfers, " without my approval, for the following reasons:

This bill, it appears to me, is a sample of hasty, crude and illy considered legislation. Presumably this bill was intended to provide a record of the owners of real estate to which the assessors might go for information. If so, why limit the deeds to "unconditional" conveyances? Why not include decrees of the county and circuit courts conveying titles? Why not provide a complete record? The record does not begin with a complete up-to-date list, but simply contemplates further conveyances. How many years will it take before a record under this law would be of any value? This bill would add a great deal of extra work to the auditor's office and a great deal of expense to the county, and accomplish practically nothing.

These are only a few of many objections to this bill. The plan proposed is too crude to be of any real benefit.

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 10, 1903.

STATE OF SOUTH DAKOTA

EXECUTIVE CHAMBER

To the Honorable Secretary of State:

I herewith place on file in the office of the Secretary of State, as provided by law, Senate Bill number 160, entitled: "An act entitled an act to license solicitors for benevolent organizations, " without my approval, for the following reasons:

This bill purports to make it a misdemeanor for any person claiming to represent "an orphan asylum, children's Home, rescue home, hospital, or like charitable organizations, " in any other state to solicit aid in this state without first obtaining an annual license, except "salvation army, deaconesses who wear a distinct garb, " etc.

1. The enrolled bill contains numerous clerical errors.

2. It confers certain duties and powers upon a board which it refers to as "the board of charities. " If the "State Board of Charities and Corrections" was intended, it should have been designated by its legal, constitutional title.

3. This bill aims to protect the people in matters where each one ought to be able to protect himself. It is on a par with the anti-peddler legislation, etc. The time of the members of the Board of Charities and Corrections should not be taken up with issuing begging permits.

4. This bill savors of freak legislation. No great harm will come to the state during the next two years even if this bill does not become a law.

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 10, 1903.

STATE OF SOUTH DAKOTA
EXECUTIVE CHAMBER

To the Honorable Secretary of State:

I herewith place on file in the office of the Secretary of State, as provided by law, Senate Bill No. 207, entitled: "An act to provide against discrimination in insurance rates, fixing the penalty for violation of the same," without my approval, for the following reasons:

This bill makes it a criminal offense for any life insurance corporation or any agent, to allow any inducement to a person insuring in the way of rebate of premium, or any special favor or advantage or other benefits, or any valuable consideration or inducement whatever not specified in the policy.

From the nature of things, such agreements can be known only to the two parties to the transaction; hence this law would not be enforced, and it would be simply a dead letter upon the statute books.

This bill attempts evidently to kill competition among life insurance companies and is clearly for the benefit exclusively of the insurance companies and not for the benefit of the people of the state. If the people who insure should get the benefit of lower rates by virtue of secret and active competition, it certainly ought not to be considered a crime. In money loaning, banking, buying and selling, in all avocations of life, competition is considered beneficial to the consumer. If ° `competition is the life of trade," why legislate to kill it off? This Legislature passed an anti-trust bill, and also the famous anti-compact bill which prohibits

agreements among insurance companies which stifle competition. Surely the same Legislature did not intend to reverse and stultify itself by enacting a law which not only makes such agreements possible but proclaims as criminals the agents who, by their energy and business enterprise, reduce the rates, and thereby give the people cheaper insurance. The insurance companies do not need the aid of the criminal law to enable them to make more money. The statements of the enormous surplus of the great insurance companies show that this money all comes out of the assured and that the business has been most profitable. Why not let competition reduce these rates? It seems strange that the Legislature should make and define as a new crime something which has heretofore been considered beneficial. Crimes are offenses against the people. Securing cheaper life insurance, it seems, to me, may reduce the profits of the agents, and possibly the companies, but it is certainly not an offense against the people.

In a neighboring state the circuit court held a similar law unconstitutional on the ground that it was class legislation and an infringement upon the right of contract.

I can only account for the passage of this bill by the fact that it was introduced during the closing days of the session and considered and passed during the rush of business during its closing hours, without due consideration.

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 11, 1903.

STATE OF SOUTH DAKOTA

EXECUTIVE CHAMBER

To the Honorable Secretary of State:

I herewith place on file in the office of the Secretary of State, as provided by law, Senate Bill No. 173, entitled: "An Act defining the effect of a recorded instrument other than an instrument of warranty, " without my approval, for the following reasons:

Under this act schemers and speculators can get quit claim deeds to property, and by putting the same of record obtain a perfect title to property, and this although the former owner of the property may have transferred the same by warranty deed, if for any reason the person holding the warranty deed should fail to record the same. Frequently a person who purchases a piece of property neglects to record his deed. Or the deed may be taken at some place other than the county seat and it may take some little time to get the deed to the office of the register of deeds. Under this act, the party having sold and conveyed the property by warranty deed and received a full compensation therefor could then turn around and give a quit claim deed to another party, and, if the party who held the quit claim deed got it on record first, he would hold the property. Under this act, it would be simply a race for the office of the register of deeds. A party can give a quit claim deed to property and not be liable to the person to whom he makes the transfer if the title fails, and as a necessary result, if A gives a warranty deed of a piece of property to B, and if afterwards A gives a quit claim deed to C, if C gets his quit claim deed on

record first, he becomes the owner of the property and B, who has a warranty deed, would not only lose his property but have no recourse against A. One who takes a quit claim deed of real estate is presumed to have notice that there are prior equities and he is deemed to take said deed with the actual notice of said equities. The usual method of conveying a good title is by warranty deed. The usual method of conveying a defective title is by a quit claim deed. Under this act schemers and speculators could close their eyes to honest and reasonable inquiries and traffic in apparent imperfections in titles. This act would give a special and peculiar value to quit claim deeds in this state, and contrary to that established by the courts throughout the United States.

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 11, 1903.

STATE OF SOUTH DAKOTA
EXECUTIVE CHAMBER

To the Honorable Secretary of State:

I herewith place on file in the office of the Secretary, of State, as provided by law, House Bill No. 245, entitled:

"An act to appropriate money to pay Margaret W. Mellette the amount of the judgment awarded by the Supreme Court of the State of South Dakota, " without my approval, for the following reasons:

This bill appropriates money to pay the costs awarded the defendant, Margaret W. Mellette, in an action which was not decided on its merits but purely on technical grounds, as will fully appear from an examination of the facts as set forth in the opinion of the court. State v. Mellette, 92 N. W., page 395. As this case is still pending and the state is equitably and probably legally entitled to a judgment against the defendant, I am unable to approve this bill, although the amount appropriated is not large, and that of itself is of comparatively small importance.

The facts are as follows:

The controversy is over certain real property located in Codington County. The defendant, while the owner of said property conveyed the same, her husband joining in the conveyance, to W. W. Taylor, January 19, 1893, to secure a note given by her husband to Taylor for $15,200, for which she was surety. While this conveyance was absolute in form, it was really a mortgage. Mr. Taylor, who was State Treasurer, and upon whose official bond defendant's husband

was a surety, defaulted in January, 1895, to an amount exceeding $350,000. The State secured a judgment against Taylor and his bondsmen for the amount of said defalcation. In August, 1895, Taylor delivered to Hon. Coe I. Crawford, then Attorney General of the State, said Mellette note and a quit claim deed to the premises in question. When Mr. Crawford received said note and deed he knew that said deed was in fact a mortgage. In December, 1896, Mr. Crawford transmitted said note to the defendant by mail, accompanied by the following letter:

"DEAR MADAM: I have the honor herewith to hand you a certain promissory note dated at Watertown, South Dakota, January 15, 1893, signed by A. C. Mellette and M. W. Mellette, for the sum of $15,200, payable to the order of W. W. Taylor, and due on or before January 15, 1894, with interest at 7 per cent. per annum. This note was delivered to the State of South Dakota with certain other property by W. W. Taylor, late defaulting treasurer of South Dakota, on the 5th day of August, 1895. Certain real estate deeded by you and by the Hon. A. C. Mellette to W. W. Taylor was by Taylor deeded to the State. The appraised price of your real estate and that of Hon. A. C. Mellette which could be applied upon the note at the appraised price equalled the appraised value of the note as per indorsement. I therefore, with the consent of the State board of appraisal, have the pleasure of returning the note to you as satisfied. "

When the defendant received the note it contained the following endorsement on the back thereof:

"August 5, 1895. By homestead at Watertown from Margaret W. Mellette, and lots at Lake Kampeska from her, appraised at $5,390, Mitchell lots $400, and bal. paid in real estate taken from A. C. Taylor as per appraised price. W. W. Taylor. "

The defendant received the note and accompanying letter and retained the same without objection. As a matter of

fact, this arrangement was by mutual consent and agreeable to both parties to the transaction.

The Legislature of 1897 attempted by joint resolution to quit claim the State's interest and donate the same to said defendant. This proceeding was null and void, being unconstitutional, and, in the language of the Supreme Court, "the Legislature was without power to release it." The action wherein this judgment for costs was obtained was commenced by Attorney General Pyle against defendant to recover possession of said premises. The Supreme Court very properly held that, "There is therefore no escape from the conclusion that the State merely acquired a lien upon the defendant's property, unless she is estopped by her conduct from showing that the deed to Taylor was in fact a mortgage. " The fact that Mr. Crawford treated this transaction, not as a mortgage which should have been foreclosed, but as a transfer of good title to the State, surrendering the note to Mrs. Mellette, shows conclusively that this arrangement was entirely satisfactory to Mrs. Mellette at that time, and her subsequent assumption of a right to the use and possession of said land is clearly a breach of good faith with Mr. Crawford and the State.

Quoting again from the said opinion of the Supreme Court:

* * * "it is merely a lien which has not been heretofore extinguished. "

'To what extent, if any, the plaintiff's lien continues to exist should be determined in an action where the issues are presented by appropriate pleadings. Under the liberal laws of this state relating to amendments, we think the court below might properly have allowed the plaintiff to amend its complaint by alleging the facts necessary to establish and foreclose its mortgage. Murphy v. Bank, 13 S. D. 501, 83 N. W. 575.

"The judgment is therefore reversed, with directions to

either dismiss or grant leave to amend the complaint, as the lower court may deem just and equitable, should application for such leave be made. "

When this opinion was filed November 26th, 1902, I immediately wrote the Attorney General and urged him to proceed in this matter in accordance with the suggestions of the Supreme Court. The payment of costs should await the final determination of this case, which there is every reason to believe will be favorable to the State of South Dakota.

Respectfully,

CHARLES N. HERREID,

Governor.

PIERRE, March 12, 1903.

[NOTE.-A large number of bills were returned to the legislature with suggestions for amendments which weremade, thereby obviating veto messages.]